IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKAURAU

Decision [2025] NZEnvC 058

IN THE MATTER OF	appeals under clauses 29(6) and 14(1) of Schedule 1 of the Resource Management Act 1991
AND	
IN THE MATTER OF	Private Plan Change 73: O'Hara-Waiuku to rezone land from rural to residential at Constable Road, Waiuku and introduce a new precinct within the Auckland Unitary Plan – Operative in Part
BETWEEN	GARDON TRUST, MATOAKA HOLDINGS LIMITED, POKORUA HOLDINGS LIMITED (ENV-2023-AKL-051) Appellants, Applicants, and Requestors
AND	BASELINE (2018) LIMITED (ENV-2023-AKL-053)
AND	S CHAPMAN, CHAPMAN ONION EXPORTS LIMITED (ENV-2023-AKL-054) Appellants
AND	AUCKLAND COUNCIL Respondent
AND	BALLE BROS GROUP (and parties at Appendix 1) Section 274 parties

Court:	Judge J A Smith Commissioner J Baines Commissioner R M Bartlett
Hearing:	9 – 13 December 2024 16 – 18 December 2024
Last case event:	18 December 2024
Appearances:	P Fuller & A K Devine for the Appellants and s 274 parties D K Hartley & A Buchanan for Auckland Council
Date of Decision:	27 February 2025
Date of Issue:	27 February 2025

DECISION OF THE ENVIRONMENT COURT

A: Subject to final refinement of the wording sought by the Appellants and supported by the s 274 parties listed in Appendix 1, Private Plan Change 73 is endorsed by this Court.

B: This approval is subject to specific changes to provide perimeter planting to the northwestern and western boundaries with rural land (not the recreation reserve). It may include reconfiguration of the master plan to make provision for this and also to provide for separation between such planting and houses preferably by the use of road. It also should include connections as proposed, and a community garden which may be subject to arrangement with the school and/or local tangata whenua as more particularly discussed in the evidence.

C: We direct the primary Appellant Gardon Trust and others to circulate to the other parties within 40 working days its revised precinct proposal and associated provisions for consideration. The other Appellants, s 274 parties and the Council are then to comment on these within a further 20 working days. If the parties cannot agree on the final conditions, Gardon Trust and others is to file

a memorandum with the Court setting out the differences between the parties, and its preferred provisions within a further 10 working days. The Council will then file its submissions as to its position on each of the matters in dispute, 10 working days thereafter.

D: The Court will then decide whether it can decide the matter on the papers or whether it needs to proceed to a further hearing.

E: Costs are reserved, although these are generally not appropriate on plan change cases. If any party seeks costs, such application is to be filed within 40 working days, any response within 10 working days thereafter, and final reply (if any) a further five working days thereafter.

REASONS

Introduction

[1] The Appellants Gardon Trust, Matoaka Holdings Limited and Pokorua Holdings Limited (**Gardon Trust and others**) sought a private plan change (**PPC73**) to provide some 30 hectares of urban land for housing to the south/southwest of Waiuku Township. The application was supported by a number of parties including the other Appellants to these proceedings and other interested s 274 parties.

[2] The plan change was not supported by the independent hearing panel (**the Commissioners**) appointed by the Council and this appeal ensued. In this appeal, Gardon Trust and the other Appellants Baseline (2018) Limited, and Chapman Onions Exports Limited and Sharon Chapman, and a broad range of s 274 parties who comprise residents, growers and other companies, supported the PPC73 application.

[3] The Council's continued objection was largely that the plan change was not necessary and therefore did not meet the requirement for the exemption of highly productive land (**HPL**) under the National Policy Statement for Highly Productive

Land 2022 (**NPS-HPL**).

[4] This case turned on the application of the various exemptions in the NPS-HPL but included a wider issue as to whether the change itself was necessary to provide more housing for the population of Waiuku. The Council also argued PPC73 was not appropriate under the Operative Auckland Unitary Plan (**AUP-OP**), particularly the protection of prime soils under part B2 of the Regional Policy Statement (**RPS**).

Overview

[5] Having heard all of the evidence in this case and for the reasons that will be addressed in detailed in this decision we conclude:

(a) There is no doubt that the extension of Waiuku in the way envisaged by Gardon Trust and others would provide for a compact and well-functioning urban extension to Waiuku township;

(b) Housing development there would increase the diversity of properties available;

(c) The demand for such properties is clearly demonstrated by the sale of lots within a smaller area adjacent to this land in the last few years and now nearly fully occupied;

(d) The site is close to all of the key facilities including schools, health, social services (including a hybrid community centre), and the shopping centre of Waiuku itself, all within a range of approximately one kilometre;

(e) The site also seems to be largely serviced, although there were some issues around wastewater and stormwater. For the reasons we will explain we conclude these issues are able to be resolved by provisions delaying development until this infrastructure is in place;

(f) There are questions as to whether Watercare will be providing improvements envisaged in its plan in the next few years as anticipated or whether they would take place over a lengthier period. Gardon Trust and

others have addressed this by agreeing that they will not be able to commence development until such time as these facilities are available;

(g) For the reasons we will go into in greater detail, there is no doubt in the mind of the Court that this would be a significant benefit to Waiuku and provide further variety in the typology, price and market in Waiuku town itself as well as in its surrounding rural catchment; and

(h) We also conclude it may also have the impact of avoiding development on other more rural properties with prime soils.

[6] The issue which engaged most of the evidence and time in this case was whether or not the application met the various constraints on development for prime soils under the NPS-HPL provisions and also under the AUP-OP provisions.

Highly Productive Land

[7] This Court has previously noted that the use of large areas of prime soils for residential development in an unplanned manner is not, in our view, commensurate with the long-term sustainability of the resource.

[8] Nevertheless, this Court has been faced with a series of applications for rezoning of such land. This includes recent rezoning in the Drury and Hingaia areas which amount to many hundreds of hectares.

[9] Beyond that, the Council acknowledges that the special housing areas (**SHA's**) introduced by special legislation also included some areas of prime soils and these have now been developed, with the impact upon the resource and the surrounding area now occurring.

[10] Beyond that, there have been other recent developments closer to this site including Hingaia, Karaka, Paerata and Patumahoe, all of which have involved the use of some HPL. Some of these occurred since the promulgation of the new NPS-HPL, involving rezoning of commercial land closer to Waiuku and Glenbrook for housing. This has raised the consequent concern of horticultural and other agricultural

businesses, which wish to conserve prime and elite soils, as to the future of their industries and employment, particularly locally.

Use of Models

[11] The expert economists used a variety of mathematical models to determine the economic effects of development on the subject land for residential use or for agricultural or other productive use of its prime soils. On the one hand, Dr Fairgray, an economist called for Auckland Council, found that infill housing within Waiuku would satisfy the need for additional housing there. On the other hand, Mr Adam Thompson, economist for the Appellants, considered that new greenfields development was required to satisfy the demand for new housing. Dr Kirdan Lees, also an economist for the Appellants, found there would be substantial economic benefits to allowing the PPC73 development.

[12] In the end, the differences between the experts were, in our view, distinguished by the scale on which the various models were developed. Dr Fairgray, for example, examined the wider area of Pukekohe as being part of southwest Auckland even though much of this land is rural. Mr Thompson examined a small area focused around Waiuku and including some immediate surroundings such as Clarkes Beach and Glenbrook. Beyond this, the question becomes: at what point does residential utilisation of the remaining elite and prime soils within the area become significant?

[13] The NPS-HPL provides for certain exceptions to the use of land containing elite and prime soils for residential purposes. To be clear, this Court agrees that such exceptions should be applied strictly, and all sub-requirements must be met in order that the application meets the necessary tests.

[14] Nevertheless, we have concluded, for the reasons which we will go into in some particular detail, that the tests are not intended to exclude all development on elite and prime soils, and that where a proper exception is established, an allowance should be made on a reasonable basis.

[15] For these reasons, we conclude this minor extension, which will allow the

development of 30 hectares directly adjacent to the Waiuku township, is an exception and also forms a sound planning approach to an existing well-functioning urban area. It will assist in consolidating the town centre and the utilisation of its facilities.

Waiuku

[16] Waiuku is a town with a population of nearly 10,000 and is the second largest town in the Auckland Region. It is situated in the southwest of the Auckland Region near the boundary with the Waikato Region. It is around 20 kilometres from Pukekohe which is also some distance from State Highway 1. Pukekohe is nevertheless better connected with central Auckland itself.

[17] The State Highway 1 connection to Waiuku is at Drury. This is now an area that has just been rezoned to urban, having been previously identified in the AUP as a potential future urban zone but zoned as rural pending a plan change.

[18] The main roads to Waiuku from either Papatoetoe or Drury deviate to Pukekohe while travelling through Paerata and Patumahoe. A copy of the plan showing the main roads to Waiuku is annexed hereto as "**A**". It can be seen that Waiuku is at the head of the estuary and its main road provides access to both Kariotahi beach on the west coast and the Āwhitu Peninsula.

[19] While Warkworth has been subject to significant rezoning as a result of plan changes and the construction of State Highway 1 motorway to its periphery, this town is still smaller than Waiuku. There has been significant rezoning at both Paerata and Patumahoe but the Appellants assert that there has been no significant rezoning at Waiuku for some 30 years, notwithstanding that "*The PC73 land has a long history of being identified for urban development and under the Franklin District Council, rezoning for residential housing was supposed to follow on from the rezoning of Fernleigh for employment. ...*".[1]

[20] We have already noted that a small amount of additional residential land has recently been released adjacent to the proposed development site and next to the Waiuku College. "**B**" shows a close up of the site and surrounding area.

[1] Evidence of Donna Goettler, dated 9 February 2024, at [3.1].

[21] "**C**" is a copy of an oblique aerial view looking south over Waiuku and it can be seen that the area involved is close to Waiuku College, medical centres, the Auckland Council reserve, the rugby club and a number of large-scale business activities. In particular, it also features, though not shown on the plan, a proximity to the Auckland Council facilities including the library and community centre. The small area shown proximate to the entry of Blake Road with earthworks for roading has now been fully completed and constructed. The bare portion of PPC73 land to the west is intended to be an extension of that development.

[22] Annexed hereto as "**D**" is a map prepared by the Applicant showing what it considers to be the relevant areas of interest within the surrounding area. The connections with Manukau, Papakura and Drury are demonstrated on the map as well as Pukekohe and Waiuku.

[23] A visit to Waiuku showed to this Court a strong sense of social and urban cohesion. It has a number of large parks, shopping centres and facilities including big box retailers off Blake Road and a traditional main street in Queen Street. However, it also showed a great deal of cohesiveness around the residential areas including proximity to the various more major attributes of the town itself.

[24] This was less evident in the large lot area which seems to be largely disconnected from Waiuku itself and the countryside living zone just outside Waiuku.

[25] In Riverview Road, Edgewater Parade and Riverside Drive there appeared to be a more intensive development. Given the age of the buildings, we thought it would have been developed in the 1980s or 1990s. Although there was some other general infill, such as the use of parts of existing sections, this did not appear to be dominant throughout Waiuku.

[26] Although various explanations for limited infill were given, we agree with those witnesses who suggest that this is probably because people live in Waiuku as a lifestyle choice and because of the larger sections, especially with the older homes.

[27] For those who would want more modern homes, there is more limitation on

the availability of these, particularly for those who may be seeking to have small sections.

[28] In our view, this is reflected in the fact that the sections released in the subdivision immediately adjacent to the site around 2021 appear to have been picked up very quickly, with most of the homes built and occupied. From our visit to the site, it seems to include a wide range of people from those with younger families through to those who are retired. We suspect a mix of nearby facilities including medical, community and schools and sport provides a potent mix of attractants to people living in this part of Waiuku.

[29] Beyond Waiuku itself, a number of rural properties have been developed with more intensive horticultural activity. One of these adjacent to the reserve and close to the subject site appears to have been a kiwifruit orchard which is now being utilised as a large lot subdivision. There are several other examples of intense horticultural development including glasshouses just to the south of subject site.

[30] These developments are scattered but seem to be less dependent on the soil type than on the intensive development method adopted (glasshouses and the like). Several of these can be seen in the photo of the wider area.

[31] The area to the east of Blake Road, opposite to the proposed development site, is relatively low lying and we heard evidence about issues to do with flooding on that land. It appears most suited to grazing and there is no indication at this stage that it is intended for development.

[32] The broader area around Waiuku constituting highly productive land under the NPS-HPL appears to be utilised for a wide range of activities from large lot residential, pastoral and cropping, to intensive horticultural as we have discussed.

[33] When driving to and from Waiuku from the motorway over many kilometres of farmland, it is difficult to ascertain which land is elite, prime, or of lesser status simply from observation, as all seems to be growing grass and trees. Again, it is really not possible to ascertain whether or not the farming activities are economic businesses

or simply hobby farming, but we did notice there are a number of houses close to the townships including around Waiuku.

Waiuku compared to surrounding areas

[34] One of the curiosities we found having visited Waiuku, was that other areas much smaller and with no particular urban features appeared to have been developed for housing, such as Paerata and Patumahoe. In both cases, there seemed to be very little in the way of community infrastructure such as shops, community facilities, sports grounds or schools.

[35] Nevertheless, we have no actual understanding as to when and how these areas developed as no evidence was given to us on the topic. Suffice to say that they have been developed and have created a demand for schooling, community facilities, shops and the like.

[36] Whilst Pukekohe is nearby, with a range of facilities, there is also the potential for the facilities at Waiuku to be attractants. We noted, for example, a Mitre 10 and a large supermarket situated near to the subject site and there are also medical facilities.

[37] We were told by the principal of Waiuku College that the majority of students travel to the school from out of Waiuku, although he did not describe the precise extent of catchment areas. Nevertheless, this appeared to include Clarks Beach, Glenbrook and some parts of the Āwhitu Peninsula.

[38] Pukekohe itself has been scheduled for major growth with provision made in the Auckland Unitary Plan (AUP). It is unclear whether the Paerata development is part of this anticipated growth, given it is some five or six kilometres from the centre of Pukekohe. Beyond Pukekohe, Tuakau and Pōkeno are outside the region but appear to be significant growth areas. Pōkeno, in particular, has seen significant housing built on the slopes of Bombay Hills with further development in the Hampton Downs area some kilometres to the south.

[39] We are unanimous in our view that Waiuku appears to have been left out of any

consideration for development. For reasons that are still unclear to this Court, having heard all of the evidence, we are still unclear as to why no future growth was provided for Waiuku. Whilst Dr Fairgray attempts to justify such a decision in his evidence, it is clear that in other areas, including areas such as Hingaia and Drury, there was provision made for future greenfields development. This is notwithstanding Dr Fairgray's views as to the capacity for infill dwellings within the existing urban area of Waiuku to address demand.

[40] Overall, we have reached the conclusion that Waiuku has been somewhat forgotten through the planning process. It is clearly a well-functioning existing urban environment and given it is not on any critical transport or other routes, it appears to have been simply overlooked.

The National Policy Statement on Highly Productive Land and the Application

[41] It is clear that this application for plan change became caught up in the notification of the NPS-HPL and is subject to it. It appears that the Council planning committee accepted the private plan change request on 3 February 2022. Between that time and the hearing and issue of a decision by the independent hearing commissioners on 19 April 2023, the NPS-HPL 2022 was issued.

[42] This was one of a suite of national policy statements and other methods (including regulations for stock) introduced in the last 10 years including to freshwater (changed a number of times) and urban development.

[43] We acknowledge that between the time of filing the application in March 2022, acceptance of a private plan change request on 3 February 2022, the application itself being filed around 11 March 2022, and its consideration in early 2023, the NPS-HPL took effect. That has now been superseded by the NPS-HPL 2024.

[44] The application for PPC73 sought to change the zoning of only some 32 hectares of land (amended as to area a number of times). The land has both Land Use Capability (**LUC**) 2 and LUC 3 soils and adjoins Waiuku township. The

Appellants seek that the land be used for residential housing for approximately 750 homes, that is, accommodation for around 1,500 to 2,000 people. The proposal also intended to provide for specialised housing needs for aged residents with a dedicated facility, such not being currently available in Waiuku.

[45] Gardon Trust and others are supported by other Appellant parties comprising a wide range of companies, many of which are unrelated to the Gardon Trust and others, including major growers who have particular requirements for elite and prime soils, industrial and other companies that utilise workers, the tangata whenua who support the application, and other groups such as the school.

[46] The Council, on the other hand, argued that the land should be retained for primary production. The arguments of the Council against the proposal rest in part upon the provisions of the AUP-OP and upon the application of the NPS-HPL. Whilst other provisions in the plan are also fundamental, policies relating to new or expanded rural or coastal towns and villages in Chapter B2 of the RPS were a focus.

The RPS – Chapter B2

[47] The regional policies are annexed hereto as "**E**". Those of most relevance are:

> **2.6.2. Policies**
>
> (1) Require the establishment of new or expansion of existing rural and coastal towns and villages to be undertaken in a manner that does all of the following:
>
> (a) maintains or enhances the character of any existing town or village;
>
> (b) incorporates adequate provision for infrastructure;
>
> …
>
> (d) avoids elite soils and avoids where practicable prime soils which are significant for their ability to sustain food production;
>
> (e) maintains adequate separation between incompatible land uses;
>
> …
>
> (3) Enable the establishment of new or significant expansions of existing rural and coastal towns and villages through the structure planning and plan change processes in accordance with Appendix 1 Structure plan guidelines.

> (4) Enable small-scale growth of and development in rural and coastal towns and villages without the need for structure planning, in a manner consistent with policies B2.6.2(1) and (2).

[48] Nevertheless, the policies as a whole are of importance, and we rely on all of the policies.

National Policy Statement on Urban Development 2020 – Updated May 2022

[49] Beyond the AUP – Regional policy statement, reference needs to be made generally to the NPS-UD which itself contains provisions which must be given effect to. The interpretation and application of these provisions was one of the issues in this case. We will discuss this in due course.

[50] The first objective of the NPS-UD is that:

> **Objective 1:** New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

[51] Policy 1 of the NPS-UD defines a "well-functioning urban environment". Policy 1 states:

> **Policy 1:** Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:
>
> (a) have or enable a variety of homes that:
>
> (i) meet the needs, in terms of type, price, and location, of different households; and
>
> (ii) enable Māori to express their cultural, traditions and norms; and
>
> (b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and
>
> (c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and
>
> (d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and
>
> (e) support reductions in greenhouse gas emissions; and

> (f) are resilient to the likely current and future effects of climate change.

[52] Part 2 of the NPS-UD is of some importance because much of it relates to the calculation of capacity and demand. Therefore, it has an interaction with the NPS-HPL. NPS-UD clause 3.2(1) requires a tier 1 local authority (Auckland Council) to provide at least sufficient development capacity in its region or district to meet expected demand for housing:

(a) In existing and new urban areas;

(b) For both standalone dwellings and attached dwellings; and

(c) In the short and medium long term.

[53] To be 'sufficient' Clause 3.2.2 requires it to be:

(a) Plan enabled;

(b) Infrastructure ready;

(c) Feasible and reasonably expected to be realised; and

(d) For tier 1 and tier 2 local authorities only, meet the expected demand plus the appropriate competitiveness margin.

[54] The NPS-UD has some discussion of the methodologies to ascertain what is feasible and reasonably expected, including:

> **3.26 Estimating what is feasible and reasonably expected to be realised**
>
> …
>
> (2) The following are examples of the kind of methods that a tier 1 local authority could use to assess the amount of development capacity that is feasible and reasonably expected to be realised:
>
> > (a) separately estimate the number of feasible dwellings (using a feasibility model) and the number of dwellings that can reasonably be expected to be realised (using building consents data on the number of sites and extent of allowed capacity that has been previously developed), for the short, medium and long term; compare the number of dwellings estimated by each method; then

> pick the lower of the numbers in each time period, to represent the amount of development capacity that is feasible and reasonably expected to be realised
>
> (b) estimate the number of feasible dwellings or sites, and then assess the proportion of these that can reasonably be expected to be developed in the short, medium and long term, using information about landowner and developer's intentions
>
> (c) integrate information about past development trends and future landowner and developer intentions into the feasibility model, which could mean modifying assumptions about densities, heights, and time of development.
>
> …
>
> (4) Different methods may be appropriate when assessing the development capacity that is reasonably expected to be realised in different circumstances, such as:
>
> (a) in existing, as opposed to new, urban areas; and
>
> (b) for stand-alone, as opposed to attached dwellings.

[55] As can be seen just by our reference to the wording of these, there is an enormous scope for argument between parties as to the meaning or application of these various words, as proved to be true in the context of this case. The economists' evidence is widely apart on their inputs to and outcomes of the calculations.

[56] We have heard evidence from a range of people, including builders and developers, who have indicated to us that the existing potential within Waiuku is significantly reduced, and that infill development is not appropriate or cost-effective in such a place. On the other hand, Dr Fairgray supported by other Council witnesses suggest there is sufficient capacity within Waiuku for infill to meet the NPS-UD.

The NPS-HPL

[57] The NPS-HPL itself seeks to protect elite and prime soils and provides that highly productive land must be identified by the Council. In the meantime, land that has been identified as Land Use Capability Class[2] LUC 1, LUC 2 or LUC 3 is deemed highly productive land. It is then protected for use in land-based primary production

[2] As mapped by the New Zealand Resource Inventory or any more detailed mapping that uses the Land Use Capability classification.

activity both now and in the future. In particular, Policy 5 of the NPS-HPL states that urban zoning of highly productive land is avoided except as provided for in this National Policy Statement.

[58] It is pertinent to this point that we remove from consideration any arguments as to the applicability of the NPS-HPL. Both parties have conceded that the land is deemed 'highly productive land' as it contains soils that are classified as LUC 2 and LUC 3 and that this applies to the majority of land on this site. Although the parties go into arguments as to how much of the land might be within those classifications, we see this as irrelevant, given the deeming provision of the NPS-HPL. We therefore refer to and support the decision of the Environment Court, *Balmoral Developments (Outram Limited) v Dunedin City Council,*[3] that pending identification of the land by the Council its Land Use Classification as LUC 2 and LUC 3 is sufficient to determine it is highly productive land.

[59] Clause 3.6 of the NPS-HPL goes on to deal with restricting urban rezoning of highly reproductive land. Thus, the 'avoid' wording in Policy 5 generally is changed in clause 3.6 to provide that land that meets the criteria in clause 3.6 may be rezoned:

> **3.6 Restricting urban rezoning of highly productive land**
>
> (1) Tier 1 and 2 territorial authorities may allow urban rezoning of highly productive land only if:
>
> (a) the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020; and
>
> (b) there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and
>
> (c) the environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.
>
> (2) In order to meet the requirements of subclause (1)(b), the territorial

[3] [2023] NZEnvC 59.

authority must consider a range of reasonably practicable options for providing the required development capacity, including:

(a) greater intensification in existing urban areas; and

(b) rezoning of land that is not highly productive land as urban; and

(c) rezoning different highly productive land that has a relatively lower productive capacity.

(3) In subclause (1)(b), development capacity is **within the same locality and market** if it:

(a) is in or close to a location where a demand for additional development capacity has been identified through a Housing and Business Assessment (or some equivalent document) in accordance with the National Policy Statement on Urban Development 2020; and

(b) is for a market for the types of dwelling or business land that is in demand (as determined by a Housing and Business Assessment in accordance with the National Policy Statement on Urban Development 2020).

(4) Territorial authorities that are not Tier 1 or 2 may allow urban rezoning of highly productive land only if:

(a) the urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land in the district; and

(b) there are no other reasonably practicable and feasible options for providing the required development capacity; and

(c) the environmental, social, cultural and economic benefits of rezoning outweigh the environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.

(5) Territorial authorities must take measures to ensure that the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment.

[60] The application of the wording of this provision is at the heart of this case. The argument advanced by the Appellants in this case is that it meets each of the criteria under subclause (1) and subclause (2) and that the proper application of the criteria in subclause (3) reinforced that position. In particular, they note that under subclause (3), the same locality and market is Waiuku with the potential for small additional areas to be added, perhaps Clarks Beach and Glenbrook. Nevertheless, the primary

argument is that Waiuku is the locality and market.

[61] Subclause (5) is also relevant as to whether the spatial extent of the urban zone covering highly productive land is the minimum necessary to provide the requirement for development capacity.

Other Issues

[62] There are several issues about the site that arise around these core issues. One is that the Court discussed with the parties creating a buffer zone between the site and the surrounding rural land which would in fact retain that for rural purposes. Thus, to that extent at least, the LUC principles would be met. Whether this has an effect on the application is a matter that is unclear.

[63] The other issue mentioned by Gardon Trust and others, is that it could harvest the soils and utilise them to enrich other areas such as the buffer area or other areas of reserve and public use within the subdivision. Again, the Council says that this is not a matter addressed in terms of the relevant NPS-HPL. It is unclear to what extent that matter may be relevant.

[64] One of the arguments about whether or not various targets are met in terms of the NPS-UD seems to turn on the scale at which the examination is occurring. The Council, for example, submitted that there is no evidence that RPS provisions relating to feasible development capacity for housing, and enabling the sufficient supply and diverse range of dwelling types that meets people and communities needs are not being given effect to at a regional level.

[65] Witnesses refer to the sub-regional level which we took to be southwest Franklin. The exact scope of that area is unclear, but nevertheless it seemed to be suggested that areas such as Patumahoe and Paerata met the requirements in relation to Waiuku. Their inclusion turns on the question of the locality and market and on this particular matter there is very much a major point of difference between the approaches of Dr Fairgray for the Council and Mr Thompson for the Applicant.

[66] There was also an issue raised during the hearing in relation to stormwater and whether or not the development of this site would increase stormwater flows to the low-lying area to the south of Blake Road. Additionally, there were issues raised by the Council as to the ability to service the area, notwithstanding that Watercare has budgeted for the upgrading of wastewater and water for this area.

[67] Mr Perera for Watercare gave evidence that there have been recent changes in relation to that upgrade. Apparently, the application for consent to allow the upgrading has now been withdrawn given commentary made by the commissioner hearing the consent application and Watercare is now considering its options.

[68] As we understand it, Gardon Trust and others' position in response to this is that any utilisation of the rezoned land (actual development and sale of it) would be contingent upon those services being available. To that extent, we understand that provision of water, management of wastewater and the flooding issue downstream are appropriately addressed by the development or other works. Whether that answers in full the question of the Council is a matter we will consider in due course.

[69] Finally, the Council raised the issue that s 21 of the Resource Management Amendment Act 2020, amended s 74(2) of the Resource Management Act 1991 so that two further matters relating to climate change need to be considered:

(a) any emissions reduction plan made in accordance with s 5ZI of the Climate Change Response Act 2002; and

(b) any national adaptation plan made in accordance with s 5ZS of the Climate Change Response Act 2002.

[70] These provisions came into effect on 30 November 2022 but do not apply to these appeals given the transitional provisions in Schedule 12 of the Resource Management Act. Nevertheless, can we say that we do not understand those would affect the application in any event.

[71] It is again common ground in relation to the medium density residential standards (**MDRS**) which are mandatory for private plan change requests, that it has

been accepted that the proposal in this case did meet the requirements of Clause 35.1 of the Schedule 12, namely that the new zones would be MDRS.

[72] Another issue that arises in this regard is whether the application includes the 11 sections which were derived from the certificate of title which was subdivided for the purposes of the earlier development adjacent to Constable Road on the eastern corner of the site. It appeared that title had not been issued for those sections.

[73] In *Schmuck v Northland Regional Council,*[4] this Court was faced with an applicant who applied for consents in relation to foreshore and seabed area, some of which were not identified at all in any plans, although arguably it was the subject of evidence. At first instance, the Court, with Judge Smith presiding, concluded that the applicant had not identified the property in question and accordingly they could not grant a consent for that part at least. On appeal, the High Court said that the Court had the innate ability to rationalise the application in such terms that it is clearly within its power to include the area.

[74] That case, however, is a step distant from the current. In that case, there had been no identification of the property at all. In the current case, the lands had been identified in terms of an earlier title which applied to all of the land and from which the new titles were derived subsequently. In all the maps, the land in question had been clearly identified. Accordingly, based in part upon the *Schmuck* decision but more particularly upon the clarity of the application, we are satisfied that no third party looking at the documentation associated with this would have misunderstood that the land in question was included.

[75] In particular, it seems to us that in such cases the diagrams in development maps are far more significant to people reading the documentation than would the quotation of particular titles. Accordingly in that regard, the Court concludes that all of the land is within scope of the change.

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[4] [2020] NZHC 1270.

The Court's role on appeal

[76] Clearly, when considering any appeal, the Court's jurisdiction is founded first by the scope of the appeal and, at the other extreme, the decision of the Commissioners. In this case, this is between certain grounds of refusal and the full extent of PPC73 sought by the Applicant.

[77] It also appears that in deciding this case, the Court may not grant all the changes as sought by the Applicant or may impose further conditions that were not considered by the Commissioners. No party disputed this, and we proceed on that basis.

[78] Beyond that, the Court is obliged to consider the various tests in ss 32 and 32AA and otherwise assess whether the change is appropriate. Some of these criteria are set out in statutory tests we have already mentioned or in National Policy Statements. Others, of course, are more general in nature relating to questions as to *most appropriate* and *necessary*.

[79] These tests are well accepted, and all parties acknowledged them. Analysis is set out clearly in *Long Bay-Okura Great Park Society v North Shore City Council*,[5] and *Colonial Vineyard v Marlborough District Council.*[6]

[80] We further note that it appeared to be accepted by both parties that there is no presumption in favour of any particular zoning of the land, the subject of the plan change.[7]

[81] The Court is required to determine the most appropriate zoning of the land between the status quo and the proposed zoning option that has been put forward by the Appellants. Accordingly, the evidence of some witnesses talked about whether there was justification to change the zoning. This, in our view, misconceives that test. We take the matter no further, as it was agreed by Council that the starting position is neutral as to zoning. In this case, the situation is somewhat complicated by the various

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[5] EnvC Auckland A78/08, 16 July 2008, at [34].
[6] [2014] NZEnvC 55, at [17].
[7] *Infinity Group v Queenstown Lakes District Council* C10/2005, at [54].

National Policy Statements and, in particular, the presumptions contained within Part 5 of the NPS-HPL.

The Commissioners' decision

[82] The general powers of the Court are set out in s 290 of the Act and gives the Court the same power, duty, and discretions as the original decider (s 290(1)). In accordance with s 290(2), the Court may confirm, amend, or cancel a decision.

[83] Section 290A requires that the Environment Court have regard to the decision that is the subject of appeal or inquiry. At the outset, it is important to note that the notice of appeal by Gardon Trust and others, the primary Appellant, is nuanced. It recognises that it is the decision to refuse the plan change due to loss of productive soils that has been the key issue.

Gardon Trust, Matoaka Holdings Limited and Pokorua Holdings Limited notice of appeal

[84] Gardon Trust, Matoaka Holdings Limited and Pokorua Holdings Limited's notice of appeal, notes:[8]

> The Requestors … agree with the Decision on the following findings:
>
> (a) Structure planning is not necessary for the scale of development of PC73 (5% increase in the size of Waiuku) in order to meet the requirements of Auckland Unitary Plan-Operative in Part – Regional Policy Statement 2016 (**AUP-RPS**) Chapter B2 and Appendix 1.
>
> (b) The site has low ecological values and PC73 would result in positive environmental effects.
>
> (c) The site is geotechnically suitable for development. This is a factor which should be given significantly more weight in zoning decisions. The devastating impact of Cyclone Gabrielle, with hundreds of homes in the region red stickered due to landslide damage, has exposed the risks of building on land that does not have suitable geology and gradient. …
>
> (d) Stormwater can be appropriately managed. While the Panel acknowledged the Requestors had worked constructively with Ngāti Te Ata to incorporate their tikanga practices …

[8] Notice of appeal, dated 26 April 2023, at [12].

(e) The site can be adequately serviced with three waters infrastructure. While some public works need to be undertaken before physical connections can be provided, those works are planned and funded. …

(f) Local roads and intersections can be upgraded to safely accommodate the development. …

(g) The provision of roading connections to neighbouring rural land, requested by Auckland Transport, were not necessary.

(h) Landscape and visual effects will be acceptable with the proposed rural buffers.

(i) Urban design outcomes will be acceptable and achieve a well-functioning urban environment.

(j) The new proposed urban boundary, while relying partly on cadastral boundaries, was appropriate to meet the requirements of the AUP-RPS.

(k) The site does not contain elite soil, but prime soil (reference to the AUP definitions) and 91% of this site is HPL, as identified in the reports and evidence of Dr Singleton, and corroborated by Dr Hills for the Respondent. …

(l) Positive effects would arise from PC73 as identified in par 224 – 225. This summary is agreed, but the full range of positive effects is much broader and more substantial, and should have been given more weight in the overall final analysis.

(m) PC73 is consistent with the National Policy Statement – Urban Development 2020 (**NPS-UD**) and will achieve a well-functioning urban environment. …

(n) Not providing Future Urban Zone (**FUZ**) for Waiuku during the Proposed Auckland Unitary Plan – 2014 (**PAUP**) process was not intentional, in the sense that it would have been without planning merit. …

(o) As a consequence of Council prioritising growth, planning for the main urban area and the two satellite towns (paragraph 293, Commissioner's decisions).

(p) The Waiuku 2 Precinct provisions developed and modified by the Requestor, in response to matters raised by the Respondent and other submitters, are agreed by the Respondent, on a without prejudice basis, should PC73 be approved.

[85] From the reading of the appeals, no party, including the Council, disputed those findings of the Commissioners and accordingly they are settled and form a parameter of the Court's decision.

[86] What Gardon Trust and others did go on to say in the notice of appeal is that although they agreed with those findings, the overall weighting given to different relevant considerations is subject to appeal. They note:[9]

> As a general comment the Appellants say that insufficient weight was given to the positive and beneficial findings outlined above, and too much weight was given to the NPS-HPL, and the AUP-RPS provisions, for the protection of highly productive land.

[87] In setting out these statements, we have omitted the commentary in the notice of appeal by Gardon Trust and others in respect of each of the findings which we do not consider to be part of the Commissioners' findings.

[88] Gardon Trust and others' appeal then goes in some detail into why different weight should be given to certain of the positive aspects and it is clear that the appeal notes which parts of the Decision it does appeal.

[89] Those parts of the decision that were specifically appealed include the following findings:[10]

> (a) That while there are some significant merits, overall, PC73 is inconsistent with the AUP-RPS due to the loss of prime soils and other productive land. …
>
> (b) That while there are clear benefits in terms of urban design, economies of scale, affordability and better delivery to market, PC73 does not meet the requirements of clause 3.6(1)(a) and (b) of the NPS-HPL.
>
> (c) PC73 does not satisfy clause 3.6(1)(c), considering overall costs and benefits, including tangible and intangible values. At par 304 the Decision did helpfully note that further evidence may satisfy this provision.
>
> (d) PC73 does not satisfy clause 3.6(5) regarding amending the design to avoid the very best soils.
>
> (e) While generally consistent with the NPS-UD, PC73 does not satisfy all of the directive critical of the NPS-HPL including Clause 3.6, and fails Objective 1 and Policy 5.
>
> (f) That the introduction of the NPS-HPL, in combination with existing provisions in the RPS, relating to avoiding the loss of

[9] Notice of appeal, dated 26 April 2023, at [13].
[10] Notice of appeal, dated 26 April 2023, at [25].

prime soils, sets a "substantial threshold" to be achieved in order to allow urban rezoning of highly productive land to occur, and this threshold was not satisfied.

(g) That the evidence of Mr Bradley and Mr Foy, which relied on data from RIMU, who did not attend the Hearing to present evidence, was preferred over that of Mr Thompson and Mr Colegrave, regarding residential demand and supply capacity calculations. It is noted that the Requestors witnesses were the only ones to undertake the required demand assessment under the NPS-UD methodology.

(h) That the interpretation of Clause 3.6(1)(b) means that residential growth can be adequately accommodated in locations in the south other than Waiuku. The Decision adopted the position advanced by the Council that the "same locality and market" could be defined as "southern regional towns". This was incorrect, for the reasons provided in submissions and evidence in the Hearing by the Requestors, which has now been confirmed by the recently released National Policy Statement for Highly Productive Land – Guide to Implementation – March 2023.

(i) That residential growth can be adequately accommodated with intensification of the existing urban area and the use of alternative land in Waiuku.

(j) Regarding the precinct plan, that the proposed retirement village was not assured, and that it should have a connecting road through it.

(k) The soil needs to be preserved for current future primary production and this was necessary for food security, and to meet the requirements of the NPS-HPL.

[90] The appeal also noted that 45A Constable Road had the soils modified, pursuant to earthworks consent and it no longer contained prime or HPL soil. The appeal states this site could have been distinguished in the Decision and seeks rezoning of this site in the alternative to the relief for all four sites.

[91] We also note that this changes the percentage of prime / HPL soils of the PPC73 site as a whole, being less than indicated in the soil classification of Dr Singleton.

[92] The Appellant in its reasons for the appeal notes that the Decision did not:[11]

(a) meet the Purpose and Principles of Part 2 of Act;

[11] Notice of appeal, dated 26 April 2023, at [32].

(b) regarding the interest of Ngāti Te Ata (mana whenua), fulfil the mandatory requirements of s6(e), s7(a)(aa) and s8 of the Act, and Chapter B6 of the AUP-RPS;

(c) ensure the Respondent achieved its functions as a unitary authority under sections 30 and 31 of the Act, and in particular, ensure ("shall") that there is sufficient development capacity for housing in Waiuku to meet demand (s 31(1)(aa));

(d) satisfy the s32 and s32AA requirements of the Act, and in particular, the need to assess the benefits and costs of the urban zoning, regarding opportunities for economic growth and employment, that will be significantly reduced as a consequence of the Decision (s32(2)(a));

(e) satisfy the matters that must be considered for a Plan Change (s74);

(f) "give effect" in the higher order statutory planning instruments as is required (s75(3)) …;

(g) properly apportion respective weight to the NPS-HPL, and the enabling NPS-UD and the RPS, and importantly, resolve policy tensions within the overall statutory framework of the Act;

(h) meet the requirements of Schedule 1 of the Act;

(i) avoid, remedy and mitigate, significant adverse environmental effects, and in particular, the adverse effects on social and economic wellbeing and health as safety, from a shortage of housing choices in Waiuku, and in a location with low hazard risk;

(j) place sufficient weight on the submissions and expert evidence provided by the Requestors in the Hearings, and the many parties in support of PC73, and put too much weight on the evidence of some of the Respondents witnesses;

(k) recognise the significant urban design and amenity contribution that development of the Requestors land can make to achieve a well-functioning urban environment for Waiuku; and

(l) demonstrate sound resource management practice.

[93] The Appellant then goes on at some length to deal with particular concerns from the above including the NPS-UD, the NPS-HPL, the AUP-RPS, and then reaches a series of conclusions which are a curiosity given it is an appeal.

[94] Notwithstanding its prosaic and repetitive nature, it is clear to us that this is a limited appeal. It adopts the positive findings of the hearings panel. There is an issue before the Court as to the weight that might be given to those positive effects when

considered along with negative effects.

[95] No counter appeal has been filed which will reopen these issues and accordingly, we are limited to the matters that remain extant in terms of this appeal. In particular, these relate to the questions of the weight to be given to the positive effects versus the effects arising through the AUP-RPS, NPS-HPL, and in Part 2 of the Act.

The NPS-HPL and the NPS-UD

[96] Unfortunately, at hearing there was a lack of focus and although these were dominant issues before us, the Court became embroiled in long difficult arguments between expert witnesses as to what soils are on the site and the economic implications of development from witnesses on stormwater, traffic and the like. We conclude that by filing evidence on these settled matters the Appellants gave the Council the impression that the entire decision was up for dispute, notwithstanding that it was very clear from the appeal that the appeal is limited. The Court's jurisdiction is founded on the appeal, and we are not able to expand it and cover the entire matter simply because an appellant chooses to call evidence that is unnecessary or unhelpful.

[97] We now move on to the balance of the Decision and it appears to us that it raises the same issues that are germane to this appeal. It appears useful to us to first discuss and deal with the issues raised by the Commissioners in their Decision (from paragraph 226 onwards). We intend to deal with them in the same order.

The Regional Policy Statement

[98] The independent panel concluded that on infrastructure, transport and energy in Chapter B3, that PPC73 was consistent. Similarly for mana whenua in Chapter B6. In our view, this leaves in contention Chapter B2 and Chapter B9.

Chapter B2 – Urban growth and form

[99] It is clear from Chapter B2, and the Issues stated at B2.1 that there is demand for housing, employment, business, infrastructure, social facilities and services. It

seeks to provide growth that achieves eight goals:

> **B2.1. Issues**
>
> Auckland's growing population increases demand for housing, employment, business, infrastructure, social facilities and services.
>
> Growth needs to be provided for in a way that does all of the following:
>
> (1) enhances the quality of life for individuals and communities;
>
> (2) supports integrated planning of land use, infrastructure and development;
>
> (3) optimises the efficient use of existing urban areas;
>
> (4) encourages the efficient use of existing social facilities and provides for new social facilities;
>
> (5) enables provision and use of infrastructure in a way that is efficient, effective and timely;
>
> (6) maintains and enhances the quality of the environment, both natural and built;
>
> (7) maintains opportunities for rural production; and
>
> (8) enables Mana Whenua to participate and their culture and values to be recognised and provided for.

[100] We need to make an initial commentary about the plan because of the way in which parties, including the Council, often identify particular paragraphs without reference to either the surrounding paragraphs or the context of the provisions within the plan as a whole.

[101] The plan is very clear that it is to be read as a whole and the provisions are to be interpreted on a holistic basis, not evaluated on a one-by-one basis. When we turn to the RPS provisions that we are now discussing we need to keep in mind the context of those provisions. For this reason, we consider we should first look at what the issues and goals are before looking at how those might be achieved. This often gives proper context to the provisions.

[102] There appears to be no dispute that seven out of those eight goals are achieved by the application. The remaining one is "(7) maintains opportunities for rural production" and that is the focus of the dispute in this case.

[103] The objectives contained in B2.2.1(1) again emphasise quality, compact urban form. Given that subclause(f) relates to "better maintenance of rural character and rural productivity", this seems to implicitly recognise a compact urban form can be created without the need to duplicate facilities. This will avoid excessive use of rural productive land. Accordingly, the medium density provisions that are intended here are a way to achieve that compact urban form, thus reducing the demand for use of rural land for residential activity.

[104] It is clear under B2.2.1(2) that the urban growth is primarily accommodated within the urban area as at 2016. The use of the word "primarily" indicates to us that there can and will be exceptions, but these will need to be done in a principled way. To our mind, this reflects the strengthening of the provisions against ad hoc subdivision and development in the rural area by way of either full discretionary or non-complying activity applications which have remained a feature of the Auckland planning regime not withstanding these provisions.

[105] B2.2.1(3) states "sufficient development capacity and land supply is provided". We are unanimous that these words mean capacity and land shall be provided if it is not already provided. That will reflect on the test under B2.2.1(2) as to whether there should be further urban growth. The need for appropriate infrastructure is accepted by the Applicant and is raised in B2.2.1(5). This site is outside the rural urban boundary and is instead a 'town', and a 'rural and coastal town and village'. In this case, this is the second largest town in the Auckland Region beyond the rural urban boundary.

[106] Many of the policies in B2.2.2 do not apply. Subparagraph (4) includes promoting urban growth and intensification … within the Rural Urban Boundary, towns, and rural and coastal towns and villages and avoiding urbanisation outside these areas. Subparagraph (7) seems to apply not only within the Rural Urban Boundary but to other land in the future urban zone. This does not apply to the current application.

[107] The policies in B2.3 are not in dispute in this case, and they are achieved by this

application as are the policies which follow in B2.3.2. The residential growth provisions B2.4.1 repeat similar themes and include a reference at subparagraph (6) to "sufficient, feasible development capacity for housing is provided, in accordance with Objectives 1 to 4 above, to meet the targets in Table B2.4.1 below". Curiously enough, this does not apply only within the Rural Urban Boundary and requires models or evidence to achieve a short to medium term target.

[108] Given that we are now in 2025, one would expect the short to medium term target to be close to being met. The reality disclosed to us in evidence was that Waiuku has grown by 30 dwellings per annum between 2016 and 2023, of which one was a terrace house.[12] Policies in B2.4.2 although theoretically applying to towns outside the rural urban boundary seems to be largely repetitive of earlier provisions.

[109] B2.5 relates to commercial and industrial growth and is not directly relevant.

[110] B2.6 Rural and coastal towns and villages again, repeats similar things but is more focussed in its objectives:

> **B.2.6.1 Objectives**
>
> (1) Growth and development of existing or new rural and coastal towns and villages is enabled in ways that:
>
> (a) avoid natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage or special character unless growth and development protects or enhances such values; and
>
> (b) avoid elite soils and avoid, where practicable prime soils which are significant for the ability to sustain food production; and
>
> (c) avoid areas with significant natural risks;
>
> (d) are consistent with the local character of the town or village and the surrounding area; and
>
> (e) enables the development and use of Mana Whenua's resources for their economic well-being.
>
> (2) Rural and coastal towns and villages have adequate infrastructure.

[12] Evidence of Adam Thompson, dated 12 February 2024, at [5.17].

[111] Looking at these objectives as a whole, they are clearly not stated as cumulative requirements and they are clearly objectives.

[112] B2.6.2 states:

> **B2.6.2. Policies**
>
> (1) Require the establishment of new or expansion of existing rural and coastal towns and villages to be undertaken in a manner that does all of the following:
>
> (a) maintains or enhances the character of any existing town or village;
>
> (b) incorporates adequate provision for infrastructure;
>
> (c) avoids locations with significant natural hazard risks where those risks cannot be adequately remedied or mitigated;
>
> (d) avoids elite soils and avoids where practicable prime soils which are significant for their ability to sustain food production;
>
> (e) maintains adequate separate between incompatible land uses;
>
> (f) is compatible with natural and physical characterises, including those of the coastal environment; and
>
> (g) provides access to the town or village through a range of transport options including walking and cycling.
>
> …

[113] Of those cumulative requirements, the application clearly meets (a), (b), (c), (f) and (g). In relation to B2.6.2(d), there are no elite soils on the site. The question therefore is whether the Applicant has avoided *where practicable* prime soils which *are significant for their ability to sustain food production*. The other matter which may not be fully met currently is the maintenance of adequate separation between incompatible land uses. This might be addressed by providing the means within the site itself to afford, in the future, appropriate separation for incompatible uses outside the site boundaries.

Avoid, where practicable, prime soils significant for their ability to sustain food production

[114] The wording of the RPS in the heading above we have concluded involves consideration of the following terminology:

(a) 'avoids where practicable';

(b) 'prime soils'; and

(c) 'significant for their ability to sustain food production'.

[115] There is no dispute that the land involves prime soils, although arguably the proportion of the site that can be described as such varies between around a half to two-thirds. We accept for current purposes that the land area has a majority of prime soils.

[116] The question is as to whether to 'avoid where practicable' involves an assessment and discretion. On this site, it is proposed that there be areas set aside for recreation and transport corridors. At the hearing, the Court suggested a buffer be developed on the site beside any future rural boundary and that there also be provision for community gardens.

[117] Accordingly, of the total site area, some one third (assuming a buffer width of 100m, including any roads), would be reserved for those purposes, and not available for residences to be constructed there.

[118] Nevertheless, the zoning would change to urban, which is what Policy B2.6.2 addresses. Accordingly, the question in our view turns on whether it is practicable to avoid use of either this site or other land with prime soil for expansion of Waiuku. That in turn takes us back to an issue (which is why we discuss it close to the other issues in this case) relating to whether or not greenfield land is required around Waiuku to provide for future growth.

[119] The other issue which was a subject of evidence in this case is whether this land is significant for its ability to sustain food production. It forms under 30 hectares (given the reworking of the soils on 45A Constable Road) of the approximately 190,000 hectares of prime soils in the southwest region of Franklin. More particularly, there are extensive areas of prime soils immediately adjacent to this subject site, continuing some considerable distance towards Patumahoe and Paerata Rise and then continuing beyond those areas to Karaka and Drury.

[120] The land currently has pastoral use. There is clear evidence around Waiuku that smaller lots have been utilised for some form of intensive horticulture, some for arable purposes and some simply used for hobby farming. An earlier kiwifruit orchard to the northwest near the council reserve appears to have been abandoned, with the trees largely removed and now with several large houses on it.

[121] We have concluded that the word 'significant' must mean that it is beyond the normal. The significance cannot simply arise because it is prime soils, otherwise all prime soils would be protected under the original plan. Here those soils must be significant for their ability to sustain food production.

[122] While we accept there is a range of uses to which the land could be put, we conclude that the land is not significant for its ability to produce food for the following reasons:

(a) It is proximate to existing rural housing and also the town itself, and adverse effects from spraying, dust and the like are likely to generate complaints and constraints upon the use of the site; and

(b) The range of crops cultivated on the site is currently unknown but is likely to be similar to those within nearby sites, including a wide range of pastoral use, grazing, crop land, fallow land, horticulture and intensive activities.

(c) It is difficult to see anything about this land which makes it significant in comparison to nearby land or in fact the land throughout the region as a whole.

(d) Larger areas would, we understand, become significant. We accept the evidence from the market gardeners, that areas of 100 hectares or greater become increasingly more important because of the ability to operate activities on an economic scale. The relatively small area of prime soils on this site does not make the site significant. Larger areas of the same soils are likely to be significant, and we would be more concerned if this was an area of 100 hectares or greater.

(e) We note also that, in relation to sustaining food production, there needs to be a suggestion that food production could not occur unless it was a prime soil.

[123] In this respect, we noted that there are large areas of the region which we were not clear were prime or other highly productive soils. They still support pasture and accordingly they may support food production via stock farming. Thus, it appears to us that the interpretation of what constitutes prime soils is that it is those soils that enable significantly higher value activities to occur than simply pastoral stock farming.

[124] At paragraph [232] of the Decision, the Commissioners discussed this issue. We have reached a different conclusion to the Commissioners. Whilst we accept that economics changes over time, the reality is that this site forms an almost infinitesimal proportion of the land available in this particular area (by this we mean immediately around Waiuku and within the southwest Franklin area).

[125] We further conclude that the Commissioners did not consider the compact urban form as avoiding the use of other prime soils in this area which might be required to be used if housing is not available within Waiuku.

[126] We note that the Commissioners accepted that this land was the most logical location for urban expansion if urban expansion of Waiuku was necessary, and we conclude that this is the place with the least overall impact including on prime soils because of its ability to sustain higher density development.

[127] We do not consider this policy should be exempt from the additional lens of the NPS-HPL which we consider raises different tests which must also be met.

[128] We conclude that the application meets B2.6.2 as whole and that in particular it meets it on balance in light of our discussion. The test under (d) considers that subject to appropriate conditions on any plan change, adequate separation between incompatible land uses can be maintained. We note that wherever in future development for housing might occur around Waiuku, it would face the same challenges, as acknowledged by the planners in their JWS.

Chapter B9 – Rural environment

[129] We acknowledge the connection with Chapter B9 and in particular, 9.3.1 Objectives and 9.3.2 Policies. These of course turn upon the categorisation of the land as either urban or rural. We have concluded that these objectives and policies do not engage with the question as to what is the appropriate zone for the land.

[130] For example, Policy 9.3.2(1) seeks to avoid new countryside living subdivision, use and development on land containing elite soil and discourage them on land containing prime soil, with the objective B9.3.1(2) being land that is prime or elite is managed to enable its capability, flexibility and accessibility for primary production. It is clear to us that in the event that PPC73 is not justified then the land should remain as rural land and these policies would apply.

[131] The Commissioners noted:[13]

> …the Requestor has not demonstrated there are no other viable alternatives (such as a smaller urban expansion on these productive land).

With respect we conclude this statement misconceives the rural policy. Policy 9.3.2(1) is dealing with rural land not whether the land should be zoned as rural or urban.

[132] We do accept the question of viable alternatives as relevant under the NPS-HPL and we will discuss that shortly.

[133] Accordingly for the reasons we come to, we conclude from the Decision at paragraph 240 that the Commissioners, having recognised the majority of matters are met, has concluded that the failure to meet one provision acts as a veto. With respect, that cannot be correct. The plan is very clear that the provisions must be taken on as a whole and weighed together. Even if we had reached the conclusion of the Commissioners that the rezoning was inconsistent with that particular provision, we do not consider that precludes the land being rezoned, depending on the weighting of the various items.

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[13] Auckland Council decision on PPC73, dated 24 February 2025, at [239].

[134] Overall, when we go back to the issues under the plan and its approach, generally under B2, we are satisfied that the application meets, in broad terms, the requirements of the RPS when taken as a whole.

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

[135] We move to discuss the NPS-UD before the NPS-HPL for two reasons:

(a) This is the order in which the matter was dealt with by the Commissioners; and

(b) Understanding of the NPS-UD is necessary to inform the context of the discussion in the NPS-HPL (2022).

[136] We need to make a further preliminary comment, and this relates to the fact that we have two national policy statements, both seeking to fulfil different requirements:

(a) A district plan must be prepared in accordance with ss 31 and 32 of the Act, and Part 2 of the Act; and

(b) Directions under s 25A, evaluation reports (to which *particular regard* must be given under s 32), and national policy statements, national planning standards and any regulations.

[137] Accordingly, the plan change must comply and be in accordance with both the NPS-UD (if this is applicable) and the NPS-HPL to the extent it applies. In this case, it appears to be common ground that the consideration of both these statements is necessary as it influences the appropriate zoning for this land.

[138] The land that is to be zoned as urban land must meet the requirements of the NPS-UD. On the other hand, in order to be considered for rezoning it must meet the requirements of NPS-HPL clause 3.6 which restricts the urban rezoning of highly productive land.

[139] To make it clearer, the definition of urban rezoning in the NPS-HPL is "changing from a general rural or rural production zone to an urban zone". There is

no dispute that is what would occur here. The question then for this Court is how these two national policy statements should be read together. They are clearly interrelated and the change of zone from rural to urban requires consideration of the NPS-HPL while the objectives of the NPS-UD are clearly relevant if it is to be zoned as urban land.

[140] As we will see in due course, there is potential for a conflict between the two policy statements given the requirement in clause 1.3 Application of the NPS-UD, and 1.3(1)(b) of the NPS-UD that it applies to "planning decisions by any local authority that affect an urban environment". In this regard, the objectives in NPS-UD clause 2.1 are all relevant but there is clearly potential for conflict with NPS-HPL (2022). Objectives 2 and 3 of the NPS-UD read:

> **Objective 2:** Planning decisions improve housing affordability by supporting competitive land and development markets.
>
> **Objective 3:** Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:
>
> (a) the area is in or near a centre zone or other area with many employment opportunities
>
> (b) the area is well-serviced by existing or planned public transport
>
> (c) there is high demand for housing or for business land in the area, relative to other areas in the urban environment.

[141] There is no doubt these objectives would apply to both the subject land and to Waiuku generally given that Waiuku is an urban area and town. It is intended to be part of a housing and labour market with at least 10,000 people. Again, there is no serious dispute that the population of Waiuku is currently above or near the 10,000 limit and therefore it is an 'urban environment' by definition. We have already discussed that clearly the attributes of the subject site meet the requirements of Objective 3, at least (a) and (c), and probably (b) as well given it is on a main route.

[142] Similarly, the subject site meets all of the requirements of Policy 1 of the NPS-UD. The Commissioners concluded that the NPS-UD has the primary objective of ensuring that New Zealand has well-functioning urban environments that enable all

people and communities to provide for their social, economic and cultural wellbeing and for their health and safety now and into the future.

[143] The Commissioners state at [249]: "While we have concerns regarding the loss of prime and highly productive soils which we discussed below, we are satisfied that, PC 73 is consistent with the NPS-UD and would achieve a well-functioning urban environment".

[144] The Applicant asserted in its appeal and before this Court that this conclusion significantly downplayed the importance of the NPS-UD and the importance of this particular site (see [92] at (g) above).

[145] We agree that clearly this site forms part of an existing urban environment and that the urban environment is Waiuku. It already has a population exceeding that prescribed in the NPS-UD Definitions and therefore in itself must provide the well-functioning urban environment envisaged in the policy statement.

[146] To suggest that surrounding rural areas, villages and other areas such as Clarks Beach and Patumahoe form part of this urban environment is patently incorrect. The widespread areas of rural land between these areas make it clear that they do not form part of a well-functioning urban environment as envisaged under the NPS-UD.

[147] To this extent, the Council was suggesting that Waiuku is not in itself an urban environment. We conclude as a matter of fact that that is incorrect. Nor can there be any doubt in our minds that the addition of these 32 hectares would achieve in an exemplary fashion, the very objectives of the NPS-UD by integrating this land close to all of the critical facilities and increasing the viability and housing choices within Waiuku itself.

[148] Finally, we conclude that the Commissioners were wrong to exclude the NPS-UD from further consideration when considering the balancing of the policy statements, both of which the application must be in accordance with. In the first instance, we agree (it has of course been repeated by the Court and others) that the Court will seek to find a way in which both policy statements can be met.

Nevertheless, to the degree they are incompatible a decision must be made in the circumstances as to the appropriate balance to be met in terms of the Resource Management Act to reach an integrated solution.

[149] This is the test under s 32 as to which is the most appropriate course of action given other possibilities are available. In this case, the question that arises for the Court is whether it is more appropriate that the land be retained as rural land because of the prime soils on it, or that it be rezoned as urban land given it is fully in accordance with (and arguably an exemplar of achieving) the objectives and policies of the NPS-UD.

[150] Accordingly, when considering the NPS-HPL (2022), it is not simply a matter as to whether or not the land passes the various tests of clause 3.6 but then balancing the objectives and policies of the NPS-UD against those of the NPS-HPL (2022).

[151] We accept the position of the Council that the NPS-HPL (2022) sets a relatively high threshold before land can be considered for an inclusion within an urban environment.

[152] Clause 3.6(1) states:

> (1) Tier 1 and 2 territorial authorities may allow urban rezoning of highly productive land only if:
>
> (a) the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020; and
>
> (b) there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and
>
> (c) the environmental, social, cultural and economic benefits of rezoning outweigh the long term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.
>
> (2) In order to meet the requirements of subclause (1)(b), the territorial authority must consider a range of reasonably practicable options for

providing the required development capacity, including:

(a) greater intensification in existing urban areas;

(b) rezoning of land that is not highly productive land as urban; and

(c) rezoning different highly productive land that has relatively lower productive capacity.

(3) In (3)(1)(b), development capacity is **within the same locality and market** if it:

(a) is in or close to a location where a demand for additional development capacity has been identified through a Housing and Business Assessment (or some equivalent document) in accordance with the National Policy Statement on Urban Development 2020; and

(b) is for a market for the types of dwelling or business land that is in demand (as determined by a Housing and Business Assessment in accordance with the National Policy Statement on Urban Development 2020).

(4) [not relevant]

(5) Territorial authorities must take measures to ensure that the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment.

Statutory Context

[153] Neither the NPS-UD nor NPS-HPL actually define how the terms 'locality' and 'market' are intended to be interpreted. Nevertheless, they do provide elements of a framework for interpretation and a context for interpretation.

NPS-UD

[154] The phrase 'housing and labour market' is included in the NPS-UD definition of 'urban environment'. Furthermore, the NPS-UD definition of 'urban environment' explains the population threshold that would constitute such an urban environment by stating:

> **urban environment** means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:
>
> (a) is, or is intended to be, predominantly urban in character; and

> (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people.

[155] It is therefore clear that the concept of 'locality and market' requires interpretation in terms of an area of land or geographical/spatial extent associated with where people live and work. Furthermore, when making assessments involved with such a 'locality and market', associated assumptions should be made explicit.

[156] It is also clear that Waiuku itself constitutes an 'urban environment'.

Objectives

[157] Objective 3 states:

> Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:
>
> (a) the area is in or near a centre zone or other area with many employment opportunities
>
> (b) the area is well-serviced by existing or planned public transport
>
> (c) there is high demand for housing or for business land in the area, relative to other areas within the urban environment.

[158] The rapid uptake of residential opportunities in the recent 45 Constable Road development would seem to indicate that such a high demand exists for Waiuku, particularly when compared with recent infill housing development. We note also the relevant evidence of the College Principal regarding busloads of students from surrounding areas.

Policies

[159] Policy 8 states:

> Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:
>
> (a) unanticipated by RMA planning documents; or
>
> (b) out-of-sequence with planned land release.

Subpart 2 – Responsive Planning

[160] Clause 3.8 Unanticipated or out-of-sequence development states:

> (1) This clause applies to a plan change that provides significant development capacity that is not otherwise enabled in a plan or is not in sequence with planned land release.
>
> (2) Every local authority must have particular regard to the development capacity provided by the plan change if that development capacity:
>
> (a) would contribute to a well-functioning urban environment; and
>
> (b) is well-connected along transport corridors; and
>
> (c) meets the criteria set under subclause (3).
>
> (3) Every regional council must include criteria in its regional policy statement for determining what plan changes will be treated, for the purpose of implementing Policy 8, as adding significantly to development capacity.

Subpart 3 – Evidence-based decision-making

[161] Clause 3.9 Monitoring Requirements states:

> (1) Every tier 1, 2, and 3 local authority must monitor, quarterly, the following in relation to each urban environment in their region or district:
>
> (a) the demand for dwellings
>
> (b) the supply of dwellings
>
> (c) prices of, and rents for, dwellings
>
> (d) housing affordability
>
> (e) the proportion of housing development capacity that has been realised:
>
> (i) in previously urbanised areas (such as through infill housing or redevelopment); and
>
> (ii) in previously undeveloped (i.e., greenfield) areas
>
> (f) available data on business land.
>
> …

[162] By specifying 'each urban environment in their region', this requirement

indicates clearly the need to treat each such urban environment as a discrete spatial entity and not subsume it in or aggregate it with other urban areas.

[163] Other parts of the NPS-UD may also be worth reviewing, specifically in relation to planning for 'urban environments', including:

(a) Subpart 4 – Future Development Strategy (FDS):

  (i) Clause 3.12 Preparation of FDS

(b) Subpart 5 – Housing and Business Development Capacity Assessment (HBA):

  (i) Clause 3.20 Purpose of HBA

  (ii) Clause 3.24 Housing demand assessment

  (iii) Clause 3.25 Housing development capacity assessment

  (iv) Clause 3.27 Assessment of sufficient development capacity for housing.

[164] The language in these sections generally refers to the 'urban environment' (singular) for the tier 1 local authority and therefore may infer that such assessments apply across the collective urban environment rather than each individual urban environment within the region (as was the case in Clause 3.9).

[165] Nevertheless, what is clear is that underlying assumptions about the spatial extent of 'locality and market' are critical to the assessment of housing demand, housing supply and housing development capacity.

NPS-HPL

[166] The NPS-HPL makes explicit reference to the 'same locality and market' when defining its 'exception tests' and explicitly links this concept to the consideration of achieving a well-functioning urban environment. Clause 3.6 is set out above.

[167] It is worth noting the use of the phrase 'within the same locality and market', and particularly the use of the word 'within'. To us, this signals clearly that the concept of 'locality' is distinct from that of 'location' in that it implies an explicitly defined spatial extent of an area, as distinct from a point on a map or an undefined area. Defining the spatial extent of a locality is clearly essential to any exercise of assessment of housing demand, housing supply, development capacity and well-functioning urban environment.

[168] The NPS-HPL makes two references to 'urban environment', in Clause 3.6 and in relation to well-functioning urban environments.

Why is the clear interpretation of 'locality and market' so critical?

[169] As noted above, defining the spatial extent of a locality is clearly essential to any exercise of assessment of housing demand, housing supply, development capacity and well-functioning urban environment and related parameters.

[170] Such assessments are critical to determining whether or not the 'exception tests' in the NPS-HPL are met.

What are the essential attributes of the concept of 'locality and market'?

[171] We conclude that key attributes include:

(a) A clearly defined area/geographical extent most relevant to the assessment of capacity and demand;

(b) Identification of related dwelling typologies with respect to market preferences and affordability, across the range of densities – from urban zoning to rural zoning – associated with the clearly-defined area; and

(c) With respect to areas of urban zoning, consideration of well-functioning urban form (Live-Work-Play connections) associated with the clearly defined area.

[172] We have taken the view that the concepts of 'locality' and 'market' need to be

considered as distinct but complementary concepts, rather than a single concept, where:

(a) 'locality' refers to a range of attributes such as social and community identity; infrastructure provision; community amenities provision (theatre, library, recreation ground, public reserves, …); social services provision (health, education, …); while

(b) 'market' is related to buyer preferences and affordability of housing in that locality, as well as to developer preferences and profitability.

[173] Interestingly, the Court notes that Dr Fairgray states:[14]

> A key issue is that locality and market may be defined quite appropriately according to their purpose, but by using different criteria. This means that the "*locality*" of the subject HPL resource may have a geographical extent which is quite different from the "*market*" for that same resource. Commonly, the geographic definition of the "*market*" based on the NPS-HPL criteria will include an area which is larger than the "*locality*", also defined according to the NPS-HPL criteria. However, the assessment in 3.6(1)(a) must refer to only one geographical area to be valid.

Evidential basis

How have various witnesses interpreted the concept of 'locality' and 'market'?

Evidence of Mr Thompson (Economics)

[174] Mr Thompson states:[15]

> Clause 3.6(1)(b) of the National Policy Statement – Highly Productive Land – 2022 (NPS-HPL) requires PC73 to be evaluated in terms of whether there is sufficient development capacity within the '*locality and market*', and that PC73 can only be approved if "*there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment*". Regarding capacity, my analysis finds that there is insufficient development capacity in Waiuku and the Franklin Local Board area and that PC73 is required to meet demand in Waiuku.

[175] It is interesting to note the significance of the word "same". Clearly, this refers

[14] Evidence of Dr James Fairgray, dated 5 June 2024, at [4.11].
[15] Evidence of Adam Thompson, dated 12 February 2024, at [1.29].

to "the same locality and market" that would be served by residential development on PPC73 land. It is not inviting us to consider whether PPC73 development should be assessed against the needs of the wider South Franklin Local Board area, particularly since there is a further requirement that PPC73 should contribute to achieving a well-functioning urban environment. There is only one urban environment that PPC73 could rationally be considered to contribute to, and that is Waiuku itself.

[176] Furthermore, at [1.30] and [1.31], Mr Thompson makes the link between 'locality and market', well-functioning urban environment (**WFUE**), and transport efficiencies with reference to NPS-UD policies 1(a), 1(c) and 1(e).

Mr Thompson's Section 23. Locality & Market

[177] Mr Thompson notes that:[16]

> The HBA appears to rely on the Local Board areas as the relevant locality and market. In which case, the Franklin Local Board area is the relevant locality and market for PC73 as determined by Auckland Council. In my opinion, the Franklin Local Board area is too large and diverse to function as a single locality and market. It is a large geographic area (larger than the Auckland urban area) and has its population spread across many settlements between the west coast and east coast, including Beachlands/Maraetai, Clevedon, Drury, Pukekohe, Clarkes Beach, Kingseat, Glenbrook and Waiuku.

[178] The Court considers Mr Thompson's interpretation is far more logical, while the Council's interpretation appears arbitrary and not supported by any consideration of WFUE or transport efficiency aspects.

[179] At [23.5] Mr Thompson draws attention to the NPS-HPL requirement to consider sufficient development capacity within the same locality and market while achieving a well-functioning urban environment. He further points out, at [23.8], the two new industrial employment nodes – Fernleigh (adjacent to Waiuku) and Glenbrook (5km to the north), and, at [23.9], that several towns in Franklin have populations exceeding 10,000 people, meeting the threshold of an 'urban environment', and thereby triggering the requirement to consider WFUE matters pertinent to each distinct urban environment.

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[16] Evidence of Adam Thompson, dated 12 February 2024, at [23.2].

[180] We consider Mr Thompson is correctly drawing our attention to the significance of that word "same" when considering the relationship between development capacity and WFUE. He asserts that sufficient development capacity must be provided in each distinct 'locality and market' to provide for the requirements of the NPS-UD Policy 1(a)-(f).

[181] Mr Thompson concludes:[17]

> In my opinion, Waiuku and to an extent the adjacent small towns serviced by the Clarkes Beach Wastewater plant, should be considered the relevant "locality and market" for the purpose of the capacity assessment. However, if the Council's view were adopted, that the Franklin Local Board is the relevant locality and market, then the main towns and villages in Franklin, in my opinion, should be considered individually, as distinct urban environments, in order to ensure there is sufficient development capacity to achieve a WFUE.

Mr Thompson's rebuttal evidence

[182] Mr Thompson refers to 'locality and market' three times in his rebuttal:

(a) At [5.15] and [5.16] he criticises Dr Fairgray's assessment of demand as being based only on quantity of housing and not price of housing. The relevance of this to the appropriate definition of 'locality and market' is associated with the fact that the proportion of dwellings in each price bracket may well differ between different markets – the proportion of affordable houses in a narrowly defined Waiuku locality and market may well be different from the proportion of affordable houses across the wider West Franklin market or indeed across the entire Auckland market;

(b) At [8.1] – [8.7] Mr Thompson disputes Dr Fairgray's finding that "the HBA does not find any capacity shortfall for any Local Board Areas (**LBAs**) in Auckland. Mr Thompson states that "*The HBA finds there is insufficient lower priced housing to meet demand at the regional level (Figure 11) and that housing affordability will continue to worsen over time.*"[18] As Dr Fairgray has explained previously, the more extensive the spatial extent of 'locality and

[17] Evidence of Adam Thompson, dated 12 February 2024, at [23.10].
[18] Evidence of Adam Thompson, dated 9 October 2024, at [8.2].

market', the less likely that any insufficiency will be identified; and

(c) At [11.10] – [11.12], Mr Thompson criticises Dr Fairgray's proposition "that the West Franklin area is a relevant locality", noting the requirement in the NPS-HPL clause 3.6(1)(b) to also be a WFUE. As Mr Thompson states "… *a well-functioning urban environment would require sufficient housing capacity is available in Waiuku, and this capacity could not be provided elsewhere, such as Pukekohe*."[19]

Evidence of Mr Brown (Planning)

[183] At [9.15] – [9.21], Mr Brown discusses his interpretation of 'same locality and market', focusing on the three criteria in NPS-HPL clause 3.6(1)(b), particularly the need to achieve a well-functioning urban environment. Mr Brown notes:[20]

> … the only potential option I can identify that does not involve highly productive land is the Large Lot zoned land on the eastern side of the town. I acknowledge that this land would meet the second criterion as it is within the local area. However, I do not consider that it could satisfy the remaining two criteria.

[184] Citing physical and geotechnical constraints and fragmented, multiple ownership, Mr Brown concludes that "*I do not consider the Large Lot zone land to be a reasonably practicable and feasible option for delivering the required development capacity*."[21] He elaborates his reasons in considerable detail, stating:[22]

> My expectation is that many owners would choose not to take the development opportunities that would arise from a plan change in this location. A more intensive residential zone could only *enable* development rather than insist on it. In my opinion, the combination of lot sizes, house sizes and value of these properties creates significant potential for intended capacity to be frustrated by owners that have financially and emotionally invested in their properties and do not want to participate in the outcomes enabled through a rezoning. The larger lot sizes in this location would provide an opportunity for landowners to remain in place without being eased off the land as a result of the less desirable effects of intensification on their boundaries. I consider that a piecemeal and disconnected residential outcome of this nature would not contribute to a well-functioning urban environment.

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[19] Evidence of Adam Thompson, dated 9 October 2024, at [11.12].
[20] Evidence of Philip Brown, dated 28 March 2024, at [9.16].
[21] Evidence of Philip Brown, dated 28 March 2024, at [9.18].
[22] Evidence of Philip Brown, dated 28 March 2024, at [9.19].

[185] Mr Brown states that being in "the same locality and market":[23]

> … means that it needs to be located in Waiuku. In my opinion, it is not appropriate to consider the growth of Waiuku in the context of capacity that might exist at another location somewhere in the southern rural part of the Auckland region. Waiuku is not a suburb forming part of a larger urban area. It is a largely self-contained town that should be considered as an entity in its own right. If that approach is not accepted, the implication is that a town such as Waiuku will never be allowed to grow if there happens to be another town 30km down the road that has some development capacity. I do not agree with that proposition.

[186] Mr Brown points to another factor that he considers relevant to defining the concept of 'locality and market', stating:[24]

> In my opinion, the perceptions and aspirations of the community are also relevant considerations in determining the locality and market. It is clear from the SIA and the evidence of the s274 parties that they see Waiuku as having a strong and unique identity that is distinguishable from other towns in the southern part of the region.

Evidence of Mr King (Urban design)

[187] Mr King devotes an entire section of his evidence (Section 4) to discussing the definition of 'same locality and market' – or 'catchment boundary' – from an urban design perspective and the reasons for his conclusions. He states:[25]

> … I contend that there are at least two or three localities/markets within the southern rural area:
>
> • **Waiuku**
>
> • **Pukekohe**, taking in Paerata and Karaka
>
> • **Pokeno**, arguably a third (conflicted) catchment.

[188] From his professional discipline of Urban Planning, he draws on the Theory of Edges for a methodology to determine catchment boundaries.[26]

[189] Mr King also links his arguments with evidence from the Social Impact

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[23] Evidence of Philip Brown, dated 28 March 2024, at [9.20].
[24] Evidence of Philip Brown, dated 28 March 2024, at [9.21].
[25] Evidence of Tim King, dated 27 February 2024, at [4.14].
[26] Evidence of Tim King, dated 27 February 2024, at [4.2] – [4.13].

Assessment (**SIA**) by Ms Boucher, the travel-to-work data provided by Mr Parlane, and data on employment/residency links provided by Mr Thompson.

[190] Drawing on the SIA, he states:[27]

> Within the southern rural area, Waiuku is sufficiently self-supporting, sufficiently distinct in terms of economic activity, landscape, and lifestyle that residents want to live there because of those differences. The differences create their own demands in terms of growth and change. These are the things that separate the Waiuku market from the rest of the southern rural area.
>
> The SIA (Section 5.1) describes in some detail the depth of community identity and the factors that have given rise to the sense of Waiuku's independence. Strong ties to industry, and intergenerational ties to the land, are strongly present. It is the business of urban design to define locality in a spatial sense. 'Placemaking' is the central activity that aligns the unique physical attributes of a place to give expression to and strengthen the qualities of community and identity. Homogenisation of localities, as occurs in suburbia (and as proposed by Council for the southern rural area housing market), diminishes the sense of place and therefore community quality.

[191] For the purpose of interpreting the wording of the NPS-UD in a properly nuanced manner, he states:[28]

> Therefore, in a spatial sense, defining the boundary of a "locality and market", between two different locations, very much depends on which direction you look from. In my view, the Council approach, looking out from the CBD, perceives uniformity and homogeneity, whereas the residents of Waiuku, looking towards the CBD, see differences and heterogeneity. My reading of, for example, objective 1 of the NPS-UD, and the use of the word "their" in relation of defining a WFUE, is that emphasis is required to be placed on the subjective perceptions of the community, rather than a more objective regional scale meta-perspective. With respect, "their" is not referring to the planners at Auckland Council.

[192] Drawing on Mr Parlane's travel-to-work data, he states:[29]

> It is the residents' own ("their") behaviour as much as their declared sense of place that defines the Waiuku catchment as a distinct locality relevant to the concept of 'same locality and market'. Growth in Waiuku is the business of Waiuku, not of some other place. The travel to work data of Mr Parlane (par 5.1-5.7 in his evidence) shows that Waiuku has a high level of self-sufficiency and a commendable balance of houses and jobs. It is not merely a "commuter suburb" of metropolitan Auckland.

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[27] Evidence of Tim King, dated 27 February 2024, at [4.21] – [4.22].
[28] Evidence of Tim King, dated 27 February 2024, at [4.27].
[29] Evidence of Tim King, dated 27 February 2024, at [4.29] – [4.30].

> In this context, it is important to note that the Hearings Panel did find that granting PC73 would achieve a WFUE (Decision par 306), which in the Hearing, also was finally accepted by the Reporting Planner.

[193] In a section on Waiuku catchment, Mr King discusses the relevant attributes of a 'terminus settlement'.[30] The Court considers it is worth considering this analysis in some detail when contemplating how to define the appropriate spatial extent of 'same locality and market':[31]

> A terminus settlement is by definition a distinct entity. It is more inclined to develop facilities and services that make it more self-sufficient and more adapted to its surrounds. This is because it can only mainly access support from one side and because the catchment to its other side has no option but to look for support from the terminus settlement itself. This leads to the development of characteristics that are different to its neighbours. Identity is strengthened through the expression of these differences. Raglan is a good example of a similar town where all these matters apply to produce a very distinct, robust, and vigorous community. They are towns to "go to" rather than "go through".
>
> The Waiuku catchment differs from the other southern settlements in many ways. On the hinterland side its dependent settlements hang like a string of pearls around the inner shoreline of the Awhitu Peninsula. They are recreational and touristic in nature rather than dormitory or service villages. Agriculture, more than horticulture, is the most wide-spread economic activity of the area, with heavy engineering and manufacturing, resource extraction, forestry, and tourism, all resulting in Waiuku being quite different from its eastern neighbours.
>
> At its northern end, although Auckland is just a short dinghy ride across the harbour, realistic access by car means it is nearly as far from the Auckland CBD as is Hamilton. Its isolation and distinct natural environment set it apart from the other southern area settlements.
>
> In TOE [Theory of Edges] terms, with strong defining boundaries on three sides, Waiuku will naturally develop an independent character, and purpose, *less capable of absorbing change not consistent with that character and purpose*.
>
> The current town is tightly bound in form, function, and locality to the character and identity of its geographically defined catchment. TOE analysis says that, with considerable topographic variation, there is a reasonable capacity for the area to absorb development – *so long as that development is consistent with the identified character and identity*.

[194] In the Court's opinion, Mr King has brought together insights and information from a variety of different expert disciplines to produce a most coherent basis for determining that the Waiuku catchment (as depicted in his Figure 1) is the most

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[30] Evidence of Tim King, dated 27 February 2024, at [4.31] – [4.36].
[31] Evidence of Tim King, dated 27 February 2024, at [4.32] – [4.36].

appropriate spatial extent for defining what constitutes "the same locality and market".

Evidence of Ms Boucher (Social Impact Assessment)

[195] When describing the social environment, Ms Boucher focused on social baseline and social locality.[32] She states:[33]

> The social locality is the area, or areas, of social influence of a project. It is defined by relationships and networks and the spaces they are embedded in, for assessing where impacts maybe perceived and experienced. Social locality provides a social perspective of "locality and market" for Waiuku for the NPS-HPL clause 3.6(1)(b) & (3) over its 30-year timeframe. For this project there are three social areas of influence described earlier in my evidence at paragraph 5.4. Locality was expanded on earlier from paragraph 6.14 in my evidence.

[196] At [5.4] she states:

> Three social areas of influence were determined as being:
>
> (a) The locality, being a 400m catchment around the PC73 site;
>
> (b) Waiuku township comprised of five SA2[34] areas; and,
>
> (c) The Franklin Local Board area and beyond.

[197] At [6.14] she states:

> There are very strong feelings in the community about what comprises local, with local very much being Waiuku and its immediate surrounds. Not even Patumahoe or Glenbrook Beach is considered local. This aligns with the "Waiuku" geographic area of influence used in the SIA outlined in paragraph 5.4. A quote from the community survey notes "*Waiuku is not Pukekohe. It's not Takaanini. It's Waiuku.*"

[198] Ms Boucher references Mr King's evidence, with its focus on Waiuku township and its area of influence.[35]

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[32] Evidence of Julie Boucher, dated 9 February 2024, at [7.1].
[33] Evidence of Julie Boucher, dated 9 February 2024, at [7.2].
[34] Statistical Area Level 2 (SA2s) are defined by Statistics NZ and are functional areas that represent a community that interacts together socially and economically. They often align with Suburb and Locality boundaries. In major urban areas SA2s often reflect one or more related suburbs.
[35] Evidence of Julie Boucher, dated 9 February 2024, at [7.5].

Evidence of Dr Fairgray (Economics)

[199] Dr Fairgray makes it clear that he applied two interpretations to the phrase "same locality and market" in his assessment.

[200] He states:[36]

> I have considered what represents the "*same locality and market*" for the PC73 land, in terms of the definitions in the NPS-HPL. I consider that the same locality and market is the West Franklin area, which includes Waiuku and other towns and settlements in part of the Franklin Local Board Area (**LBA**), which generally encompasses the southern Auckland urban fringe. The Waiuku economy and demography are similar to the other towns and settlements and may be differentiated from the wider total Auckland economy. …

[201] The Court questions this final sentence as being an unexplained and unsubstantiated generalisation. Apart from Pukekohe, no other towns and settlements come close to meeting the criterion of an urban environment.

[202] Dr Fairgray states:[37]

> I have also examined urban Waiuku which I term the Waiuku Locality as the same locality and market. This reflects that the definition of the same locality and market which is used for assessment of NPS-HPL clause 3.6 does have a direct bearing on the test of sufficiency of development capacity, under 3.6(1)(a). That tighter geographic definition reduces the risk that the 3.6(1)(a) test might lead to an incorrect conclusion, by showing that there is sufficient capacity when there is not sufficient capacity.

[203] Dr Fairgray helpfully acknowledges the importance that appropriate interpretation of the phrase "same locality and market" has to the assessment, particularly relevant to NPS-HPL clause 3.6. It is worth noting that he states that this much more spatially confined definition "*is used for assessment of NPS-HPL clause 3.6*" precisely because it "*does have a direct bearing on the test of sufficiency of development capacity, under 3.6(1)(a)*".[38] He helpfully elaborates his arguments further at [4.12] – [4.18], see below.

[204] In light of his observation that "*The hierarchy which is in clause 3.6 is important.*

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[36] Evidence of Dr James Fairgray, dated 5 June 2024, at [1.3].
[37] Evidence of Dr James Fairgray, dated 5 June 2024, at [1.4].
[38] Evidence of Dr James Fairgray, dated 5 June 2024, at [1.4].

Subclause 3.6(1)(a) is critical, because it specifies a complete test as the first step in the sequence",[39] and having noted that the phrase "same locality and market" appears in clause 3.6(1)(b) but not in 3.6(1)(a), Dr Fairgray goes on to set out his argument underpinning his interpretation of that important phrase/concept, stating:[40]

> In my view, it is not clear whether clause 3.6(1)(a) is intended to apply to the geographic area which relates to the "*same locality and market*" of the subject HPL as per clauses 3.6(1)(b), 3.6(1)(c), 3.6(2) and 3.6(3); or whether scope is intended for clause 3.6(1)(a) to apply more broadly to development capacity to meet demand for housing land and give effect to the NPS-UD more generally, for example in the Auckland region. However, subsequent sub-clauses 3.6(1)(b) and 3.6(3) do refer to geographic areas in terms of "*the same locality and market*". From an economic perspective, in my view, as a matter of logic, any assessment under 3.6(1)(b) to complement or test 3.6(1)(a) has to refer to the same geographical area as 3.6(1)(a) if it is to be appropriate. Therefore, by implication the test in 3.6(1)(a) has to apply to the same 'locality' and 'market' definitions as referred to in 3.6(1)(b) and 3.6(3). For completeness, I have addressed the sufficiency of development capacity to meet demand for housing for the "*same locality and market*" in terms of the HBA for Auckland, and the West Franklin area as well as for a more tightly defined geographic area relating to the Waiuku Locality, given the focus of Mr Thompson's evidence on Waiuku, as discussed below.

[205] It is useful that Dr Fairgray has acknowledged that the assessments under clauses 3.6(1)(a), (b) and (c) and 3.6(3) should all be carried out adopting the same definition of "same locality and market". He further reinforces this position at [4.10]. He also claims to have covered all the possibilities in his evidence – the Waiuku Locality, West Franklin, and the whole of Auckland, the latter two referencing the Housing and Business Assessment (**HBA**) which was completed for Auckland region in September 2023 and which he contributed to.

[206] However, we perceive a problem with his claims about his assessments of sufficiency of development capacity with reference to the HBA in the context of the NPS-UD. The Court considers the HBA was carried out mainly at a regional level and therefore does not meet the explicit requirements of the NPS-UD, which we set out below. Clause 3.19 Obligation to prepare HBA states:

> (1) Every tier 1 and tier 2 local authority must prepare, and make publicly available, an HBA for its tier 1 or tier 2 urban environments every 3 years, in time to inform the relevant local authority's next long-term

[39] Evidence of Dr James Fairgray, dated 5 June 2024, at [4.6].
[40] Evidence of Dr James Fairgray, dated 5 June 2024, at [4.9].

> plan. [Note: 'urban environments' plural]
>
> (2) The HBA must apply, at a minimum, to the relevant tier 1 or tier 2 urban environments of the local authority (i.e., must assess demand and capacity within the boundaries of those urban environments), but may apply to any wider area. [Note: 'urban environments' plural]
>
> …

[207] If it is accepted that Waiuku meets the definition of an 'urban environment', as does Pukekohe, then the Council has not met its obligation. Furthermore, it is on quantitatively shaky ground to use any of the data and assumptions in its regionwide HBA to automatically inform its assessment of sufficiency for the Waiuku urban environment. Indeed, Dr Fairgray acknowledges that "*The Auckland HBA is at a high level, with geographic breakdown according to only the 21 LBAs (p112). The demand assessment which includes Waiuku is for the total Franklin LBA.*"[41] He later states:[42]

> The most recent Auckland HBA offers information on demand for the 21 LBAs, as does the section 32 assessment which I prepared for notified PC78. Neither document of the Council has identified demand specifically for the Waiuku area. However, I have drawn on the same source information of projected household and population growth by specific locality within Auckland which was used for those documents to consider demand specific to the Waiuku locality and market, as well as the West Franklin area.

[208] The Court would question the relevance of such data sets, if they do not identify and distinguish greenfield-based trends and patterns over time from infill-based trends and patterns over time. In this regard, the practice of averaging household growth data over periods of time can mask relevant detail.

[209] Dr Fairgray states:[43]

> Generally, the larger the geographical area applied to the 3.6(1)(a) test, then *ceteris paribus* the greater will be the probability that the 3.6(1)(a) test will show there is sufficient capacity, such that a territorial authority or the Court would not allow urban rezoning. Conversely, the smaller the geographical area applied to the test, then the higher the probability that a territorial authority might allow urban rezoning. A main reason for this is because the subject HPL resource would account for a larger share of the total land in the smaller area which is potentially available for urban use, and there will be limited capacity on the other non-HPL resource.

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[41] Evidence of Dr James Fairgray, dated 5 June 2024, at [4.21].
[42] Evidence of Dr James Fairgray, dated 5 June 2024, at [5.4(c)].
[43] Evidence of Dr James Fairgray, dated 5 June 2024, at [4.16].

[210] He continues:[44]

> In the NPS-HPL, the terms locality and market are defined in broad terms only. Assuming that both the 'locality' and the 'market' must contain the subject HPL resource, the definition is generalised and limited to "*in or close to a location where demand for additional capacity has been identified*…" in 3.6(3)(a) and "*...for the types of dwelling or business land that is in demand...*" in 3.6(3)(b). These terms apply to both the 'locality' and the 'market'.

[211] Dr Fairgray references Ministry for the Environment Guidance on the implementation of the NPS-HPL that "*recognises the potential importance of a finer grained approach where relevant*".[45]

[212] Dr Fairgray references the Commissioners' finding:[46]

> … that Waiuku is part of a wider locality and market than just its defined urban extent and it accepted the evidence of the Council experts, that while this does not include metropolitan Auckland, it does include those areas in Franklin and southern Auckland west of the motorway.

[213] Dr Fairgray summarises his two resulting definitions of 'same locality and market' as being (1) "*the Waiuku Locality (urban Waiuku)*", and also (2) "*a wider locality and market which is the towns and settlements of the wider West Franklin area of Auckland*."[47] In doing so, his assessments have adopted two definitions that are both different from Mr Thompson's.

[214] He defines explicitly his definition of 'Waiuku Locality' as "*the area covered by the five SA2 areas which are entirely or mostly zoned as urban. This definition also matches the Stats NZ's 'Urban-Rural' definition which relates to Waiuku*",[48] and maps this on his Figure 1.

Evidence of Ms Trenouth (Planning)

[215] Ms Trenouth discusses possible reasonably feasible alternatives within the same locality and market as urban Waiuku, stating:[49]

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[44] Evidence of Dr James Fairgray, dated 5 June 2024, at [4.18].
[45] Evidence of Dr James Fairgray, dated 5 June 2024, at [4.24].
[46] Evidence of Dr James Fairgray, dated 5 June 2024, at [4.27].
[47] Evidence of Dr James Fairgray, dated 5 June 2024, at [4.29].
[48] Evidence of Dr James Fairgray, dated 5 June 2024, at [5.7].
[49] Evidence of Chloe Trenouth, dated 6 June 2024, at [174] – [175].

> I consider reasonably feasible alternatives to meeting the demand for growth to be the plan-enabled development capacity within Waiuku, rezoning the LLZ to MHSZ, and the availability of development capacity within the Southern Auckland Urban Fringe. This is consistent with Clause 3.6(2), which requires a range of options including greater intensification of existing urban areas, rezoning of land that is not highly productive, and rezoning different highly productive land that has relatively lower productive capacity.
>
> … I consider a combination of development across these areas would be able to meet the requirements for sufficient development capacity while achieving a WFUE.

[216] If she is implying that such a combination of locations (required to provide sufficient development capacity) would achieve a WFUE (singular), then the Court strongly disagrees with Ms Trenouth's finding. She is clearly relying on Dr Fairgray's arguments about defining the wider spatial extent of 'locality and market'.

[217] Ms Trenouth demonstrates further reliance on Dr Fairgray for her opinion on the relevant spatial extent of 'locality and market', stating:[50]

> I disagree with Mr Brown's opinion, based on Dr Fairgray's economic evidence, that 'the same locality and market' require alternatives to be located in Waiuku. It is possible to accept that Waiuku is a rural town with its own character and identity without determining that it is a separate location and market.

[218] This opinion may, of course, reflect a broader Council perspective on Waiuku, and thereby explain the lack of Council attention over the years.

Economics Joint Witness Statement

[219] Given the contrasting interpretations of the phrase 'same locality and market' expressed by the various economists and outlined in the preceding section, the Economics JWS adds little in terms of agreement on this particular matter.

Planning JWS

[220] Given the reliance of the planning experts on the various interpretations of the phrase 'same locality and market' from their corresponding experts, the Planning JWS adds little to influence the Court's findings on the appropriate interpretation.

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[50] Evidence of Chloe Trenouth, dated 6 June 2024, at [177].

Nevertheless, there are several points of agreement in their JWS worth noting:

(a) Regarding NPS-HPL clause 3.6(2)(a) the planners agree that the existing urban zones in Waiuku including the Large Lot zone are reasonably practicable options for consideration;

(b) Regarding the NPS-HPL clause 3.6(2)(b) the planners agree that Waiuku is surrounded by highly productive land and that growth options are constrained in that respect;

(c) Regarding the NPS-HPL clause 3.6(2)(c) the planners are not aware of any highly productive land immediately surrounding Waiuku that has relatively lower productive capacity;

(d) Regarding the NPS-HPL clause 3.6(1)(c) the planners agree that if it is determined that clause 3.6(1)(a) is achieved, then the benefits of growth are likely to outweigh the costs of highly productive soil loss; and

(e) Regarding NPS-UD the planners agree that PPC73 contributes to a well-functioning urban environment.

Conclusions on the topic of 'locality and market' and how it should be defined

[221] Drawing on the various statements of evidence cited above, we summarise in the following table the definitions of spatial extent adopted by various experts:

Expert/discipline	**Spatial extent of 'same locality and market'**
For the appellants	
Mr Thompson – economics	Waiuku and the adjacent small towns serviced by the Clarks Beach WWTP
Mr Brown – planning	Waiuku – a largely self-contained town
Mr King – urban design	The Waiuku catchment – see his Figure 1
For the Council	
Dr Fairgray – economics	(a) Wider – the towns and settlements of the wider West Franklin area of Auckland (b) More confined – Waiuku Locality (urban Waiuku)
Ms Trenouth – planning	Waiuku as part of the Southern

	Auckland Urban Fringe

[222] Our conclusions are as follows:

(a) The Council's approach to defining the appropriate interpretation of the phrase 'same locality and market' and particularly the corresponding spatial or geographic extent appears to be driven by considerations of assessment methodology (economic) and data availability (particularly population and property data) while the Appellant's approach appears to be founded on multi-disciplinary and 'real world' considerations;

(b) Dr Fairgray provides a very helpful discussion for thinking about the concept of 'same locality and market' and the implications of such an interpretation for assessing sufficiency of development capacity;

(c) The Court disagrees strongly with the spatial extent adopted by Dr Fairgray and Ms Trenouth of the 'same locality and market' being the West Franklin area, principally because it seems to be totally blind to the important requirement that any urban growth promoted under the NPS-UD should provide for a well-functioning urban environment. Therefore, if it is to provide for urban growth to meet demand for Waiuku, it needs to be contiguous with Waiuku's existing urban zoning;

(d) Put another way, if we focus carefully on the wording in NPS-HPL clause 3.6(1)(b) "sufficient development capacity within the same locality and market while achieving a well-functioning urban environment", the clause refers to 'a well-functioning urban environment' (singular) and therefore it is illogical that the Council would consider including fragments of development capacity from elsewhere in West Franklin in its assessment calculations in order to imply that sufficient development capacity does potentially exist. And there are only two 'urban environments' in West Franklin – Pukekohe and Waiuku. As Dr Fairgray has helpfully explained, the more extensive the spatial extent of the defined 'locality and market', the less likely that any insufficiency will be identified;

(e) The Court is concerned that some of Dr Fairgray's assumptions, based on data averaging (both spatially and temporally) and a lack of adequate focus on the distinction between market responses to greenfield and infill development opportunities, do not provide sufficient confidence in the relevance of his quantitative estimates with respect to the NPS-HPL clause 3.6(1) exception tests;

(f) We find the collective evidence of the Appellant's experts, drawing on multiple disciplines (environmental, social, cultural, and economic), addresses more effectively the various dimensions that require consideration in the statutory context for this assessment, particularly the NPS-UD. Indeed, we find Mr King's arguments about 'locality and market' are most compelling. He has brought together insights and information from a variety of different expert disciplines to produce a most coherent basis for interpreting the most relevant 'locality and market'; and

(g) In the Court's opinion, the appropriate conceptualisation of the relevant 'locality and market' goes right to Part 2 of the RMA – "enabling people and communities to provide …".

Sufficient Development, Capacity and Practical and Feasible Options

[223] Having established the 'locality and market' as being Waiuku itself, the question is whether or not there is sufficient development capacity. This was a subject of significant dispute between the economists and others involved in the area.

[224] In part, the answer from the Council, in particular from Dr Fairgray, was that the 'locality and market' is a wider area. However, even within Waiuku, the argument was that infill housing provided a complete answer for the requirements in the meantime. How this provided the range of housing required was more problematic.

[225] Evidence was given by several people involved in the housing industry as to the limited attractiveness of single house development and subdivision, and it seems the prospects of large lots of land being available for multiple subdivision are relatively

rare now, most of that land having been utilised over the last 35 years.

[226] We have concluded that as a matter of fact there is insufficient capacity within Waiuku for both the existing people wishing to live there and for future requirements for the following reasons:

(a) There are large industrial areas having been approved and now developed which will introduce more businesses to the area and therefore more job prospects and more people to take those jobs;

(b) In the integrated nature of Waiuku itself, it is likely to become more important as the cost of transport increases and people seek to locate closer to their places of work whether this will be in a rural area or within Waiuku itself; and

(c) There is a limited range of building opportunities available, and this has been conclusively established by the development of the 40-odd lots adjacent to the subject site and the very quick uptake from the time those became available to the hearing date of this matter by which time they were fully occupied.

[227] When we look at other options to provide for greenfield development, this site is clearly the most capable of adding to the well-functioning urban environment because of its proximity to key features such as the schools, sports grounds, medical and community facilities.

[228] We also agree with the witnesses for the Appellants that the housing market in Waiuku has been artificially suppressed by virtue of the unavailability of appropriate greenfield sites to allow the town to grow naturally. We also agree that the addition of these 750 sites over a period of time will naturally contribute to the availability of a range and choice of housing style for the people of Waiuku. It is likely to create a better and competitive market for the development of other sites and enable continued growth of a well-functioning urban environment, rather than the villages that are disconnected from fundamental facilities elsewhere in the subregion.

Weighing the loss of the highly productive land against the social and economic benefits

[229] We do not see the social and economic benefits as being the key weighting item in this case. If that were the case, there would never be an instance where highly productive land could be preserved. The analysis required under clause 3.6(1)(c) of the NPS-HPL must take into account both tangible and intangible values. As we have said previously, we can see nothing that marks this particular prime land from any other within the subregion.

[230] Because of its small size, we have concluded that it is not possible for the PPC73 site to operate as a part of a larger primary produce market or more intensive development, although it might sustain a small activity within it (flowers or the like). There are many other sites proximate which could do the same thing.

[231] To that extent, the issue becomes whether the loss of this small area, less than 30 hectares of highly productive land, would have any marked or noticeable consequences within the wider rural environment. Certainly, the transition from the country to the town will remain much the same but for a very small extension of a couple of hundred metres of the urban environment. With a control over a peripheral area fronting the rural area, that transition would be more clearly marked. We conclude this would form a better basis for the rural urban transition than much of the balance of the entryway into Waiuku and elsewhere.

[232] Overall, looking at both the NPS-HPL and NPS-UD, we do not consider that it is intended that all development around towns be precluded simply because they would involve inclusion of land with prime soils. Small areas of land, say less than 40 to 50 hectares, may be justified if they become defensible boundaries. They may also be justified where they add significantly to a well-functioning urban environment already existing.

[233] As we have noted, there are only two towns that would sustain a population of 10,000 people currently, being Pukekohe and Waiuku. Accordingly, we do not see this as a widespread issue. In particular, we consider that Waiuku has been overlooked

during the AUP process and this has led to a situation where the market for sales and growth for Waiuku has been artificially constrained compared to the balance of Auckland. There is no adequate reason why this should be the case, and we would regard PPC73 as being one of the better examples of integration of a new area into an existing town which we have seen.

[234] We remain alert to the concerns about the loss of prime or elite soils. As we have already noted, any larger areas (even if incremental) around towns, say over 100 hectares, would lead to a real concern as to whether or not the broader objectives of maintaining the versatility and flexibility of prime or elite soils were being met.

[235] This case has dealt with such concerns and is in fact an example of including such land as illustrated with the issues we have discussed. A consent was issued for the earthworks involved in the development at 45A Constable Road, which allowed the highly productive soils on its surface to be removed. The effect of its removal is that it no longer contains those soils, notwithstanding it is still showing on a map that that was produced prior to that development. We would expect the Council to be more alert to these concerns when people are seeking to undertake major earthworks in the rural area.

Overall discretion

[236] Having reached this point, clause 3.6.1(c) of the NPS-HPL has already required us to undertake an evaluation of the balancing required under both the NPS-HPL and NPS-UD and in the terms of the broader plan. The development meets the criteria of clause 3.6 and clearly will enhance the environmental, social, cultural and economic benefits to the Waiuku community with a very small loss of prime land.

[237] On the other hand, it clearly meets the primary purposes of the NPS-UD and as we have noted it is probably an exemplar of the type of development that meets all of the criteria.

[238] The overall purpose of the Act is to be met and Part 2, and the Court must be satisfied under ss32 and 32(AA) that the rezoning of this land constitutes the most

appropriate outcome available to it in terms of the appeals and the documents before it. We are unanimous that the application does so and will in fact encourage aspects of Part 2 of the Act identifying social and cultural matters. PPC73 forms a clear basis for people to work, live and play all within an expanded well-functioning urban environment.

[239] PPC73 meets the objectives of tangata whenua in providing the possibility of partnership with the developers; these provisions are indicated within the planning documents and also the potential for housing for their whanau. The concept of community gardens, separation of areas which may be planted with native species, and the like, give a number of opportunities for partnership with tangata whenua by providing such trees, engaging with the community garden and working with the developers towards a broader integration of tikanga and tangata whenua values within the development itself.

[240] We are satisfied that these intentions are sincere on both sides and that the Appellants and their witnesses have a genuine desire to see Waiuku succeed and prosper. Accordingly, we see the Proposed Private Plan Change 73 as broadly appropriate in terms of the rezoning of the site to urban.

The development plan

[241] The concern of the Court is that the rezoning itself would need to be accompanied by provisions requiring a development plan for the area and wording controlling:

(a) Separation from the rural area via provision of a buffer within which planting would occur along the boundary, along with open space, and preferably providing for roading between the buffer area and the housing to give additional separation;

(b) The provision of community gardens;

(c) A walkway through incorporating parts or all of the buffer, and protecting the existing stream and any other hydrological features;

(d) The retention of as much prime soil as possible during the earthworks stage of the development for its re-use in, for example, the area of the community gardens, or to provide increased soil depth in the buffer or residential planting areas;

(e) Explicit provision for tangata whenua involvement and engagement throughout the process; and

(f) The setting up of a long-term community committee, including tangata whenua, to ensure long-term partnership.

[242] The application already goes a long way towards the above, but those matters above would need to be imposed as standards of the plan change, that is, as part of the precinct plan, rather being left to the uncertainty of the intentions of the eventual developer (who may not be the Appellants).

[243] Accordingly, with modification to the precinct plan and provisions attached to the precinct plan, we consider that the plan change should be allowed.

Outcome

[244] We therefore direct:

(a) Gardon Trust and others to circulate to the other parties within 40 working days its revised precinct proposal and associated provisions for consideration;

(b) The other Appellants, s 274 parties and the Council are then to comment on these within a further 20 working days;

(c) If the parties cannot agree on the final conditions, Gardon Trust and others is to file a memorandum with the Court setting out the differences between the parties, and its preferred provisions within a further 10 working days thereafter;

(d) The Council will then file its submissions as to its position on each of the

matters in dispute, 10 working days thereafter; and

(e) The Court will then decide whether it will convene a further hearing or deal with the matter on the papers.

Costs

[245] Costs are generally not appropriate on plan change matters. This is a clear case where the position of both parties is arguable and it involves a detailed assessment under the regional policy statements and plans, the AUP, NPS-HPL (2022) and NPS-UD (2020, updated May 2022).

[246] Costs applications are not encouraged. If, notwithstanding these comments, any parties seek costs, they are to file any application within 40 working days, a response is to be filed within a further 20 working days, and a final response, if any, within a further 10 working days thereafter.

For the Court:

J A Smith
Environment Judge | Kaiwhakawā o te Kōti Taiao

Appendix 1

Section 274 parties

MARK BALL

BASELINE (2018) LIMITED

BHARAT BHANA

CHAPMAN ONION EXPORTS LIMITED

SHARON CHAPMAN

BRIAN COX

DESIGNMAX HOMES

HIRA BHANA & CO LTD

IMG LIMITED

J MAXWELL

NGAATI TE ATA

JANICE PRICE

NANCY RAE

PAUL SANDS

TDM CONSTRUCTION LTD

WAIUKU COLLEGE BOAR

"A"

Papatoetoe

Drury

Awhitu

Clarks Beach

Paerata

Glenbrook Beach

Patumahoe

Pukekohe

Steelmill

Potential soil distribution area

PC 73 Area

Waiuku

Kidd Rd horticulture

Windfarm

Tuakau

Kariotahi

0 1000 2000 3000 4000 5000 6000 7000 8000 9000 10000 m

project O'Hara Waiuku Plan Change

scale 1:20,000

Franklin District

size A3 checked tk pr date 27/11/2024 project #

file Waiuku Wide.vwx

SV 1

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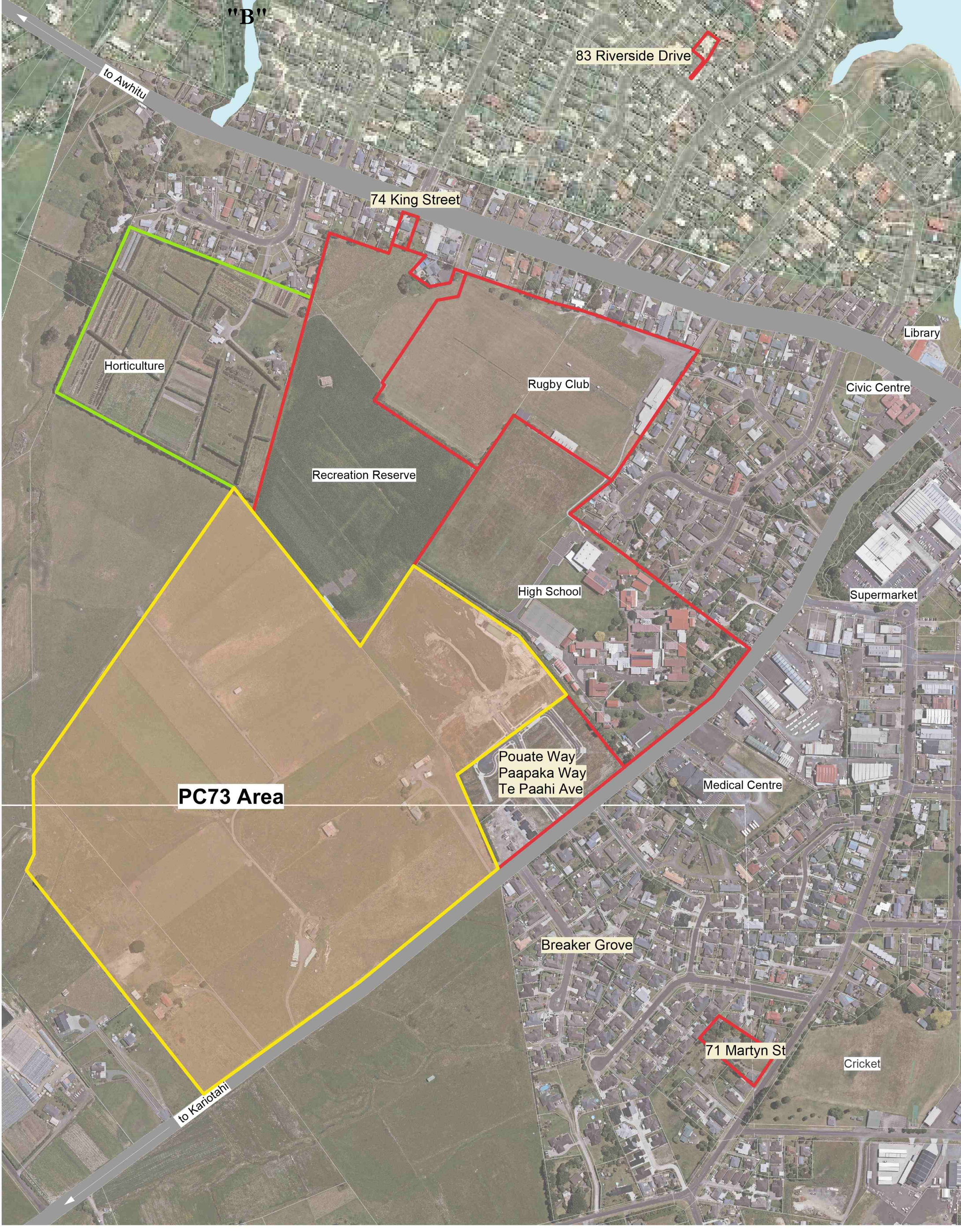

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project O'Hara Waiuku Plan Change

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O'Hara Site

SV 4

size A3 checked tk pr date 27/11/2024 project # 19002-2

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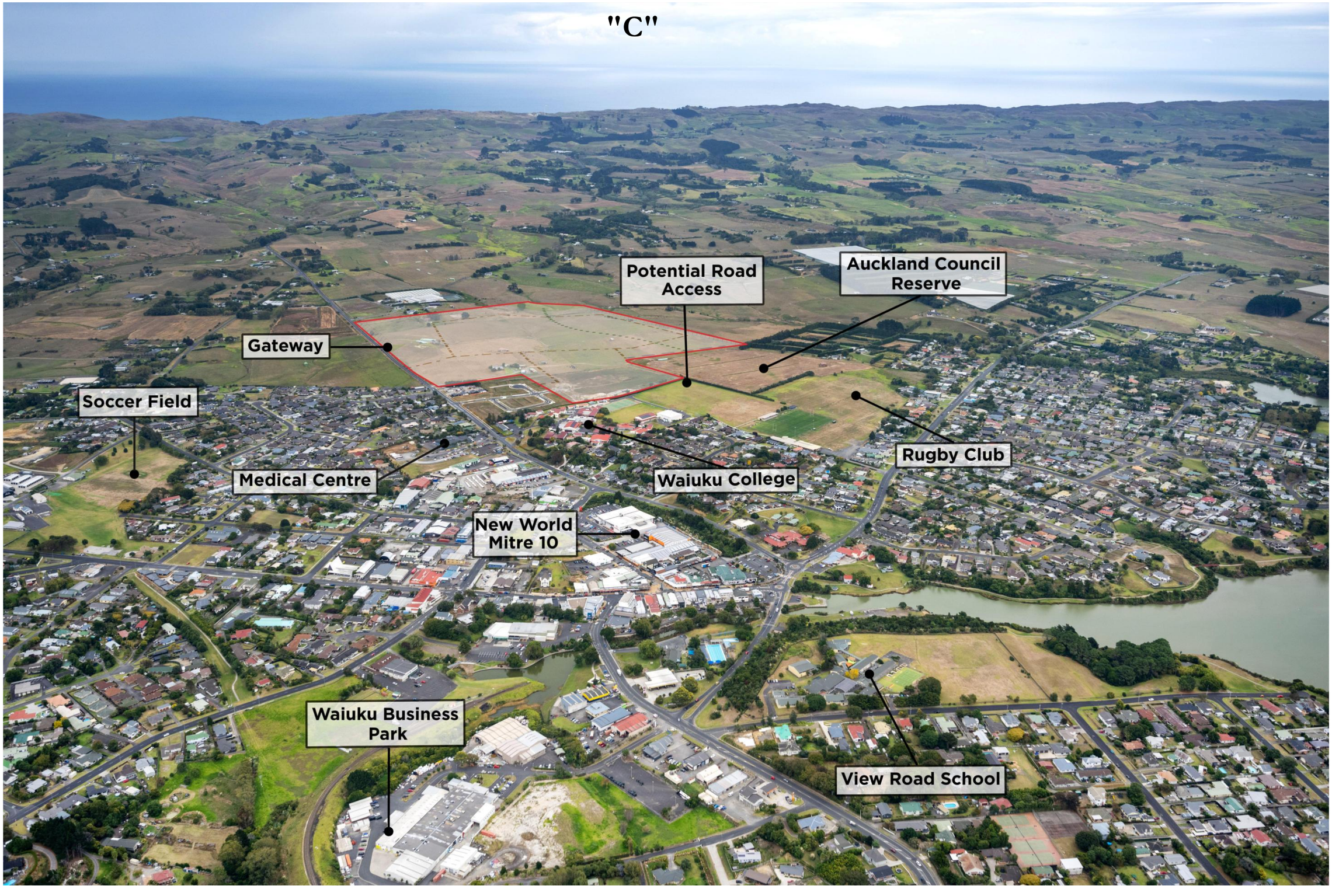

AERIAL VIEW SOUTHWEST OVER WAIUKU

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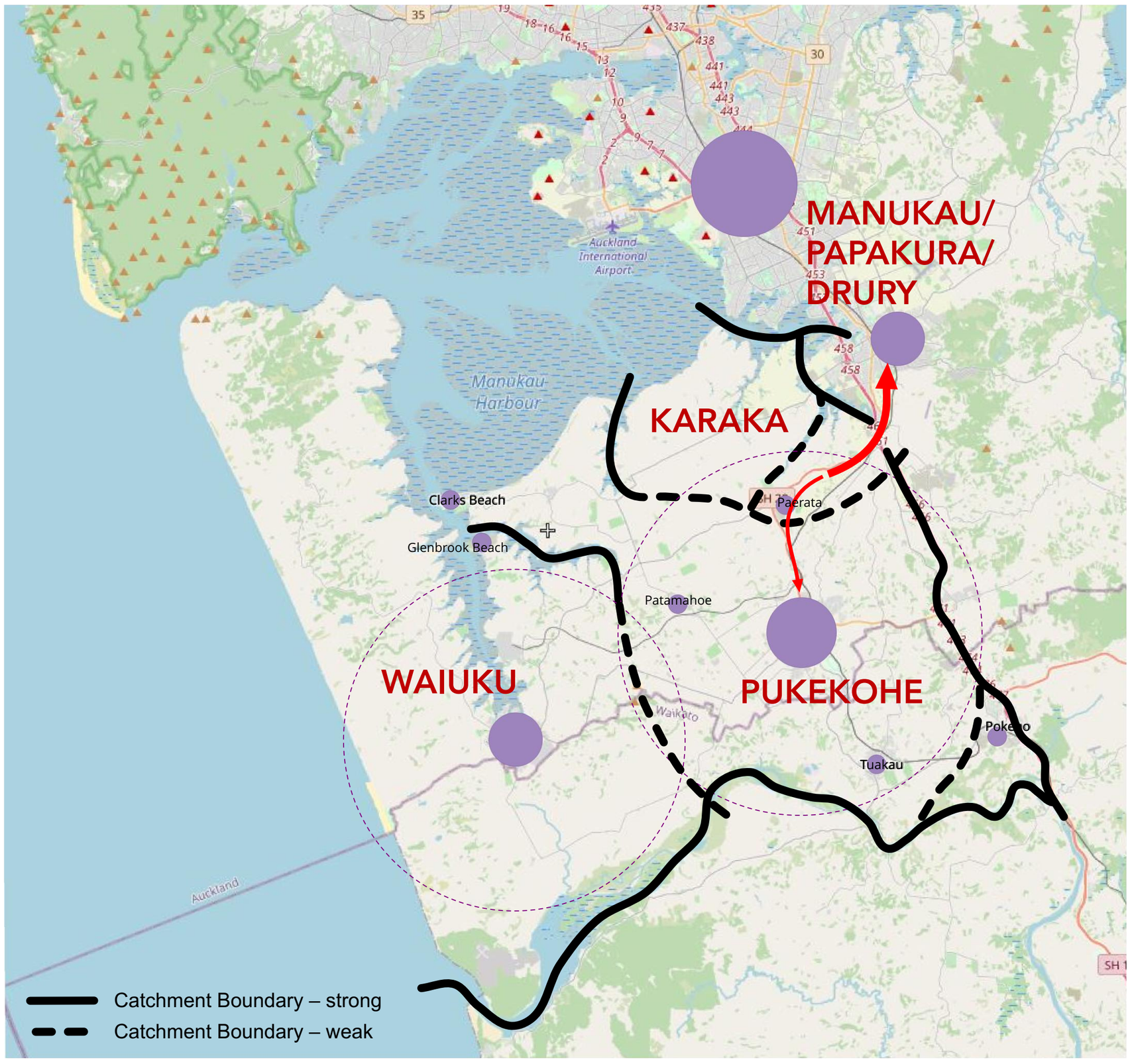

SOUTHERN RURAL LOCALITIES

B2. Tāhuhu whakaruruhau ā-taone - Urban growth and form

Tāhuhu whakaruruhau ā-taone

The sheltering ridge pole

B2.1. Issues

Auckland's growing population increases demand for housing, employment, business, infrastructure, social facilities and services.

Growth needs to be provided for in a way that does all of the following:

(1A) contributes to well-functioning urban environments;

(1B) improves resilience to the effects of climate change;

(1) enhances the quality of life for individuals and communities;

(2) supports integrated planning of land use, infrastructure and development;

(3) optimises the efficient use of the existing urban area;

(4) encourages the efficient use of existing social facilities and provides for new social facilities;

(5) enables provision and use of infrastructure in a way that is efficient, effective and timely;

(6) maintains and enhances the quality of the environment, both natural and built;

(7) maintains opportunities for rural production; and

(8) enables Mana Whenua to participate and their culture and values to be recognised and provided for.

B2.2. Urban growth and form

B2.2.1. Objectives

(1A) A well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

(1) A well-functioning urban environment with a quality compact urban form that enables all of the following:

(a) a higher-quality urban environment;

(b) greater productivity and economic growth;

(c) better use of existing infrastructure and efficient provision of new infrastructure;

(d) good accessibility for all people, including by improved and more efficient public or active transport;

(e) greater social and cultural vitality;

(f) better maintenance of rural character and rural productivity;

(g) reduced adverse environmental effects; and

(h) improved resilience to the effects of climate change.

(2) Urban growth is primarily accommodated within the urban area 2016 (as identified in Appendix 1A).

(3) Sufficient development capacity and land supply is provided to accommodate residential, commercial, industrial growth and social facilities to support growth.

(4) Urbanisation is contained within the Rural Urban Boundary, towns, and rural and coastal towns and villages.

(5) The development of land within the Rural Urban Boundary, towns, and rural and coastal towns and villages:

(a) is integrated with the provision of appropriate infrastructure; and

(b) improves resilience to the effects of climate change.

B2.2.2. Policies

Development capacity and supply of land for urban development

(1) Include sufficient land within the Rural Urban Boundary that is appropriately zoned to accommodate at any one time a minimum of seven years' projected growth in terms of residential, commercial and industrial demand and corresponding requirements for social facilities, after allowing for any constraints on subdivision, use and development of land.

(2) Ensure the location or any relocation of the Rural Urban Boundary identifies land suitable for urbanisation in locations that contribute to a well-functioning urban environment and that:

(a) promote the achievement of a quality compact urban form

(b) enable the efficient supply of land for residential, commercial and industrial activities and social facilities;

(c) integrate land use and transport supporting a range of transport modes;

(d) support the efficient provision of infrastructure;

(e) provide choices that meet the needs of people and communities for a range of housing types and working environments;

(ee) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and

(f) follow the structure plan guidelines as set out in Appendix 1; while:

(g) protecting natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage and special character;

(h) protecting the Waitākere Ranges Heritage Area and its heritage features;

(i) ensuring that significant adverse effects from urban development on receiving waters in relation to natural resource and Mana Whenua values are avoided, remedied or mitigated;

(j) avoiding elite soils and avoiding where practicable prime soils which are significant for their ability to sustain food production;

(k) avoiding mineral resources that are commercially viable;

(l) avoiding areas with significant natural hazard risks and where practicable avoiding areas prone to natural hazards including coastal hazards and flooding, including the effects of climate change including sea level rise on the extent and frequency of hazards; and

(m) aligning the Rural Urban Boundary with:

(i) strong natural boundaries such as the coastal edge, rivers, natural catchments or watersheds, and prominent ridgelines; or

(ii) where strong natural boundaries are not present, then other natural elements such as streams, wetlands, identified outstanding natural landscapes or features or significant ecological areas, or human elements such as property boundaries, open space, road or rail boundaries, electricity transmission corridors or airport flight paths.

(n) limits or avoids urbanisation where a “qualifying matter” justifies that limitation or avoidance of urbanisation.

(3) Enable rezoning of future urban zoned land for urbanisation following structure planning and plan change processes in accordance with Appendix 1 Structure plan guidelines.

Quality compact urban form

(4) Promote urban growth and intensification within the urban area 2016 (as identified in Appendix 1A), enable urban growth and intensification within the Rural Urban Boundary, towns, and rural and coastal towns and villages, in a way that contributes to a well-functioning urban environment and avoid urbanisation outside these areas.

(5) Enable higher residential intensification:

(a) in and around centres;

(b) along identified corridors; and

(c) close to public transport, social facilities (including open space) and employment opportunities.

(6) Identify a hierarchy of centres that contributes to a well-functioning urban environment which supports a quality compact urban form:

(a) at a regional level through the city centre, metropolitan centres and town centres which function as commercial, cultural and social focal points for the region or sub-regions; and

(b) at a local level through local and neighbourhood centres that provide for a range of activities to support and serve as focal points for their local communities.

(7) Enable rezoning of land within the Rural Urban Boundary or other land zoned future urban to accommodate urban growth in ways that contribute to a well-functioning urban environment and that do all of the following:

(a) support a quality compact urban form;

(b) provide for a range of housing types and employment choices for the area;

(c) integrate with the provision of infrastructure;

(caa) provide good accessibility, including by way of efficient and effective public or active transport;

(ca) incorporate resilience to the effects of climate change;

(d) follow the structure plan guidelines as set out in Appendix 1; and

(e) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets.

(8) Enable the use of land zoned future urban within the Rural Urban Boundary or other land zoned future urban for rural activities until urban zonings are applied, provided that the subdivision, use and development does not hinder or prevent the future urban use of the land.

(9) Apply a Rural Urban Boundary for Waiheke Island (identified in Appendix 1B) as a regional policy statement method.

B2.3. A quality built environment

B2.3.1. Objectives

(1) A well-functioning urban environment with a quality built environment where subdivision, use and development do all of the following:

(a) respond to the intrinsic qualities and physical characteristics of the site and area, including its setting;

(b) reinforce the hierarchy of centres and corridors;

(c) contribute to a diverse mix of choice and opportunity for people and communities;

(d) maximise resource and infrastructure efficiency;

(e) are capable of adapting to changing needs; and

(f) has improved resilience to the effects of climate change.

(2) Innovative design to address environmental effects is encouraged.

(3) The health and safety of people and communities are promoted.

B2.3.2. Policies

(1) Manage the form and design of subdivision, use and development so that it contributes to a well-functioning urban environment and does all of the following:

(a) supports the planned future environment, including its shape, landform, outlook, location and relationship to its surroundings, including landscape and heritage;

(b) contributes to the safety of the site, street and neighbourhood;

(c) develops street networks and block patterns that provide good access and enable a range of travel options;

(d) achieves a high level of amenity and safety for pedestrians and cyclists;

(e) meets the functional, and operational needs of the intended use;

(f) allows for change and enables innovative design and adaptive re-use; and

(g) improves resilience to the effects of climate change.

(2) Encourage subdivision, use and development to be designed to promote the health, safety and well-being of people and communities by all of the following:

(a) providing access for people of all ages and abilities;

(b) enabling walking, cycling and public transport and minimising vehicle movements; and

(c) minimising the adverse effects of discharges of contaminants from land use activities (including transport effects) and subdivision.

(3) Enable a range of built forms to support choice and meet the needs of Auckland's diverse population.

(4) Balance the main functions of streets as places for people and as routes for the movement of vehicles.

(5) Mitigate the adverse environmental effects of subdivision, use and development through appropriate design including energy and water efficiency and waste minimisation.

B2.4. Residential growth

B2.4.1. Objectives

(1) Residential intensification contributes to a well-functioning urban environment and supports a quality compact urban form.

(1A) Residential intensification is limited in some areas to the extent necessary to give effect to identified qualifying matters.

(2) Residential areas are attractive, healthy, safe and have improved resilience to the effects of climate change with quality development that is in keeping with the planned built character of the area.

(3) Land within and adjacent to centres and corridors or in close proximity to public transport and social facilities (including open space) or employment opportunities is the primary focus for residential intensification.

(4) An increase in housing capacity and the range of housing choice which meets the varied needs and lifestyles of Auckland's diverse and growing population.

(5) Non-residential activities are provided in residential areas to support the needs of people and communities.

(6) Sufficient, feasible development capacity for housing is provided, in accordance with Objectives 1 to 4 above, to meet the targets in Table B2.4.1 below:

Table B2.4.1: Minimum Dwelling Targets

Term	Short to Medium 1 - 10 years (2016 – 2026)	Long 11 - 30 years (2027 – 2046)	Total 1 – 30 years (2016 – 2046)
Minimum Target (number of dwellings)	189,800	218,500	408,300

Source: Development Strategy, Assessing Demand, Auckland Plan 2050.

B2.4.2. Policies

Residential intensification

(1) Provide a range of residential zones that enable different housing types and intensity that are appropriate to the residential character of the area.

(2) Enable higher residential intensities in areas closest to centres, the public transport network, large social facilities, education facilities, tertiary education facilities, healthcare facilities and existing or proposed open space, which contribute to a well-functioning urban environment.

(3) Provide for medium residential intensities in area that are within moderate walking distance to centres, public transport, social facilities and open space.

(4) Provide for lower residential intensity in areas:

(a) that are not close to centres and public transport;

(b) that are subject to high environmental constraints;

(c) where there are natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage and special character;

(d) where there is a suburban area with an existing neighbourhood character; and

(e) where there are other qualifying matters listed in Chapter A that justify that limitation.

(5) Avoid intensification in areas:

(a) where there are natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage or special character; or

(b) that are subject to significant natural hazard risks including where the frequency and extent of the natural hazards are being affected by climate change; or

(c) where there are other qualifying matters listed in Chapter A which justify avoidance of intensification;

where such intensification is inconsistent with the protection of the scheduled natural or physical resources or with the avoidance or mitigation of the natural hazard risks or is necessary to give effect to identified qualifying matters.

(6) Ensure development is adequately serviced by existing infrastructure or is provided with infrastructure prior to or at the same time as residential intensification, including, as a qualifying matter, limiting intensification prior to upgrade of capacity in areas of known water and wastewater infrastructure constraints.

(7) Manage adverse reverse sensitivity effects from urban intensification on land with existing incompatible activities.

Residential neighbourhood and character

(8) Recognise and provide for existing and planned neighbourhood character through the use of place-based planning tools.

(9) Manage built form, design and development to achieve an attractive, healthy and safe environment that is in keeping with the descriptions set out in placed-based plan provisions.

(10) Provide for non-residential activities and require them to be of a scale and form that are in keeping with the existing and planned built character of the area.

Affordable housing

(11) Enable a sufficient supply and diverse range of dwelling types, sizes and locations, that meet the housing needs of people and communities, including:

(a) households on low to moderate incomes; and

(b) people with special housing requirements.

B2.5. Commercial and industrial growth

B2.5.1. Objectives

(1) Employment and commercial and industrial opportunities meet current and future demands.

(2) Commercial growth and activities are primarily focussed within a hierarchy of centres and identified growth corridors that contribute to a well-functioning urban environment and a compact urban form.

(2A) Commercial and industrial activities are resilient to the effects of climate change.

(3) Industrial growth and activities are enabled in a manner that does all of the following:

(a) promotes economic development;

(b) promotes the efficient use of buildings, land and infrastructure in industrial zones;

(c) manages conflicts between incompatible activities;

(d) recognises the particular locational requirements of some industries; and

(e) enables the development and use of Mana Whenua's resources for their economic well-being.

B2.5.2. Policies

(1) Encourage commercial growth and development in the city centre, metropolitan and town centres, and enable retail activities on identified growth corridors, to provide the primary focus for Auckland's commercial growth.

(2) Support the function, role and amenity of centres by encouraging commercial and residential activities within centres, ensuring development that locates within centres contributes to a well-functioning urban environment and the following:

(aa) a high-density urban form that responds to a centre's accessibility by public transport, commercial activity and community facilities;

(a) an attractive and efficient urban environment with a distinctive sense of place and quality public places;

(b) a diverse range of activities, with the greatest mix, concentration and density of activities in the city centre;

(c) a distribution of centres that provide for the needs of people and communities;

(d) employment and commercial opportunities**;**

(e) a character and form that supports the role of centres as focal points for communities and compact mixed-use environments;

(f) the efficient use of land, buildings and infrastructure;

(g) high-quality street environments including pedestrian and cycle networks and facilities;

(h) development does not compromise the ability for mixed use developments, or commercial activities to locate and expand within centres; and

(i) a scale and form of development that is necessary to achieve any relevant identified qualifying matters.

(3) Enable the expansion of metropolitan and town centres having regard to whether it will do all of the following:

(a) improve access to a range of facilities, goods and services in a convenient and efficient manner;

(b) maintain or enhance a compact mixed-use environment in the centre;

(c) retain or enhance the existing centre's function, role and amenity;

(d) support the existing network of centres and achieve a sustainable distribution of centres that is supported by sufficient population growth;

(e) manage adverse effects on the function, role and amenity of the city centre, and other metropolitan and town centres, beyond those effects ordinarily associated with trade effects on trade competitors;

(f) avoid, remedy or mitigate the effects of commercial activity on adjoining land uses;

(g) support medium to high intensity residential development; and

(h) support a safe and efficient transport system which is integrated with the centre.

(4) Enable new metropolitan, town and local centres which contribute to a well-functioning urban environment following a structure planning process and plan change process in accordance with Appendix 1 Structure plan guidelines, having regard to all of the following:

(a) the proximity of the new centre to existing or planned medium to high intensity residential development;

(b) the existing network of centres and whether there will be sufficient population growth to achieve a sustainable distribution of centres;

(c) whether the new centre will avoid or minimise adverse effects on the function, role and amenity of the city centre, metropolitan and town centres, beyond those effects ordinarily associated with trade effects on trade competitors;

(d) the form and role of the proposed centre;

(e) any significant adverse effects on existing and planned infrastructure;

(f) a safe and efficient transport system which is integrated with the centre; and

(g) any significant adverse effects on the environment or on natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage special character, or other identified qualifying matter.

(5) Enable retail activities, where appropriate, on identified growth corridors in business zones, having regard to all of the following:

(a) adverse effects on the function, role and amenity of the city centre, metropolitan and town centres, beyond those effects ordinarily associated with trade effects on trade competitors;

(b) adverse effects on the quality compact urban form including the existing and planned location of activities, facilities, infrastructure and public investment;

(c) effects on community social and economic wellbeing and accessibility;

(d) the efficient use and integration of land and infrastructure;

(e) effects on the safe and efficient operation of the transport network;

(f) effects of the development on the efficient use of any industrial land, in particular opportunities for land extensive industrial activities and heavy industry;

(g) avoiding conflicts between incompatible activities; and

(h) the effects on residential activity.

(6) Enable commercial activities, where appropriate, in business zones in locations other than the city centre, metropolitan and town centres and identified growth corridors, having regard to all of the following:

(a) the matters listed in Policy B2.5.2(5)(a) to Policy B2.5.2(5)(h) above;

(b) the extent to which activities would compromise the achievement of policies B2.5.2(1) and B.2.5.2(2): and

(c) the extent to which activities would compromise the hierarchy of locations identified in policies B2.5.2(1) to B.2.5.2(5).

(7) Enable the supply of land for industrial activities, in particular for

land-extensive industrial activities and for heavy industry in areas where the character, scale and intensity of the effects from those activities can be appropriately managed.

(8) Enable the supply of industrial land which is relatively flat, has efficient access to freight routes, rail or freight hubs, ports and airports, and can be efficiently served by infrastructure.

(9) Enable the efficient use of industrial land for industrial activities and avoid incompatible activities by all of the following:

(a) limiting the scale and type of non-industrial activities on land zoned for light industry;

(b) preventing non-industrial activities (other than accessory activities) from establishing on land zoned for heavy industry; and

(c) promoting co-location of industrial activities to manage adverse effects and to benefit from agglomeration.

(10) Manage reverse sensitivity effects on the efficient operation, use and development of existing industrial activities, including by preventing inappropriate sensitive activities locating or intensifying in or adjacent to heavy industrial zones.

(10A) Require commercial, retail and industrial activities to be located, designed and developed with best practice resilience to the effects of climate change.

B2.6. Rural and coastal towns and villages

B2.6.1. Objectives

(1) Growth and development of existing or new rural and coastal towns and villages is enabled in ways that:

(a) avoid natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage or special character unless growth and development protects or enhances such values; and

(b) avoid elite soils and avoid where practicable prime soils which are significant for their ability to sustain food production; and

(c) avoid areas with significant natural hazard risks;

(ca) are resilient to the effects of climate change;

(d) are consistent with the local character of the town or village and the surrounding area; and

(e) enables the development and use of Mana Whenua's resources for their economic well-being.

(2) Rural and coastal towns and villages have adequate infrastructure.

B2.6.2. Policies

(1) Require the establishment of new or expansion of existing rural and coastal towns and villages to be undertaken in a manner that does all of the following:

(a) maintains or enhances the character of any existing town or village;

(b) incorporates adequate provision for infrastructure;

(c) avoids locations with significant natural hazard risks where those risks cannot be adequately remedied or mitigated;

(d) avoids elite soils and avoids where practicable prime soils which are significant for their ability to sustain food production;

(e) maintains adequate separation between incompatible land uses;

(f) is compatible with natural and physical characteristics, including those of the coastal environment;

(g) provides access to the town or village through a range of transport options including walking and cycling; and

(h) improves resilience to the effects of climate change.

(2) Avoid locating new or expanding existing rural and coastal towns and villages in or adjacent to areas that contain significant natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage or special character, unless the growth and development protects or enhances such resources including by any of the following measures:

(a) the creation of reserves;

(b) increased public access;

(c) restoration of degraded environments;

(d) creation of significant new areas of biodiversity; or

(e) enablement of papakāinga, customary use, cultural activities and appropriate commercial activities.

(3) Enable the establishment of new or significant expansions of existing rural and coastal towns and villages through the structure planning and plan change processes in accordance with Appendix 1 Structure plan guidelines.

(4) Enable small-scale growth of and development in rural and coastal towns and villages without the need for structure planning, in a manner consistent with policies B2.6.2(1) and (2).

(5) Enable papakāinga, marae, customary use, cultural activities and appropriate commercial activities on Māori land and on other land where Mana Whenua have collective ownership.

B2.7. Open space and recreation facilities

B2.7.1. Objectives

(1) Recreational needs of people and communities are met through the provision of a range of quality open spaces and recreation facilities which contribute to a well-functioning urban environment.

(2) Public access to and along Auckland's coastline, coastal marine area, lakes, rivers, streams and wetlands is maintained and enhanced.

(3) Reverse sensitivity effects between open spaces and recreation facilities and neighbouring land uses are avoided, remedied or mitigated.

(4) Open space and recreation are resilient to the effects of climate change.

B2.7.2. Policies

(1) Enable the development and use of a wide range of open spaces and recreation facilities to provide a variety of activities, experiences and functions and which contribute to a well-functioning urban environment.

(2) Promote the physical connection of open spaces to enable people and wildlife to move around efficiently and safely.

(3) Provide a range of open spaces and recreation facilities in locations that are accessible to people and communities.

(4) Provide open spaces and recreation facilities in areas where there is an existing or anticipated deficiency.

(5) Enable the development and use of existing and new major recreation facilities.

(6) Encourage major recreation facilities in locations that are convenient and accessible to people and communities by a range of transportation modes.

(7) Avoid, remedy or mitigate significant adverse effects of land use or development on open spaces and recreation facilities.

(8) Avoid, remedy or mitigate significant adverse effects from the use of open spaces and recreational facilities on nearby residents and communities.

(9) Enable public access to lakes, rivers, streams, wetlands and the coastal marine area by enabling public facilities and by seeking agreements with private landowners where appropriate.

(10) Limit public access to and along the coastal marine area, lakes, rivers, streams and wetlands by esplanade reserves, esplanade strips or other legal mechanisms where necessary for health, safety or security reasons or to protect significant natural or physical resources.

(11) Provide for improved resilience to the effects of climate change in open space and associated recreation and biodiversity management.

B2.8. Social facilities

B2.8.1. Objectives

(1) Social facilities that meet the needs of people and communities, including enabling them to provide for their social, economic and cultural well-being and their health and safety and which contribute to a well-functioning urban environment.

(2) Social facilities located where they are accessible by an appropriate range of transport modes.

(3) Reverse sensitivity effects between social facilities and neighbouring land uses are avoided, remedied or mitigated.

(4) Social facilities are resilient to the effects of climate change.

B2.8.2. Policies

(1) Enable social facilities that are accessible to people of all ages and abilities to establish in appropriate locations which contribute to a well-functioning urban environment as follows:

(a) small-scale social facilities are located within or close to their local communities;

(b) medium-scale social facilities are located with easy access to city, metropolitan and town centres and on corridors;

(c) large-scale social facilities are located where the transport network (including public transport and walking and cycling routes) has sufficient existing or proposed capacity.

(2) Enable the provision of social facilities to meet the diverse demographic and cultural needs of people and communities.

(3) Enable intensive use and development of existing and new social facility sites.

(4) In growth and intensification areas identify as part of the structure plan process where social facilities will be required and enable their establishment in appropriate locations which contribute to a well-functioning urban environment.

(5) Enable the efficient and flexible use of social facilities by providing on the same site for:

(a) activities accessory to the primary function of the site; and

(b) in appropriate locations, co-location of complementary residential and commercial activities.

(6) Manage the transport effects of high trip-generating social facilities in an integrated manner..

(7) Require social facilities to use best practice resilience to the effects of climate change.

B2.9. Explanation and principal reasons for adoption

A broad strategy is needed to address the resource management issues arising from the scale of urban growth in Auckland.

The National Policy Statement on Urban Development 2020 (NPSUD) includes objectives and policies on well-functioning urban environment and sets out matters that are to be addressed as a minimum, to achieve this. Achieving a well-functioning urban environment is reflected by a wide range of objectives and policies across the entire Regional Policy Statement (RPS). A well-functioning urban environment is a high-level concept and is an overarching objective of the RPS.

The objectives of a well-functioning urban environment and a quality compact urban form are supported by a primary policy approach of focussing the greatest levels of residential intensification in areas with good accessibility, including by public or active transport, and around commercial centres and transport nodes and along major transport corridors.

A compact urban form is one with clear boundaries where the residential and commercial areas are relatively close together. In Auckland, most urban growth is expected to be inside the Rural Urban Boundary:

- to promote efficient and timely provision of infrastructure;
- to protect natural and physical resources that have been scheduled for particular identified values; and
- to avoid urbanisation without appropriate structure planning.

The location of the Rural Urban Boundary is a district plan land use rule pursuant to section 9(3) of the Resource Management Act 1991, other than for Waiheke Island where it is an interim regional policy statement method until it is considered as part of a plan change to incorporate the Auckland Council District Plan – Operative Hauraki Gulf Islands Section into the Unitary Plan.

A well-functioning urban environment and compact urban form can deliver a range of benefits for current and future generations by:

- enabling a range of housing choices in size, typology and price within neighbourhoods;
- protecting sites and areas with identified high environmental values;
- providing access to open space and social facilities;
- fostering productivity, creativity and social vitality by enabling social and business networks based on spatial proximity;
- limiting or avoiding intensification where there are qualifying matters that justify that limitation or avoidance of intensification;
- promoting an integrated approach to land use and transport;
- providing investment certainty about use and development strategies; and
- improving resilience to the effects of climate change.

A quality built environment is one which enhances opportunities for people's well-being by ensuring that new buildings respond to the existing built and natural environment in ways that promote the plan's objectives and maintain and enhance the amenity values of an area. In most areas this is regulated by permitted standards and by assessment where those standards are exceeded. In centres and where higher intensity development is enabled, the design and appearance of buildings is generally assessed on a restricted discretionary basis.

In addressing the effects of growth, and contributing to a well-functioning urban environment, a key factor is enabling sufficient development capacity in the urban area and sufficient land for new housing and businesses over the next 30 years. It is also important to ensure that urban environments have improved resilience to the effects of climate change. The objectives and policies guide the location of urban growth areas. They identify how greenfield land which is suitable for urbanisation will be managed until it is re-zoned for urban development. They encourage provision for Mana Whenua to develop and use their resources. They also set out the process to be followed to ensure that urban development is supported by infrastructure on a timely and efficient basis. They should be considered in conjunction with the Council's other principal strategic plans such as the Auckland Plan, the Long-term plan and the Regional Land Transport Plan. The strategies and asset management plans of infrastructure providers will also be highly relevant.

Housing affordability is a significant issue in Auckland. These objectives and policies, as one component of the many things that need to be done to address this issue, seek to enable urban growth, improve development capacity and encourage a variety of housing types, sizes and locations as resource management methods to improve housing affordability.

Urban growth in rural and coastal towns and villages is also anticipated and provided for, but at a much lesser scale than in the main urban areas. Extensions to towns and villages, and proposals for new towns or villages, must be considered against factors including ensuring compatibility with existing local character, the protection of areas with identified values (including areas of land containing elite soils) and the avoidance of areas with significant natural hazards. Changes of zoning to accommodate such growth will be the subject of structure planning processes, as for other plan changes.

Auckland has a large number of open spaces that covers a wide variety of environments. Open spaces and recreation facilities may be privately or publicly owned and operated. Auckland's streets, including shared spaces and street berms, are also an important component of the open space network. The coastal marine area is a significant public open space and recreational resource. For additional policy direction on the coastal environment see section B8 Coastal environment.

Collectively these open spaces perform a wide range of functions including:

- providing opportunities for active and passive recreational activities, locally or Auckland-wide;
- enabling public access to the coastline, islands and beaches;
- maintaining and enhancing the amenity values and the quality of the environment around them;
- protecting and enhancing our natural and cultural heritage, landscapes and

ecological values; and

- providing locations for social facilities used for sports, recreation and leisure and community activities.

With growth, new open spaces and social facilities will be required and the existing open space and social facilities will need to be expanded and upgraded to meet the needs of new residents and the increased level of use.

Social facilities include public and private facilities which provide for services such as education, health, justice, corrections, community and cultural facilities. They also contribute to the economy of Auckland and New Zealand in a variety of ways, both supporting other activities and by contributing to a high-value knowledge economy. This is particularly important for a growing city, as increasing numbers of people rely on these facilities to meet their needs and provide for their social, economic and cultural well-being.

The objectives and policies in this section of the regional policy statement must be read together with other relevant sections which set out the direction for the sustainable management of natural and physical resources in more specific contexts.