

Auckland Unitary Plan Overlays Analysis

Kath Coombes

Miriam Williams

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Kath Coombes and Miriam Williams

Auckland-wide Planning, Plans and Places, Auckland Council

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Summary

An Environment Court decision¹ issued in December 2017 confirmed that enabling provisions within overlays, zones or Auckland-wide chapters in the Auckland Unitary Plan (**AUP**) cannot prevail over more restrictive provisions unless there is a specific rule that allows it. This decision required a change in Auckland Council's approach to considering resource consent applications for alterations and additions to existing dwellings where they are subject to the Special Character Area – Residential (**SCAR**) overlay and the underlying Residential – Single House Zone (**SHZ**). The Council now ensures that the two sets of rules are considered in the consenting process, instead of only the overlay rules. The decision also raised concerns regarding whether the other overlays in the plan would operate as intended with this revised approach.

A comprehensive analysis has been undertaken of the 26 overlays in the AUP to consider how they would be affected by the change in approach. The analysis has identified potential issues in the SCAR overlay and also in nine other overlays. The issues in the other overlays are much more limited in scale and significance than those in the SCAR overlay². The identified issues fall into the following categories:

1. Enabling activities – Where an overlay provision is more permissive, and the purpose of the overlay supports enabling the relevant activity, applying a more restrictive zone provision means the overlay does not function as intended (eight overlays affected).
2. Unclear exceptions to rules – Some enabling provisions include wording stating (or implying) that more permissive rules in that section of the AUP override the zone activity status. In some cases, the wording is not sufficiently clear (three overlays and three Auckland-wide chapters affected).
3. Competing matters of discretion – Applying both an overlay and zone/Auckland-wide rule can involve competing policy directions. This is particularly an issue where restricted discretionary activities matters of discretion are inconsistent (at least three overlays affected).
4. Consistency – There are naming and content inconsistencies across the AUP that create uncertainty regarding whether a more restrictive rule applies to a particular activity (five overlays affected).
5. Activities not provided for – Some overlays do not operate as intended because they inadvertently enable activities that should be restricted by a zone or by the general rule C1.7 in the AUP which makes “activities not provided for” a discretionary activity (seven zones affected).

The review has shown that the issues between the various overlays and the underlying zones could not be addressed by a single amendment to the AUP (such as a new general rule to require overlay rules to always prevail over zones or Auckland-wide provisions). That would cause a

¹ *Auckland Council v Budden* [2017] NZEnvC 209 ('interim decision') issued 19 December 2017. The decision was further clarified in the Court's second interim decision issued on 23 January 2018 as *Auckland Council v Budden (No 2)* [2018] NZEnvC 003 ('second decision') and in the third decision issued on 15 March 2018 *Auckland Council v Budden (No 3)* [2018] NZEnvC 030 ('third decision').

² The analysis did not include a full review of the Auckland-wide provisions but did identify small-scale potential issues in at least three Auckland-wide chapters.

different range of issues, particularly where an overlay provision is less restrictive than a zone provision but has no reason to be more enabling than a particular zone. If the overlay always prevailed, the Volcanic Viewshaft overlay would enable building higher than the underlying zone, and the Quarry Buffer Area Overlay would facilitate dwellings in the industrial zones. Instead of a single amendment applying across the AUP, a more tailored approach, to address the identified issues, is required to ensure that each of the AUP overlays operates as intended.

Table of Contents

1	Introduction	8
2	The Environment Court decisions	8
3	Purpose	12
4	Methodology	12
5	Summary of AUP overlays	14
6	Identified issues – overview	16
7	Issue 1: Enabling activities	18
8	Issue 2: Unclear exceptions to rules.....	27
9	Issue 3: Competing matters of discretion	30
10	Issue 4: Consistency	33
11	Issue 5: Activities not provided for.....	35
12	Conclusion	36
	Appendices	38
	Appendix 1 GIS analysis of overlays on zones	39
	Appendix 2 Overlay summary	41
	Appendix 3 Overlay analysis: Activity tables.....	51
	Appendix 4 Overlay analysis: Standards	71
	Appendix 5 Additional issues: Auckland-wide Mana Whenua provisions	83

1 Introduction

Each site in the AUP is zoned, and is subject to the Auckland-wide rules. Some sites are also subject to precinct provisions, where they are located within a precinct area, and some sites are also subject to overlay provisions, where there is an overlay present. When considering an application on a site, regard must be had to all the various provisions (of zones and Auckland-wide rules, and precincts and overlays where applicable) that apply to the particular site.

The general rules in chapter C of the AUP set out how the different sections of the AUP work together but do not specify whether an overlay provision prevails over a zone or Auckland-wide provision, or that they should all be applied to a resource consent application. The AUP overlays serve to recognise, manage and protect particular values and resources across Auckland, and so lie across various zones and precincts. The overlays are spatially mapped as GIS layers in the AUP maps. The Auckland-wide provisions are similar in that they apply across the region, but they do not relate to mapped areas, and generally address different matters to the zones and precincts.

In December 2017, the Environment Court issued an interim decision on *Auckland Council v Budden* which determined that all relevant rules should be applied to an activity, unless a rule creates a relevant exception to other rules. The wording of the Court's declaration was refined through its second and third decisions. During the course of the Environment Court hearing, the council's lawyers advised the Environment Court that council staff were undertaking an analysis of the relationship between the AUP overlays and zones. The second interim decision directed the council to continue and complete the analysis and to provide a progress report so that the final decision could record when the parties could expect the analysis to be completed and published. The third decision directed the council to file an updating memorandum on progress with the analysis of AUP overlays by Friday 27 July 2018.

This report outlines the scope and findings of the analysis undertaken to determine what changes are required (if any) to ensure the AUP overlays function efficiently and effectively. A draft version of this report was sent to the Court on 27 July 2018.

When the AUP was developed by the council, there was a general intention of overlays overriding the zone and Auckland-wide provisions. The Environment Court declaration clarified how general rule C1.6 in the AUP is to be implemented with respect to overlays. This resulted in awareness that the SCAR overlay is not working as intended, and raised questions regarding how many other overlays may be affected by similar issues.

2 The Environment Court decisions

The *Auckland Council v Budden* decisions examined the relationship between the following sections of the AUP:

- Chapter H3 Residential – Single House Zone, and
- Chapter D18 Special Character Areas Overlay – Residential and Business.

The SCAR overlay seeks to retain and manage the special character values of specific residential and business areas identified as having collective and cohesive values, importance, relevance and

interest to the communities within the locality and wider Auckland region. The overlay applies to 50 different areas of Auckland. The SCAR provisions focus on external building works, not on the use of those buildings. The SCAR seeks to retain and manage the character of traditional town centres and residential neighbourhoods by enhancing existing traditional buildings, retaining intact groups of character buildings, and designing compatible new building infill and additions that do not replicate older styles and construction methods, but reinforce the predominant streetscape character.

The SHZ and SCAR have several provisions which overlap, including the activity status for various works relating to buildings (e.g. construction, alteration, demolition, relocation), and the related standards (e.g. building height, yards, height in relation to boundary, building coverage and fences). The SCAR requires resource consent for some activities (e.g. demolition or construction of a new dwelling) that would be a permitted activity in the SHZ if it complied with the relevant standards. Some standards in the SCAR are more permissive compared to the corresponding standard in the SHZ, while others are more restrictive. The SCAR provisions provide for a larger building envelope than the SHZ (through the height in relation to boundary and front yard standards), but also requires a wider rear and side yard than the SHZ, reflecting the historical built form in some of the older residential areas of Auckland. These areas often have small narrow sites with development closer to front boundaries than what generally occurs in more recent suburbs. Each special character area has a 'character statement' summarising the particular values and qualities of that area³.

There are extensive areas of SHZ in the Auckland Region, including areas of more recent development. Only part of the SHZ is also subject to the SCAR overlay. A key difference between the SCAR and SHZ is that one of the matters of discretion for the SHZ relates to managing effects on the amenity values of neighbouring sites. There is no equivalent matter of discretion for the SCAR.

In considering which provisions should be applied to applications in the SHZ and SCAR, the Court examined the application of the general rules, particularly rules C1.4, C1.6 and C1.8(1) of the AUP which state (emphasis added):

C1.4. Applications on sites with multiple zones, overlays or precincts or on parts of sites

(1) *Where a proposal will take place:*

(a) *in two or more zones; or*

(b) *where two or more overlays apply to it; or*

(c) *on a site which is partially affected by an overlay or a precinct;*

*then **the proposal must comply with the overlay, zone and precinct rules** applying to the particular part of the site in which the relevant part of the proposal is located.*

(2) *Where a rule for an overlay, zone or precinct controls an activity by reference to a proportion or percentage of the site, the control will be limited to that part of the site to which the overlay, zone, or precinct applies.*

³ See AUP Schedule 15 Special Character Schedule, Statements and Maps.

C1.6. Overall activity status

- (1) *The overall activity status of a proposal will be determined **on the basis of all rules** which apply to the proposal, including any rule which creates a relevant exception to other rules.*
- (2) *Subject to Rule C1.6(4), **the overall activity status of a proposal is that of the most restrictive rule which applies to the proposal.***
- (3) *The activity status of an activity in an overlay takes precedence over the activity status of that activity in a precinct, unless otherwise specified by a rule in the precinct applying to the particular activity.*
- (4) *Where an activity is subject to a precinct rule and the activity status of that activity in the precinct is different to the activity status in the zone or in the Auckland-wide rules, then the activity status in the precinct takes precedence over the activity status in the zone or Auckland-wide rules, whether that activity status is more or less restrictive.*

C1.8 Assessment of restricted discretionary, discretionary and non-complying activities

- (1) *When considering an application for resource consent for an activity that is classed as a restricted discretionary, discretionary or non-complying activity, the **Council will consider all relevant overlay, zone, Auckland-wide and precinct objectives and policies** that apply to the activity or to the site or sites where that activity will occur.*

The general rule C1.6 refers to only 'activity status' and it is not explicit whether the same approach applies to standards where there are equivalent standards applying to a proposal (e.g. two 'height in relation to boundary' standards). The council had an internal practice notice that considered that the SCAR had a complete set of development standards which represent a 'replacement package' for the corresponding set of development standards in the SHZ. As a result, construction of new buildings and additions to existing buildings in the SCAR required consent as a restricted discretionary activity, with the larger building envelope provided for in the SCAR standards, and the consent assessment did not include an assessment of effects on the amenity values of neighbouring sites (which was in the SHZ provisions). The consent process considered the effects on the streetscape and character of the area, but not the full range of matters which would have been considered under the SHZ provisions if a zone standard had been infringed.

The Court's decisions on the declaration proceedings clarified that the SCAR provisions do not replace those within the SHZ, but that all rules relevant to an activity must be applied under general rule C1.6 of the AUP. The interim decision noted:

Hence we take our lead from the applicable directions in Rule C1.6. That is, insofar as relevant, the overall activity status of a proposal to which the SCAR and SHZ activity status classifications applies:

- (a) will be determined on the basis of all rules which apply to the proposal, including any rule which creates a relevant exception to other rules; and
- (b) is that of the most restrictive rule which applies to the proposal⁴.

⁴ *Auckland Council v Budden* [2017] NZEnvC 209 ('interim decision') paragraph [13].

The final declaration wording is:

Therefore, the court declares:

Where a proposed activity:

(a) is on a site located within both the Residential - Single House zone ("SHZ") and the Special Character Areas Overlay - Residential ("SCAR") of the partly operative Auckland Unitary Plan ("AUP"); and

(b) is classed as a restricted discretionary activity either under Activity Table D18.4.1 or, due to its non-compliance with a SHZ or SCAR development standard, under Rule C1.9(2)-

then the relevant SHZ, SCAR and General Rules (and any relevant objectives and policies) apply, in the processing and determination of any resource consent application for the proposed activity, without the SCAR rules prevailing over or cancelling out other rules⁵.

This approach means that rules that enable development within overlays, zones or Auckland-wide provisions will not prevail over a more restrictive activity status elsewhere in the plan, because the most restrictive activity status must be applied to a proposal (unless a rule creates a relevant exception to other rules).

Applying all the relevant rules means that the activity status of an activity is taken from all the relevant activity tables, and that all the applicable standards apply to an activity. Where the activity status from two relevant provisions (under an overlay and a zone) is the same, all the standards relating to the relevant rules apply. The most constraining standard will limit the application of an equivalent standard from another provision. For example, a height limit of 10m in an overlay will restrict the height of a proposed building, even though the underlying zone provides for a 15m height limit, as all relevant rules must be applied.

The result of the decisions is that consent applications must be considered against the provisions of both the SCAR and the SHZ. As a consequence, it appears that the SCAR provisions that are 'more enabling' than a zone provision may not function as they were intended. For example, the standard setting a relatively narrow front yard (where the adjacent dwellings are close to the street) may not be applied if the zone requires a wider front yard and is therefore a 'more restrictive' provision in determining the appropriate building envelope.

The Court decisions considered only the SCAR overlay and did not consider whether there were wider implications for other overlays and underlying zones. However, the decisions did direct the council to continue its work on assessing the relationship between overlays and zones.

Following receipt of the first interim decision, the council began applying the rules from both the SCAR and the SHZ. However, the incorrect approach of only applying the rules in the SCAR had been applied to a number of consents issued between 1 December 2016 and 19 December 2017. In August 2018 it was identified that this issue potentially affected around 430 resource consents, largely for additions or alterations to an existing house in the SCAR. Of these, 137 properties had already received building consent and may have started work when they were notified of the potential issue with their resource consent. Some of the consent holders may be required to reapply for resource consent. The council has notified all the affected consent holders and has waived the processing fees for the new consent applications.

⁵ *Auckland Council v Budden* [2018] NZEnvC 030 ('third decision') paragraph [54].

3 Purpose

This report has the following goals:

1. To report on the outcome of the analysis work that has been undertaken in accordance with the directions in the Environment Court decisions.
2. To assess whether using the most restrictive provision within an overlay, zone or Auckland-wide chapter causes any issue(s) for the intended outcomes of the plan.
3. To summarise any issues so that the council can determine appropriate actions to address the issues.

This report does not propose a plan change to address any identified issues. Any proposed plan changes will involve a subsequent analysis of alternative options for addressing the issues.

4 Methodology

The overlay analysis consisted of five main stages as outlined in Table 1.

Table 1: Methodology stages

Stage	Name	Description	Results
1	Spatial Analysis: Overlays on Zones	GIS analysis identified the zones affected by each overlay.	See Appendix 1.
2	Overlay Summary	Each overlay was summarised to assist the subsequent analysis. The summary provides information on each overlay's purpose and notes how each overlay relates to national direction and the AUP regional policy statement (RPS). It also lists all the chapters containing rules for each overlay.	Information summarised below in 'Summary of AUP Overlays'. More detail in Appendix 2.
3	Overlay Analysis: Activity Tables	This analysis compared each overlay's activity tables with the activity status in the AUP zone and Auckland-wide chapters that could apply to the same activity.	Information summarised below in the 'Identified Issues' sections. More detail in Appendix 3.
4	Overlay Analysis: Standards	This analysis compared each overlay's standards with the standards in the AUP zone and Auckland-wide chapters that could apply to the same activity.	Information summarised below in the 'Identified Issues' sections. More detail in Appendix 4.
5	Additional Issues	GIS spatial and activity table analysis of two Auckland-wide chapters: E20 Māori Land and E21 Treaty Settlement Land.	Information summarised below in 'Identified Issues' sections. More detail in Appendix 5.

Each overlay's purpose was reviewed to consider whether the overlay should have precedence over the zone and Auckland-wide provisions because of a relationship with a national direction or a directive RPS provision. The purpose of each overlay is largely determined from the 'background' and 'objectives' sections of the overlay chapter. Identifying the overlay purpose could also assist consent assessments, where an overlay and zone are both relevant, because an overlay provision that implements a national direction could be given a greater weighting than the zone provision. In the overlay summary, 'national direction' includes RMA Part 2 matters, national policy statements, and other legislation.

The analysis examined how the AUP overlays interact with zones and with the Auckland-wide provisions. The approach established in the Environment Court decisions for the 'SCAR overlay and SHZ' relationship has also been applied to the 'overlays and Auckland-wide provisions' relationship. An overlay can set out a different requirement for an activity covered in the Auckland-wide provisions (such as earthworks or tree trimming) in the same manner as for activities covered in a zone (e.g. land use or building heights).

The analysis has focused on activity tables and standards as these set the parameters for what consents are needed for a proposal. It has not compared objectives, policies, matters of control, matters of discretion and assessment criteria. However, these have been considered for context in some cases where potential issues have been identified.

The analysis has not included a full comparison of Auckland-wide provisions against zone provisions. In general, the Auckland-wide and zones provisions both apply to all sites and address different matters. In contrast, the overlays can include an additional layer of rules that apply to particular areas and can address matters which are also addressed in either a zone or an Auckland-wide chapter. While assessing the overlays, some issues have been identified that relate to potential confusion or conflict between an Auckland-wide provision and a zone. These are noted below in the 'identified issues' sections.

The analysis has not considered the relationship between precincts and other parts of the plan. AUP general rule C.1.6(3) and (4) set out where a precinct rule takes precedence over other rules.

5 Summary of AUP overlays

There are 26 overlays in the Unitary Plan⁶. These overlays differ in form and function in multiple ways (outlined in more detail in Appendix 2). The differences between overlays relate to their:

- Purpose
- General function grouping (e.g. protecting values or enabling development)
- Links to national direction
- Structure (e.g. location of rules)

Table 2 shows the general function groupings of the overlays and notes whether each overlay has a link to a national direction. The grey headings in the table give the sub-headings used in the AUP table of contents for Chapter D. The overlays in the first two categories of 'water protection and use' and 'value protection' all relate to national direction from RMA Part 2, a national policy statement or the Waitākere Ranges Heritage Area Act 2008. The category of 'value protection (RPS criteria)' distinguishes the overlays which have a set of criteria or assessment factors identified in the RPS chapter of the AUP (other than the Waitākere Ranges Heritage Area Overlay which is based to the Waitakere Ranges Heritage Area, which has its extent set by legislation). These 'value protection' overlays generally restrict or limit development. The eight water overlays protect and manage the values and use of waterbodies, aquifers or water supply areas. The Historic Heritage Overlay and Special Character Areas Overlay are generally protective but also have provisions which enable appropriate development. The Growth Corridor Overlay is focused on enabling development. The remaining overlays have quite different roles with a focus on protecting infrastructure or on addressing reverse sensitivity issues. These overlays do not relate to a national direction except for the National Grid Corridor Overlay which relates to the National Policy Statement for Electricity Transmission.

⁶ The number of overlays depends on how related overlays are grouped together. There are 26 chapters in 'Chapter D Overlays'. The Outstanding Natural Features Overlay and Outstanding Natural Landscapes Overlay are both covered in Chapter D10; Outstanding Natural Character and High Natural Character Overlay are both in Chapter D11. There are 29 overlay GIS map layers. There are separate map layers for Outstanding Natural Features, Outstanding Natural Landscapes, Outstanding Natural Character and High Natural Character overlays. The Natural Lake Management Area Overlay and Urban Lake Management Area Overlay are mapped as one layer although they have separate chapters in the text. The Historic Heritage Overlay has two separate layers for Historic Heritage Extent of Place and Historic Heritage Place. The Significant Ecological Areas Overlay includes three categories (Terrestrial, Marine 1 and Marine 2) which have different colours on the map layer. The Outstanding Natural Features Overlay is one map layer but has ten types of features in the chapter D10 activity table and schedule 6. Chapter D20 Dilworth Terrace Houses Viewshaft Overlay was deleted as part of the resolution of an appeal.

Table 2: AUP overlay categories

	Overlay	Function group	National direction
	Natural Resources		
D1	High-use Aquifer Management Areas	Water protection & use	Yes
D2	Quality-sensitive Aquifer Management Areas		Yes
D3	High-use Stream Management Areas		Yes
D4	Natural Stream Management Areas		Yes
D5	Natural Lake Management Areas		Yes
D6	Urban Lake Management Areas		Yes
D7	Water Supply Management Areas		Yes
D8	Wetland Management Areas		Yes
D9	Significant Ecological Areas	Value protection (RPS criteria)	Yes
	Natural Heritage		
D10	Outstanding Natural Features and Outstanding Natural Landscapes	Value protection (RPS criteria)	Yes
D11	Outstanding Natural Character and High Natural Character		Yes
D12	Waitākere Ranges Heritage Area		Yes
D13	Notable Trees		Yes
D14	Volcanic Viewshafts and Height Sensitive Areas		Yes
D15	Ridgeline Protection		Yes
D16	Local Public Views		Yes
	Built Heritage and Character		
D17	Historic Heritage	Value protection (RPS criteria)	Yes
D18	Special Character Areas - Residential and Business	Enabling development	Yes
D19	Auckland War Memorial Museum Viewshaft	Value protection (RPS criteria)	Yes
	Mana Whenua		
D21	Sites and Places of Significance to Mana Whenua	Value protection (RPS criteria)	Yes
	Built Environment		
D22	Identified Growth Corridor	Enabling development	No

	Overlay	Function group	National direction
	Infrastructure		
D23	Airport Approach Surface	Infrastructure protection	No
D24	Aircraft Noise	Reverse sensitivity	No
D25	City Centre Port Noise		No
D26	National Grid Corridor	Infrastructure protection	Yes
D27	Quarry Buffer Area	Reverse sensitivity	No

6 Identified issues – overview

The analysis identified possible issues across a range of overlays, as shown in Table 3. The following sections describe these issues in more detail. In general, the operation of most of the overlays is not affected by the approach set out in the Court's decisions.

Table 3: Summary of AUP overlay issues

	Overlay	Is there an issue?	Scale of issue ⁷	Issue category
D1	High-use Aquifer Management Areas	No		
D2	Quality-sensitive Aquifer Management Areas	No		
D3	High-use Stream Management Areas	No		
D4	Natural Stream Management Areas	No		
D5	Natural Lake Management Areas	No		
D6	Urban Lake Management Areas	No		
D7	Water Supply Management Areas	No		
D8	Wetland Management Areas	No		
D9	Significant Ecological Areas	Yes	Low	1. Enabling activity
D10	Outstanding Natural Features	No		
D10	Outstanding Natural Landscapes	No		
D11	Outstanding Natural Character and High Natural Character	No		

⁷ Assessment of 'scale of issue' relates to the number of provisions affected and the significance of those issues for the overall effectiveness of the overlay.

	Overlay	Is there an issue?	Scale of issue ⁷	Issue category
D12	Waitākere Ranges Heritage Area	Yes	Low	1. Enabling activity 2. Unclear exceptions to rules
D13	Notable Trees	No		
D14	Volcanic Viewshafts and Height Sensitive Areas	No		
D15	Ridgeline Protection	No		
D16	Local Public Views	No		
D17	Historic Heritage	Yes	Low	1. Enabling activity 2. Unclear exceptions to rules 3. Competing matters of discretion 5. Activities not provided for
D18	Special Character - Residential and Business	Yes	High	1. Enabling activity 3. Competing matters of discretion 4. Consistency
D19	Auckland War Memorial Museum Viewshaft	Yes	Low	1. Enabling activity 4. Consistency
D21	Sites and Places of Significance to Mana Whenua	Yes	Low	3. Competing matters of discretion 4. Consistency
D22	Identified Growth Corridor	Yes	Low	1. Enabling activity
D23	Airport Approach Surface	Yes	Low	1. Enabling activity 2. Unclear exceptions to rules
D24	Aircraft Noise	No		
D25	City Centre Port Noise	No		
D26	National Grid Corridor	Yes	Low	1. Enabling activity 4. Consistency
D27	Quarry Buffer Area	Yes	Low	4. Consistency 5. Activities not provided for

Auckland-Wide Provisions

The *Auckland Council v Budden* decisions have implications across the AUP and will not exclusively impact overlays. The analysis work has identified that there are at least three Auckland-wide chapters that may be impacted, as shown in Table 4. Appendix 5 describes the issues with E20 and E21 in more detail.

Table 4: Summary of issues with Auckland-wide chapters

Section	Name	Is there an issue?	Scale of issue	Issue category
E20	Māori Land	Yes	Low	2. Unclear exceptions to rules 4. Consistency
E21	Treaty Settlement Land	Yes	Low	2. Unclear exceptions to rules 4. Consistency
E40	Temporary Activities	Yes	Low	2. Unclear exceptions to rules

7 Issue 1: Enabling activities

The *Auckland Council v Budden* decisions confirmed that all relevant rules must be applied to any given activity. Where two (or more) provisions apply that relate to the same matter, the council had previously taken the approach that the overlay provision replaced the provisions within the zone.

Activities will frequently be subject to various different AUP rules relating to an overlay(s) (where an overlay (or overlays) apply to a site) and to the underlying zone and any applicable Auckland-wide provisions. Provisions can interact in one of six ways, as shown in Table 5. Applying the most restrictive provision only creates an issue in scenarios 5 and 6. These are where the overlay is more permissive than the zone or Auckland-wide provision, and the overall purpose of the overlay is to enable an activity. Examples of each of the scenarios are explained below the table.

Table 5: The six different scenarios for how the AUP overlay and zone/Auckland-wide provisions interact. (The red shading indicates the scenarios where applying the most restrictive provision can create an issue.)

	Same Matters	Different Matters
Restrictive Overlay Rules	<p>1. Activity status or standards deal with the same matter.</p> <p>The overlay rule is more restrictive.</p>	<p>2. Activity status or standards deal with different matters.</p> <p>The overlay rule is more restrictive.</p>
Permissive Overlay Rules	<p>3. Activity status or standards deal with the same matter.</p> <p>The overlay rule is more permissive, but its overall purpose is to restrict an activity.</p>	<p>4. Activity status or standards deal with different matters.</p> <p>The overlay rule is more permissive, but its overall purpose is to restrict an activity.</p>
	<p>5. Activity status or standards deal with the same matter.</p> <p>The overlay rule is more permissive, and its overall purpose is to enable an activity.</p>	<p>6. Activity status or standards deal with different matters.</p> <p>The overlay rule is more permissive, and its overall purpose is to enable an activity.</p>

Scenario 1 – The overlay and zone / Auckland-wide provisions regulate the same matters and the overlay is more restrictive. For example:

- The Historic Heritage Overlay seeks to protect Category A* places by making their demolition a non-complying activity (D14.4.1(A1)).
- In most zones, demolition is a permitted activity⁸ (e.g. Single House Zone rule H3.4.1(A32)).

The approach set out in the Environment Court decisions means the more restrictive rule from the overlay is to be applied. This supports the intent of the overlay which is to place additional controls on the demolition of scheduled historic heritage sites. Such controls are not required at other sites, where the overlay is not present.

Scenario 2 – Provisions in an overlay and in zones / Auckland-wide chapters regulate different aspects of an activity and the overlay is a more restrictive provision. For example:

- The National Grid Corridor Overlay seeks to avoid structures being close to National Grid support structures and classifies buildings and structures within 12m of a support structure as a restricted discretionary activity (D26.4.1(A6) and D26.6.1.4).
- The structure in question could be a house in a Residential - Single House Zone, and therefore a permitted activity (H3.4.1(A3) and (A36)⁹).

⁸ Within the city-centre zone, demolition is a controlled activity that considers the effects on the surrounding environment, including pedestrian amenity and traffic generation.

The overlay and zone rules address different matters (structures and land use) but applying the more restrictive provision from the overlay means the plan is operating as intended.

Scenario 3 – The overlay and zone / Auckland-wide provisions regulate the same matters and the overlay is more permissive but its overall purpose is to restrict an activity. For example:

- The Quarry Buffer Area Overlay seeks to avoid reverse sensitivity effects on quarry operations. To do this, it makes dwellings a controlled activity (D27.4.1(A1)) and specifies that the location and orientation of the dwelling, and noise attenuation and vibration mitigation, are included in the matters of control.
- In the industrial zones dwellings are discouraged to ensure that industrial activities can operate efficiently within these areas. Dwellings are a prohibited activity in the Heavy Industry Zone (H16.4.1(A3)) and non-complying in the Light Industry Zone (H17.4.1(A3)).

The Quarry Buffer Area Overlay is more permissive than the zone but the overlay is not intended to override the usual considerations for dwellings in industrial zones. The overlay's overall purpose is to restrict residential development close to quarries, and generally applies to rural zoned land. Making dwellings prohibited or non-complying activities in industrial zones does not defeat the purpose of the overlay. There is no reason why the overlay should prevail and make dwellings a controlled activity in such zones.

If the overlay is more restrictive than the zone/Auckland-wide provision, or the overlay is permissive but has a restrictive purpose, applying the 'more restrictive provision' approach does not cause an issue for the operation of the overlay. In these cases, the AUP is functioning as intended.

Some overlays with permissive provisions clarify that they do not override provisions elsewhere in the AUP. However, this is not applied consistently across the AUP. (Table 11 below outlines some of these exceptions as part of the 'consistency' issue.)

Scenario 4 – Provisions in an overlay and zones / Auckland-wide chapters regulate different aspects of a single activity and the overlay is more permissive but its overall purpose is to restrict development. For example:

- If a healthcare facility was proposed in the National Grid Substation Corridor Overlay, it would be a restricted discretionary activity as a 'building for activities sensitive to the National Grid' (D26.4.2(A30)).
- In a Residential - Mixed Housing Urban Zone, the healthcare facility would be a discretionary activity (H5.4.1(A25)).

The overlay is more permissive but its overall purpose is to restrict inappropriate development close to transmission lines and substations. The zone activity status would be applied, as the more restrictive provision, but that does not obstruct the intent of the overlay to restrict structures close to the National Grid. It would be illogical to enable healthcare facilities in the zone because they are close to a national grid substation.

Another example is:

⁹ Noting that use of a new dwelling would also be a non-complying activity in the National Grid Corridor as an 'activity sensitive to the national grid' (D26.4.1(A1)).

- In the Sites and Places of Significance to Mana Whenua Overlay, subdivision that results in a site or place of significance to Mana Whenua extending across multiple lots is a discretionary activity (D21.4.1(A7)).
- In the Auckland-wide provisions for subdivision in urban areas, subdivision involving indigenous vegetation scheduled in the Significant Ecological Areas Overlay not complying with Standard E38.8.2.5 is a non-complying activity (E38.4.2(A23)).

The overlay is more permissive than the Auckland-wide provision but there is no apparent reason why the overlay should enable subdivision that would otherwise be non-complying.

When the overlay rule is either more restrictive than the zone/Auckland-wide rule, or the overlay has a restrictive intent, the different provisions simply complement each other. They can play distinct roles within the processing of an application without defeating the purpose of the overlay. The AUP overlay and zones function as intended.

An issue occurs when an overlay rule is more permissive than a comparable zone or Auckland-wide rule, and the overlay is intended to be enabling (scenarios 5 and 6).

Scenario 5 – The provisions in the overlay and zones / Auckland-wide chapters deal with the same matter. The overlay rule is more permissive, and its overall purpose is to enable an activity. For example:

- The SCAR Overlay height in relation to boundary standard is 3m + 45° (D18.6.1.2).
- The SHZ height in relation to boundary standard is 2.5m + 45° (H3.6.7).

The more permissive SCAR standard is intended to enable the compact built form typical of the special character areas. However, the equivalent zone standard is more restrictive. The SCAR purpose of enabling a larger building envelope may not be achieved when both standards are applied together and the more restrictive rule prevails.

Scenario 6 – The provisions in the overlay and zones / Auckland-wide chapters deal with different matters. The overlay rule is more permissive, and its overall purpose is to enable an activity. For example:

- The Historic Heritage Overlay provides for the use of scheduled heritage places for “an activity that is not otherwise provided for in the underlying zone or precinct” as a discretionary activity (D17.4.1(A19)). This is presumably to encourage the adaptive reuse of heritage buildings so that they are retained.
- In the majority of AUP zones (20 in total) activities “not provided for” are listed in the activity table as having non-complying activity status as activities not provided for are generally not appropriate for that zone.

If the more restrictive zone rule is applied, the Historic Heritage Overlay rule may not have its intended effect of encouraging the use of heritage buildings for activities that are not otherwise provided for in the zone.

These provisions do not function as intended; restrictive provisions elsewhere in the plan still apply, thereby negating the benefits intended by more enabling provisions in the overlay.

The overlays with enabling provisions that may not operate as intended are identified in Table 6 (activity tables) and Table 7 (standards). Additional detail is provided in Appendices 3 and 4. These tables show that the SCAR overlay has the greatest number of potential issues, across

several different activities, standards and zones. The issues also relate to core considerations for the SCAR, relating to matters such as additions to buildings and the standards for yards and height in relation to boundary. These are key matters for retaining the 'special character' of the older parts of Auckland as new development occurs. The other overlays have only a few particular rules or standards that create an issue. In most cases, these issues relate to quite confined activities, rather than the operation of the whole overlay.

The overlays with identified issues are:

Significant Ecological Areas

- Vegetation removal for a dwelling or marae (controlled activity in the overlay). Several restricted discretionary rules in Auckland-wide provisions (e.g. vegetation removal over 250m²; removal near lakes, streams, wetlands) will prevail. This may be the intended result but the apparent conflict could generate debate or confusion in a consent process.
- Subdivision creating additional sites through protection of indigenous vegetation in the overlay (restricted discretionary activity). Several discretionary or non-complying rules could prevail if the other rules applying to rural subdivision are applied to the same application. Logically, the different rules in the same table would not be applied to the same application as they have quite different standards for minimum site size. It may be sufficiently clear that only the 'most specific' rule should be applied to a subdivision creating sites through protecting a significant ecological area, rather than applying both an overlay and a general rule.

Waitakere Ranges

- Six month time limit for filming (permitted activity in overlay). The usual 30 day limit could prevail (depends on whether the existing note is adequate).

Historic Heritage

- Use that is not otherwise provided for in a zone (discretionary activity). The non-complying activities in some zones will prevail.

Special Character Areas – Residential

- Additions to buildings, new buildings (restricted discretionary activity), building standards (permitted activity), minimum net site area for subdivision (restricted discretionary activity standard). Several residential zones have discretionary activities for various buildings, and some more restrictive standards, that will prevail over the overlay.

Identified Growth Corridor

- Various types of retail (restricted discretionary or discretionary activity in the overlay). Some Light Industry Zone or Mixed Use Zone discretionary or non-complying retail types will prevail. (These may be addressed by the existing note).

Airport Approach Surface

- Tree trimming (permitted activity in overlay). Some restricted discretionary Auckland-wide rules (e.g. tree trimming that does not comply with a standard or tree removal of a tree greater than 4m in height or 400mm in girth) will prevail when the intent of the overlay is to facilitate removal of trees that extend into the airport approach surface.

National Grid Corridor

- Network utilities and electricity generation that connect to the national grid (permitted activity in overlay). Several Auckland-wide restricted discretionary or discretionary rules

(e.g. community scale electricity generation and large scale wind farms in some zones) will prevail.

Auckland War Memorial Museum Viewshaft

- Permissive building coverage where the overlay height limit is lower than the zone height limit. The building coverage in the zone rules could be applied as a more restrictive rule unless the wording of the rule is determined to create a valid exception to other rules.

Table 6: Overlays with activity table rules that are more enabling than a comparable zone or Auckland-wide rule, where the purpose of the overlay is to enable that activity. (The 'number of more restrictive rules' column refers to the rules listed in Appendix 3.)

	Overlay name	Overlay Activity	Overlay activity status	Number of more restrictive rules
D9	Significant Ecological Areas	E15.4.2(A29) Vegetation alteration or removal within a SEA for a building platform and access way for one dwelling per site	C	10
		E15.4.2(A30) Vegetation alteration or removal within a SEA on Māori land or treaty settlement land for: (a) one marae complex per site; (b) up to 30 dwellings per site; (c) activities associated with a marae complex and with papakāinga	C	10
		E39.4.2(A16) In-situ subdivision creating additional sites through protection of indigenous vegetation identified in the Significant Ecological Areas Overlay, and complying with Standard E39.6.4.4	RD	8
		E39.4.2(A20) Transferable rural sites subdivision through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay complying with Standard E39.6.4.6	RD	8
D12	Waitākere Ranges Heritage Area	D12.4.1(A1) Filming that complies with Standard D12.6.1 [Note standard D12.6.1(1) The activity must not involve any filming activity longer than six months from start to finish, irrespective of whether the activity is carried out in different years.]	P	1
D17	Historic Heritage	D17.4.1(A19) Use of a scheduled historic heritage place for an activity that is not otherwise provided for in the underlying zone or precinct, or not otherwise provided for in Tables D17.4.1 to D.17.4.3 Note – this rule does not override any prohibited activity	D	20

	Overlay name	Overlay Activity	Overlay activity status	Number of more restrictive rules
D18	Special Character Areas - Residential and Business	D18.4.1(A4) External alterations or additions to a building on all sites in the Special Character Areas Overlay – Residential or Special Character Areas Overlay – General (with a residential zoning)	RD	63 (5 zones)
		D18.4.1(A5) Construction of a new building or relocation of a building onto a site on all sites in the Special Character Area Overlay – Residential or Special Character Areas Overlay – General (those sites with a residential zone)	RD	68 (5 zones)
		E38.4.2(A24) Subdivision of sites identified in the Special Character Areas Overlay – Residential and Business complying with Standard E38.8.2.6 [minimum net site area in listed sub-areas of the overlay]	RD	14
D22	Identified Growth Corridor	D22.4.1 (A1) Food and beverage	D	1
		D22.4.1 (A2) Retail up to 450m ² gross floor area per tenancy	D	1
		D22.4.1 (A3) Retail greater than 450m ² gross floor area per tenancy	RD	5
		D22.4.1 (A4) Trade suppliers	RD	1
D23	Airport Approach Surface	D23.4.1(A1) Removal or topping of a tree that protrudes into the airfield height restriction shown in Standard D23.6.1 Height	P	7
D26	National Grid Corridor	D26.4.1 (A3) Network utilities (excluding buildings and structures for irrigation) and electricity generation that connect to the national grid	P	7

Table 7: Overlays with standards that are more enabling than a comparable standard in a zone or Auckland-wide rule, where the purpose of the overlay is to enable that activity. (The 'number of more restrictive standards' column refers to the standards listed in Appendix 4.)

	Overlay name	Overlay Standard	Number of more restrictive standards
D12	Waitākere Ranges Heritage Area	D12.6.1. Filming (1) The activity must not involve any filming activity longer than six months from start to finish, irrespective of whether the activity is carried out in different years.	1

	Overlay name	Overlay Standard	Number of more restrictive standards
D18	Special Character Areas - Residential and Business	D18.6.1.2. Height in relation to boundary (1) Buildings in the Special Character Areas Overlay – Residential must not project above a 45-degree recession plane measured from a point 3m above the ground level along any boundary of the site (3m + 45 degrees).	4
		D18.6.1.3. Yards Front - The average of existing setbacks of dwellings on adjacent sites, being the three sites on either side of the subject site or six sites on one side of the subject site Side - 1.2m Rear - 3m	6
		D18.6.1.4. Building coverage up to 200 m ² - 55 % net site area 200 - 300 m ² - 45 % 300 - 500 m ² - 35 % 500 - 1000 m ² - 35 % over 1000 m ² - 25 %	5
		D18.6.1.5. Landscaped area up to 200 m ² - 28 % net site area (minimum) 200 - 500 m ² - 33 % 500 - 1000 m ² - 40 % over 1000 m ² - 50 % The front yard must comprise at least 50 per cent landscaped area.	4
		D18.6.1.6. Maximum paved area up to 200 m ² - 17 % net site area 200 - 500 m ² - 20 % 500 - 1000 m ² - 25 % over 1000 m ² - 25 %	6
		E38 Subdivision - Urban E38.8.2. Standards – residential restricted discretionary activities E38.8.2.6. Subdivision of sites identified in the Special Character Areas Overlay – Residential and Business Minimum net site area: Isthmus A – 400m ² or 500m ² where the site does not comply with the shape factor Isthmus B1 and B3 - 1,000m ² Isthmus B2 - 600m ² Isthmus C1 - 400m ² or 500m ² where the site does not comply with the shape factor Isthmus C2 - 600m ² Isthmus C2a (refer to Figure E38.8.2.6) - 1,000m ² on sites identified in Figure E38.8.2.6 below North Shore Area A - 450m ² North Shore Area B - 500m ² North Shore Area C - 600m ²	2

	Overlay name	Overlay Standard	Number of more restrictive standards
D19	Auckland War Memorial Museum Viewshaft	D19.6.1. Building coverage For sites where the view protection height limit surface is lower than the height limit in the zone, the maximum building coverage is 40 per cent, unless a greater building coverage is allowed in the zone.	4

There is no simple amendment that can address all of these issues collectively. It would not be appropriate to introduce a general rule that makes the overlay provisions always prevail over zone and Auckland-wide provisions. This would create issues when the overlay provisions are more permissive than their equivalents elsewhere in the plan, but the overall intent of the overlay is to be restrictive. In such cases, the overlay is not meant to enable particular activities where there are other reasons for a zone to restrict that activity. Such an approach would create anomalous situations such as the Volcanic Viewshafts Overlay allowing building heights up to a sloping viewshaft height when the building height in the surrounding zone is lower.

Additional assessment is needed to determine the best way to address each of these issues. They may each need a different approach, depending on the overlay and its purpose. In some cases, it may be appropriate to amend the enabling provision by inserting a clause to state that it prevails over any zone provision. Other cases will require a more detailed consideration of whether the issue can be addressed by amendments to related policies or matters of discretion or refinements to the zone provision. For example, amending the wording of D17.4.1(A19) (which enables the use of scheduled heritage places not provided for within a zone) could ensure that the rule takes precedence over other zone provisions. Another approach would be to remove the rule (D17.4.1(A19)) and rely on corresponding historic heritage policy (D17.3(4)) to ensure that the benefits of adaptable reuse are considered even if the activity is a non-complying activity in the underlying zone. In another example, the SCAR Overlay height in relation to boundary standard (D18.6.1.2) could be amended to explicitly state that it overrides any equivalent zone standard. Alternatively, the SCAR Overlay could be amended so that it includes consideration of the amenity effects on neighbouring sites. Currently the overlay focuses on streetscape; consideration of amenity effects is only triggered by infringing a zone provision. Determining the appropriate plan amendment requires careful consideration of the purpose of the overlay and each issue created by an enabling provision. The analysis has not considered whether a plan change is justified at this stage or whether the issues can be addressed as part of a future plan review. The declaration has clarified the general approach to be taken in consent processes.

Further work on this issue could include:

- Consider amending the general rules in chapter C to more clearly communicate that where there are overlay and zone/Auckland-wide rules covering the same matter, both rules will be applied (unless a rule provides an exception), and be explicit that the same approach applies to standards as well as activity status.
- Where there are identified issues with an overlay, consider amending the relevant rule or standard to specify that an enabling overlay provision will override provisions elsewhere in the plan. Compare the costs and benefits of that amendment with other possible amendments to the AUP to determine which would better achieve the intent of the overlay in each case.

8 Issue 2: Unclear exceptions to rules

A few overlays and Auckland-wide chapters provide a more enabling approach than a zone (i.e. addressing the ‘enabling activities’ issue) through wording stating that a rule overrides a zone rule with a more restrictive activity status. The review has raised questions regarding whether the relevant wording is sufficiently clear to be an ‘exception’ in terms of rule C1.6(1). The *Auckland Council v Budden* interim decision confirmed that all relevant plan provisions must be applied to any given activity, based on the general rules of the Unitary Plan (chapter C). This includes ‘any rule which creates a relevant exception to other rules’ (rule C1.6(1)). A rule is the activity and its activity status in the activity table, any associated standard or matters of control or discretion, and assessment criteria, that form part of the rule. Rules can also include the introductory wording set out above an activity table to explain how the table is to be applied.

One overlay and two Auckland-wide chapters have wording set out above the activity tables that are clearly intended to be considered as creating permissive ‘rules that create an exception to other rules’ (see Table 8). Applying these exceptions means these chapters are functioning as intended. These statements are sufficiently clear to create rule exceptions. However, the wording in the Maori Land and Treaty Settlement Land chapters (E20 and E21) has some potential for confusion. They state that the less restrictive rule applies when the zone and Auckland-wide provide for the “same activity”. It is not clear if this means the rule cannot be applied to zone rules for “activities not provided for” as the zone is not really “providing for the same activity”. It may be clearer to use the more general wording used for the Identified Growth Corridor Overlay. It should be noted that the Identified Growth Corridor wording applies only to the activity status and not the other provisions, as addressed for Māori Land and Treaty Land, so may need to be amended for other overlays as relevant. The exception wording should be clear regarding whether the standards in the zone apply or only those in the overlay.

Table 8: Permissive rule exceptions that are explicit

Chapter	Location	AUP Text (emphasis added)
D22 Identified Growth Corridor Overlay (overlay)	D22.1 Overlay Description	The overlay can change the activity status of land use activities within the overlay area. It also provides specific objectives and policies that must be considered when assessing a proposal for a resource consent.
	D22.4 Activity Table – wording above the activity table	The land use activity status is to be determined in accordance with the underlying zoning of the site unless the following table applies a more lenient activity status.
E20 Māori Land (Auckland-wide)	E20.1 Background	These provisions are in addition to the zone provisions for any site which is Māori land. The provisions of the zone apply to Māori Land unless otherwise specified in this section. The rules provide that where the activity table for the relevant zone provides for the same activity, the less restrictive rule applies.

Chapter	Location	AUP Text (emphasis added)
provision)	E20.4 Activity Table – wording above the activity table	The provisions of the zone apply to Māori Land unless otherwise specified in this section. Where the rules in this section as well as the relevant zone rules provide for the same activity, the less restrictive rule applies.
E21 Treaty Settlement Land	E21.1 Background	The provisions of the zone apply to Treaty Settlement Land unless otherwise specified in this section. The rules provide that where the activity table for the relevant zone provides for the same activity, the less restrictive rule applies.
(Auckland-wide provision)	E21.4 Activity Table – wording above the activity table	The provisions of the zone apply to Treaty settlement land unless otherwise specified in this section. The rules provide that where the activity table for the relevant zone provides for the same activity, the less restrictive rule applies.

Two overlays and one Auckland-wide chapter contain wording that implies certain rules override relevant zone rules, but do not explicitly state this (see Table 9). Given the Environment Court decisions, it appears that these examples do not rise to the status of a “rule that creates a relevant exception to other rules” under C1.6(1). These parts of the plan may not be working as intended, as the enabling activities have uncertainty about which provision should prevail.

In the Historic Heritage Overlay, the note within rule (A19) states that the rule does not override any prohibited activity, implying that it overrides other activity statuses, including non-complying activities. This interpretation is supported by policy D17.3(4) which enables the use of scheduled historic heritage places, whether or not the use is otherwise provided for in the zone. The rule does not actually state that it prevails over a non-complying zone rule. If this rule is applied alongside a non-complying activity rule in a zone, the zone rule would prevail as being a more restrictive activity status. The discretionary activity status in rule (A19) would provide little direction to a consent process that is not also provided by policy D17.3(4). If the rule more clearly stated that it prevailed over any non-complying activity in a zone, it would remove the additional assessment required for non-complying activities under RMA section 104D.

In the Airport Approach Surface Overlay, the activity table contains two permitted activities (D23.4.1(A1-A2)) but only one states that the rule does not prevail over underlying zone or height rules, implying that the other rule does prevail. As this is not actually stated in the rule, rule (A1) would not prevail over a zone rule if a zone had a more restrictive provision. The implication that rule (A1) should prevail over other rules is consistent with policy D23.3(1) that allows the removal or topping of trees in the overlay.

The wording in Chapter E40 Temporary Activities enables a more permissive regime by stating that the zone standards do not apply, but it is not always clear how to apply the statement that the Temporary Activities activity table applies unless the activity is subject to a ‘specific rule’ in an overlay, zone or precinct. For example, there is no corresponding note in D12 Waitākere Ranges Heritage Areas Overlay to confirm that rule D12.4.1(A1) ‘Filming that complies with Standard D12.6.1’ is a ‘specific rule’ that prevails over E40.4.1(A15) ‘Filming activities up to, and including, 30 consecutive days’. The D12 standard allows for filming up to six months so it could be questioned whether that is still a ‘temporary activity’ when filming as a permitted activity is limited to 30 days everywhere else. Other parts of the D12 standard that relate to vehicle movements and

car parking are more restrictive than the standards in E40.6.2 for ‘traffic associated with temporary events’. Provisions such as these can create confusion if they specify that the ‘less restrictive rule applies’ and part of a rule is more lenient while another part is more restrictive. Similarly, Note 1 in E40 is clear that the standards in the relevant zone do not apply to a temporary activity, but it does not specify whether any standards in an overlay apply.

Table 9: Permissive rule exceptions that are implied

Chapter	Location	AUP Text (emphasis added)
D17 Historic Heritage	D17.3(4) Policies	Enable the use of scheduled historic heritage places, whether or not the use is otherwise provided for in the zone, where it does not detract from the heritage values of the place and will not otherwise have significant adverse effects.
	D17.4.1 (A19) Activity table	Use of a scheduled historic heritage place for an activity that is not otherwise provided for in the underlying zone or precinct, or not otherwise provided for in Tables D17.4.1 to D17.4.3 – Discretionary. Note – this rule does not override any prohibited activity .
D23 Airport Approach Surface	D23.3 (1) Policy	Allow the removal or topping of trees that protrude into airport approach surfaces and airport restriction designations.
	D23.4.1 (A1) Activity table	Removal or topping of a tree that protrudes into the airfield height restriction shown in Standard D23.6.1 Height – Permitted
	D23.4.1 (A2) Activity table	Buildings, structures and masts and trees that do not exceed the airfield height limits restriction in Standard D23.6.1 Height. This rule does not prevail over any underlying zone or precinct height rules. – Permitted
E40 Temporary Activities (Auckland-wide provision)	E40.4 Activity Table – wording above the activity table	Table E40.4.1 Activity table specifies the activity status of temporary activities under section 9(3) and section 12 of the Resource Management Act 1991 unless the activity is subject to a specific rule in an overlay, zone or precinct. Note 1. The standards of the relevant zone in which the temporary activity is undertaken e.g. building height and yards, do not apply to the buildings and structures that are accessory to a temporary activity.

A different approach has been applied in chapter D26 National Grid Corridor Overlay. Wording above the activity table states that: “where activities are shown in the Activity table below, the applicable zone, precinct and Auckland-wide rules also apply”. There is no statement regarding whether the more lenient or restrictive rule prevails. This overlay appears to rely on the general rule in chapter C1.6 that all rules apply and the overall activity status of a proposal is that of the most restrictive rule which applies to the proposal. This wording is unnecessary in the overlay but could be a useful reminder of the approach in the general rules.

Further work on this issue could include:

- Ensure that all wording that creates a permissive exception to a rule is clear, with particular consideration to the following Auckland-wide chapters and overlays:
 1. Māori Land and Treaty Settlement land (E20 and E21) – Consider whether the wording referring to the relevant zone should be more general than ‘provides for the same activity’.
 2. Waitakere Ranges Heritage Area Overlay and Temporary Activities (E40) – Consider whether the overlay permitted activity rule for filming for six months should state that it prevails over the E40 Temporary Activities rule for filming even though some standards are more lenient and others are more restrictive. Consider whether E40 should use alternative wording to a ‘specific rule’.
 3. Historic Heritage Overlay – Consider whether the rule for ‘use that is not otherwise provided for in the zone’ should be removed or state that it overrides a non-complying activity.
 4. Airport Approach Surface Overlay – Consider whether rule (A1) for tree trimming should prevail over the Auckland-wide rules for tree trimming.

9 Issue 3: Competing matters of discretion

Applying both the overlay and zone/Auckland-wide standards to an activity means there can be competing policy directions to consider, irrespective of whether the overlay activity status is more enabling, restrictive or the same as the zone/Auckland-wide provision. This is particularly an issue where the most restrictive rule is a restricted discretionary activity and the matters that a consent process can consider are limited to the matters of discretion that are listed in the plan. The SCAR and SHZ relationship considered in *Auckland Council v Budden* highlighted that the matters of discretion for the SCAR overlay included ‘streetscape’ but not effects on ‘amenity of neighbouring sites’. When the SCAR provisions were applied as a replacement for the zone provisions, there could be no consideration of the effects on the amenity of neighbouring sites even though they would have been considered if the equivalent zone standard was infringed. Where a proposal infringes a standard such as a yard width, focusing on streetscape may encourage a narrow yard while effects on amenity could promote a wider set-back. Such issues need to be considered on a case-by-case basis to take into account site-specific situations. The competing policy directions can make the assessment difficult and can lead to inconsistent decision making at different sites.

The AUP analysis undertaken for this report identified the location of the matters of discretion relevant to different activities, but did not include a full comparison of the matters listed. In several overlays with rules located in an Auckland-wide chapter, the matters of discretion are the same for the overlay and the Auckland-wide rule that would apply if there was no overlay. In some other cases, the matters of discretion are in different parts of the AUP but consider quite distinct matters that can be considered separately as part of a consent assessment.

Only limited cases have been found where the matters of discretion relate to competing matters that could be problematic to resolve in a consent process. Examples are set out in Table 10. There may be other cases of this in the AUP as this issue was only considered in detail for some overlays.

Table 10: Competing matters of discretion

Overlay matters of control / discretion	Zone or Auckland-wide matters of control / discretion
<p>Special Character Area Overlay (Alterations, additions to buildings, new or relocated buildings – restricted discretionary)</p> <p>D18.8.1.1 Matters of discretion</p> <p>(2) for external alterations or additions to buildings; or for the construction of a new building or the relocation of a building onto a site:</p> <p>(a) the effects on the streetscape and special character context as outlined in the Special Character Area Statement;</p> <p>(b) the building and its contribution to streetscape character; including its design, quality, purpose and amenities including matters of scale, form, massing, materials, setbacks and the relationship to the street; and</p> <p>(c) the effects on landscape and vegetation.</p>	<p>Single House Zone (Buildings that do not comply with standards – restricted discretionary)</p> <p>H3.8.1. Matters of discretion</p> <p>(2) for buildings that do not comply with Standard H3.6.6 Building height; Standard H3.6.7 Height in relation to boundary; Standard H3.6.8 Yards; Standard H3.6.9 Maximum impervious areas; Standard H3.6.10 Building coverage; Standard H3.6.11 Landscaped area; Standard H3.6.12 Front, side and rear fences and walls:</p> <p>(a) any policy which is relevant to the standard;</p> <p>(b) the purpose of the standard;</p> <p>(c) the effects of the infringement of the standard;</p> <p>(d) the effects on the rural and coastal character of the zone;</p> <p>(e) the effects on the amenity of neighbouring sites;</p> <p>(f) the effects of any special or unusual characteristic of the site which is relevant to the standard;</p> <p>(g) the characteristics of the development;</p> <p>(h) any other matters specifically listed for the standard; and</p> <p>(i) where more than one standard will be infringed, the effects of all infringements.</p>
<p>D17 Historic Heritage Overlay (Demolition – controlled)</p> <p>D17.7.1 Matters of control</p> <p>(1) the demolition or destruction of 30 per cent or more by volume or footprint (whichever is the greater) of features identified as exclusions where the feature is connected to a scheduled feature, and non-contributing sites or features in a Historic Heritage Area:</p> <p>(a) the method of demolition or destruction;</p> <p>(b) the effects on the heritage values of any scheduled historic heritage place connected to the feature being demolished; and</p> <p>(c) ground reinstatement and finished contours and surfaces.</p>	<p>H8 Business - City Centre Zone H8.7.1 (Demolition – controlled)</p> <p>H8.7.1. Matters of control</p> <p>The Council will reserve its control to all of the following matters when assessing a controlled activity resource consent application:</p> <p>(1) demolition of buildings:</p> <p>(a) pedestrian amenity and safety;</p> <p>(b) reuse of building materials;</p> <p>(c) site condition post-demolition; and</p> <p>(d) traffic generation.</p>

Overlay matters of control / discretion	Zone or Auckland-wide matters of control / discretion
<p>D21 Sites and Places of Significance to Mana Whenua Overlay (Temporary activities – restricted discretionary)</p> <p>D21.8.1. Matters of discretion</p> <p>The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary resource consent application:</p> <p>(1) the effects of the proposal on the values and associations of Mana Whenua with the site or place, including effects on the context of the local history and whakapapa.</p> <p>(2) the nature, location, design and extent of the proposal.</p> <p>(3) the purpose and necessity for the works and any alternatives considered.</p> <p>(4) the provisions of any relevant iwi planning document.</p>	<p>E40 Temporary activities (Temporary activities – restricted discretionary)</p> <p>E40.8.1. Matters of discretion</p> <p>The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary resource consent application for a temporary activity:</p> <p>(1) the effects from the noise, lighting, hours and duration of an activity;</p> <p>(2) the effects of the activity on traffic generation, parking, pedestrian safety and access; and</p> <p>(3) the effects of any disturbance to land, foreshore, seabed or vegetation associated with an activity.</p>

There may also be wider issues where the matters of discretion for an activity in an overlay is in an Auckland-wide chapter instead of the overlay chapter. For example, earthworks in the Sites and Places of Significance to Mana Whenua Overlay have rules in ‘Chapter E12 Land disturbance – District’ with matters of discretion that are narrower than those within the overlay chapter for all restricted discretionary activities in that chapter (see D21.8.1 in the table above). The matters of discretion in E12 are:

E12.8.1. Matters of discretion

(2) additional matters of discretion for land disturbance within overlay areas: ...

(c) within the Sites and Places of Significance to Mana Whenua Overlay:

(i) potential effects on the water quality of taiāpure or mahinga maataitai, wāhi tapu, taonga and other scheduled sites in the Sites and Places of Significance to Mana Whenua; and

(ii) potential effects on the values and associations of Mana Whenua with the site or place including effects on the context of the Māori cultural landscape.

It is unclear if the E12 matters of discretion are intentionally narrower than those in D21 for other activities in the overlay, or whether the wording in E12 is sufficient to cover consideration of ‘the purpose and necessity for the works and any alternatives considered’ and ‘the provisions of any iwi planning document’. It appears that the E12 matters may conflict with a directive policy in the overlay:

D21.3 Policies

(1) Avoid the physical destruction in whole or in part of sites and places of significance during earthworks.

Further assessment would be required to determine whether the different matters of discretion applying to an activity in an overlay are actually a significant issue. In many cases, different

matters of discretion will expand the matters to be considered in a consent process but that can be quite compatible as they relate to different policy directives. Difficult and inconsistent decision making processes can occur where applying both a zone and overlay encompasses matters that can conflict (such as streetscape and amenity of neighbouring sites). It could be useful to monitor consent processes to see if there are recurring issues with particular overlays.

Further work on this issue could include:

- Consider whether the SCAR overlay should include ‘the effects on the amenity of neighbouring sites’ in the matters of discretion for restricted discretionary activities.
- Develop practice notes or best practice guidelines to assist plan users when considering apparently inconsistent matters of discretion and assessment criteria in the SCAR and SHZ.
- Monitor resource consent processes to identify any other situations where the relationship between overlay and zone matters of discretion leaves gaps or conflicts in the matters to be considered. If recurring issues are found, determine whether they should be addressed through plan changes or guidance outside the AUP.

10 Issue 4: Consistency

The overlay analysis has identified some terminology and content inconsistencies across the AUP. These generally occur within standards and activity tables, although this issue applies to matters of discretion in at least one case. Table 11 outlines the identified terminology inconsistencies, as well as the possible impact they might have.

The analysis has also identified some apparent inconsistencies between the Sites and Places of Significance for Mana Whenua Overlay, the Auckland-wide chapters for Māori land and Treaty settlement land, and the Special Purpose – Māori Purpose Zone. These issues are set out in Appendix 5. Further analysis of these matters is required to determine whether there is a reason for the inconsistency or whether they should be addressed through a plan change.

Table 11: AUP inconsistencies in terminology

	Name	Description	Location	Impact
1	Fences / fences and walls	Some standards refer exclusively to fences, rather than both fences and walls.	References to “fences and walls” occur across the plan, including in the residential zones. Standard D26.6.1.3 (National Grid Corridor Overlay) refers to fences only.	Walls would not be subject to needed regulation in some cases.
2	Healthcare services / healthcare facilities	Inconsistent naming	D27 Quarry Buffer Area Overlay refers to healthcare services, not facilities.	Additional uncertainty when defining or assessing an activity.

	Name	Description	Location	Impact
3	Height in relation to boundary	Inconsistent content – residential zone standards contain exceptions for certain gable ends, dormers or roofs, but the Special Character Area overlay does not.	H1-6 Residential zones; D18 Special Character Area Overlay	Additional complexity when comparing standards and effects.
4	Māori cultural activities	Māori cultural activities are defined as “activities undertaken in accordance with tikanga, including ceremonial, ritual, transferring marking areas or boundaries, or recreational activities.”	E20; E21. This activity does not occur in most zones or in the wider nesting tables.	As this is a defined activity that is not provided for consistently across the plan, there is a potential for it to become non-complying in twenty zones as ‘activities not provided for’.
5	Māori cultural activities / customary use	Māori cultural activities defined in J1. Customary use is undefined.	E20; E21; H7; H19; J1.	Unclear if this is the same activity or not.
6	Marae / marae complex	Inconsistent naming for what is presumably the same activity.	Multiple zones; E20; E21; J1	Additional uncertainty when defining or assessing an activity.
7	Maximum paved area / maximum impervious area	Maximum paved area is not the same as maximum impervious area. "Impervious area" is defined to include roofs, paved areas, sealed and compacted metal roads, layers engineered to be impervious such as compacted clay. Impervious area also excludes porous or permeable paving. Paved area would exclude roofs and include permeable paving.	J1 defines “impervious area,” which appears in multiple zones across the plan. Maximum paved area is undefined and occurs in D18 Special Character Area Overlay only. The overlay has no control on impervious area.	Additional complexity when preparing and assessing activities.

Further work to address this issue could include investigating the issues in Table 11 and Appendix 5, and amending the AUP through a plan change if necessary.

11 Issue 5: Activities not provided for

“Activities not provided for” is a specific activity listed in the activity table of most AUP zones. However, there are seven zone chapters that contain an activity table but not an “activities not provided for” rule. These are:

- H18 Future Urban Zone
- H19 Rural Zones¹⁰
- H22 Strategic Transport Corridor Zone
- H25 Special Purpose – Healthcare Facility and Hospital Zone
- H28 Special Purpose – Quarry Zone
- H29 Special Purpose – School Zone
- H30 Special Purpose – Tertiary Education Zone

These zones rely on AUP general rule C1.7:

- (1) *Any activity that is not specifically classed in a rule as a permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited activity is a discretionary activity unless otherwise specified by a rule for an overlay, zone or precinct or in an Auckland-wide rule.*

Where there is an activity that is specifically provided for in the overlay, but not the zone, the activity will not have discretionary activity status under rule C1.7, as the activity status is “otherwise specified by a rule for an overlay”.

In rare cases, overlays inadvertently enable activities that are clearly unintended in some zones. For example, dwellings become controlled (rather than discretionary) in some H28 Special Purpose – Quarry Zone areas when covered by the Quarry Buffer Area Overlay. Another example is that grazing certain animals becomes permitted and forestry becomes controlled in the Special Purpose – Healthcare Facility and Hospital Zone when covered by a Historic Heritage Overlay.

These are activities ‘specifically classed in a rule as a permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited activity’ in terms of the first part of rule C1.7. Because the rule relates to an activity that is “not” specifically classed, that rule does not apply. No zone rule applies as these activities are not provided for in the zone activity table. This means the activity has an overlay rule but no underlying zone rule. Consequently, some unexpected activities become permitted or controlled activities and there is no ‘more restrictive’ rule that applies.

If the zones had an ‘activities not provided for - discretionary’ rule within the zone activity table, the relevant activities would be discretionary activities under the zone. There would be both an overlay and zone provision to apply, and the more restrictive activity status would apply.

¹⁰ A draft plan change for the Rural Zones that is currently being prepared is expected to include an “activities not provided for” rule.

Further work to address this issue could include:

- Consider whether rule C1.7 should be amended to address activities that are ‘specifically classed’ in an overlay but not addressed in a zone.
- Investigate adding an “activities not provided for rule” into the activity table of the following seven AUP zones that are currently relying on general rule C1.7:
 - H18 Future Urban Zone
 - H19 Rural zones
 - H22 Strategic Transport Corridor Zone
 - H25 Special Purpose – Healthcare Facility and Hospital Zone
 - H28 Special Purpose – Quarry Zone
 - H29 Special Purpose – School Zone
 - H30 Special Purpose - Tertiary Education Zone

12 Conclusion

The *Auckland Council v Budden* Environment Court decisions have highlighted a risk that the Unitary Plan overlays may not operate as intended. Where an overlay intends to create an enabling activity, the relevant rules may not be applied where the underlying zone has a more restrictive provision. Analysis of all the overlays indicates that this risk is largely confined to the SCAR Overlay but there are isolated issues with several other overlays. In addition to situations where the wording of an overlay rule does not ensure its enabling intent, there are issues with unclear permissive exceptions to rules, competing matters of discretion, terminology inconsistencies, and some unintentional outcomes in relation to activities that are ‘not provided for’ in some zones.

It would not be appropriate to address these issues through a new general rule that meant “overlays always prevail over zones”. That would cause different problems due to the number of overlays that would unintentionally enable activities in inappropriate areas. The specific issues identified require a more tailored consideration of how each issue should be addressed.

To address these issues, this report notes the following areas for further work:

Issue 1: Enabling activities

1. Consider amending the general rules in chapter C to more clearly communicate that where there are overlay and zone/Auckland-wide rules covering the same matter, both rules will be applied (unless a rule provides an exception), and be explicit that the same approach applies to standards as well as activity status.
2. Where there are identified issues with an overlay, consider amending the relevant rule or standard to specify that an enabling overlay provision will override provisions elsewhere in the plan. Compare the costs and benefits of that amendment with other possible amendments to the AUP to determine which would better achieve the intent of the overlay in each case.

Issue 2: Unclear exceptions to rules

3. Ensure that all wording that creates a permissive exception to a rule is clear, with particular consideration to the following Auckland-wide chapters and overlays:
 - Māori Land and Treaty Settlement land (E20 and E21) – Consider whether the wording referring to the relevant zone should be more general than ‘provides for the same activity’.
 - Waitakere Ranges Heritage Area Overlay and Temporary Activities (E40) – Consider whether the overlay permitted activity rule for filming for six months should state that it prevails over the E40 Temporary Activities rule for filming even though some standards are more lenient and others are more restrictive. Consider whether E40 should use alternative wording to a ‘specific rule’.
 - Historic Heritage Overlay – Consider whether the rule for ‘use that is not otherwise provided for in the zone’ should be removed or state that it overrides a non-complying activity.
 - Airport Approach Surface Overlay – Consider whether rule (A1) for tree trimming should prevail over the Auckland-wide rules for tree trimming.

Issue 3: Competing matters of discretion

4. Consider whether the SCAR overlay should include ‘the effects on the amenity of neighbouring sites’ in the matters of discretion for restricted discretionary activities.
5. Develop practice notes or best practice guidelines to assist plan users when considering apparently inconsistent matters of discretion and assessment criteria in the SCAR and SHZ.
6. Monitor resource consent processes to identify any other situations where the relationship between overlay and zone matters of discretion leaves gaps or conflicts in the matters to be considered. If recurring issues are found, determine whether they should be addressed through plan changes or guidance outside the AUP.

Issue 4: Consistency

7. Ensure consistency across the plan by investigating the issues in Table 11 and Appendix 5, and amending the AUP through a plan change if necessary.

Issue 5: Activities not provided for

8. Consider whether rule C1.7 should be amended to address activities that are ‘specifically classed’ in an overlay but not addressed in a zone.
9. Investigate adding an “activities not provided for rule” into the activity table of the following seven AUP zones:
 - H18 Future Urban Zone
 - H19 Rural zones
 - H22 Strategic Transport Corridor Zone
 - H25 Special Purpose – Healthcare Facility and Hospital Zone
 - H28 Special Purpose – Quarry Zone
 - H29 Special Purpose – School Zone
 - H30 Special Purpose – Tertiary Education Zone

Appendices

Appendix 1 GIS analysis of overlays on zones

Appendix 2 Overlay summary

Appendix 3 Overlay analysis: Activity tables

Appendix 4 Overlay analysis: Standards

Appendix 5 Additional issues: Auckland-wide Mana Whenua provisions

Chapter	Overlay	Residential Zones						Rural Zones								Special Purpose Zones			TOTAL						
		Large Lot	Single House	Mixed Housing Urban	Mixed Housing Suburban	Terrace Housing and Apartment Buildings	Rural and Coastal Settlement	Countryside Living	Mixed Rural	Rural Coastal	Rural Conservation	Rural Production	Waitakere Foothills	Waitakere Ranges	Strategic Transport Corridor	Road	Water	Airports and Airfields		Cemetery	Healthcare facility and Hospital	Maori Purpose	Major Recreation Facility	Quarry	School
D1	High Use Aquifer Management Areas	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	46
D2	Quality Sensitive Aquifer Management Areas	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	41
D3	High Use Stream Management Area	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	35
D4	Natural Stream Management Areas	x	x				x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	22
D5, D6	Lake Management Area							x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	8
D7	Water Supply Management Area	x							x			x		x		x	x								8
D8	Wetland Management Areas							x	x	x		x		x		x	x								12
D9	Significant Ecological Areas	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	42
D10	Outstanding Natural Features		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	37
D10	Outstanding Natural Landscapes	x	x		x		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	28
D11	High Natural Character	x	x	x	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	28
D11	Outstanding Natural Character						x							x		x	x								11
D12	Waitakere Ranges Heritage Area	x	x		x		x			x			x	x	x	x	x	x	x	x	x	x	x	x	23
D13	Notable Trees	x	x	x	x	x	x	x	x			x	x	x	x	x	x	x	x	x	x	x	x	x	37
D14	Locally Significant Volcanic Viewshafts		x	x	x	x									x	x	x		x		x				22
D14	Regionally Significant Volcanic Viewshaft		x	x	x	x									x	x	x		x		x				35
D15	Ridgeline Protection Overlay	x	x	x	x		x			x	x	x	x		x			x							23
D16	Local Public Views		x	x	x										x	x									13
D17	Historic Heritage Extent Of Place	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	46
D17	Historic Heritage Place	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	33
D18	Special Character		x	x	x	x	x								x	x			x						19
D19	Auckland Museum Viewshaft		x	x	x	x									x	x									18
D21	Sites and Places Of Significance to Mana Whenua		x	x	x	x				x			x		x	x			x	x	x	x	x	x	27
D22	Identified Growth Corridor															x									4
D23	Airport Approach Surface Overlay	x					x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	18
D24	Aircraft Noise	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	36
D25	City Centre Port Noise		x	x		x									x	x									14
D26	National Grid Corridor	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	40
D27	Quarry Buffer Area							x	x	x		x	x	x	x	x	x	x	x	x	x	x	x	x	20
	TOTAL	16	22	19	20	16	18	18	18	17	14	20	9	17	22	28	22	8	16	12	15	12	13	16	5

Appendix 2 Overlay summary

Chapter	Overlay Name	Rules	Purpose ¹¹	Relates to national direction?	National direction reference	Source	RPS ref	Group
D1	High-use Aquifer Management Areas Overlay	E7 Taking, using, damming and diversion of water and drilling	To manage high use aquifers.	Yes	1) RMA s7(b), (f), (g) 2) NPS for Freshwater Management 2014 3) Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. (Noted in D1.2 objective (2) as being relevant to some aquifers.)	1) is inferred from D1.1 Background which refers to quality of waterbodies and the need to manage water availability in the aquifers. 2) NPSFM includes aquifers 3) is noted in D1.2 objective (2) as being relevant to some aquifers	B7.4	Water protection & use
D2	Quality-sensitive Aquifer Management Areas Overlay	No overlay-specific rules.	To manage aquifers that are shallow and unconfined and susceptible to pollution from surface sources.	Yes	1) RMA s7(b), (f) 2) NPS for Freshwater Management 2014	1) is inferred from Background, objectives and policies. 2) NPSFM includes aquifers	B7.4	Water protection & use
D3	High-use Stream Management Areas Overlay	E3 Lakes, rivers, streams and wetlands E7 Taking, using, damming and diversion of water and drilling	To manage streams that are under pressure from demands to take water or use water.	Yes	1) RMA s7(b), (f), (g) 2) NPS for Freshwater Management 2014 3) Waikato-Tainui Raupatu Claims	1) is inferred from Background, objectives and policies. 2) NPSFM includes streams	B7.3, B7.4	Water protection & use

¹¹ Purpose is inferred from overlay chapter background and objectives.

Chapter	Overlay Name	Rules	Purpose ¹¹	Relates to national direction?	National direction reference	Source	RPS ref	Group
					(Waikato River) Settlement Act 2010.	3) is noted in D3.2 objective (2) as being relevant to some streams		
D4	Natural Stream Management Areas Overlay	E3 Lakes, rivers, streams and wetlands E7 Taking, using, damming and diversion of water and drilling E11 Land disturbance - Regional E15 Vegetation management and biodiversity.	To manage river and stream reaches with high natural character and high ecological values.	Yes	RMA s6(a), 7(b), (d), (f) NPS for Freshwater Management 2014	1) is inferred from Background, objectives and policies. 2) NPSFM includes streams	B7.3, B7.4	Water protection & use
D5	Natural Lake Management Areas Overlay	E3 Lakes, rivers, streams and wetlands E7 Taking, using, damming and diversion of water and drilling E11 Land disturbance - Regional E15 Vegetation management and biodiversity.	To manage natural lakes located in rural areas.	Yes	1) RMA s6(a), 7(b), (d), (f) 2) NPS for Freshwater Management 2014	1) is inferred from Background, objectives and policies. 2) NPSFM includes lakes	B7.3, B7.4	Water protection & use
D6	Urban Lake Management Areas Overlay	E3 Lakes, rivers, streams and wetlands E7 Taking, using, damming and diversion of water and drilling E11 Land disturbance - Regional E15 Vegetation management and biodiversity.	To manage Lake Pupuke and Western Springs Lake.	Yes	1) RMA s7(c), (f) 2) NPS for Freshwater Management 2014	1) is inferred from Background, objectives and policies. 2) NPSFM includes lakes	B7.3, B7.4	Water protection & use

Chapter	Overlay Name	Rules	Purpose ¹¹	Relates to national direction?	National direction reference	Source	RPS ref	Group
D7	Water Supply Management Areas Overlay	E3 Lakes, rivers, streams and wetlands E7 Taking, using, damming and diversion of water and drilling E11 Land disturbance – Regional E15 Vegetation management and biodiversity E26 Infrastructure	To provide protection for water catchments that supply freshwater to Auckland municipal water supply dams. To provide for the ongoing operation, maintenance, repair, upgrading and development of the municipal water supply infrastructure	Yes	1) RMA s6(a), 7(b), (c), (f) 2) NPS for Freshwater Management 2014 3) Waitākere Ranges Heritage Area Act 2008	1) is inferred from Background, objectives and policies. 2) NPSFM includes water supply 3) WRHAA noted in D7.1 Background.	B7.3, B7.4	Water protection & use
D8	Wetland Management Areas Overlay	E3 Lakes, rivers, streams and wetlands E7 Taking, using, damming and diversion of water and drilling E11 Land disturbance - Regional E15 Vegetation management and biodiversity	To protect wetlands from adverse effects of discharges, water takes, wetland drainage, invasive pest species and their physical disturbance	Yes	1) RMA s6(a), 7(c), (d), (f) 2) NPS for Freshwater Management 2014	1) is inferred from Background, objectives and policies. IHP Report topic 019 Natural features, character and landscapes states "the preservation of the natural character of the coastal environment (including the coastal marine area), <u>wetlands</u> , and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development" is a s6 matter. 2) NPSFM includes	B7.3, B7.4	Water protection & use

Chapter	Overlay Name	Rules	Purpose ¹¹	Relates to national direction?	National direction reference	Source	RPS ref	Group
						wetlands		
D9	Significant Ecological Areas Overlay	E3 Lakes, rivers, streams and wetlands E11 Land disturbance – Regional E15 Vegetation management and biodiversity E26 Infrastructure E38 Subdivision – Urban E39 Subdivision – Rural F2 Coastal - General Coastal Marine Zone	To protect significant indigenous biodiversity.	Yes	1) RMA s6(c), 2) RMA s7(d) 3) NZCPS policy 11	1) Referenced in IHP Report Topic 023 SEAs (p5) 2) inferred from background, objectives and policies	B7.2	Value protection (RPS criteria)
D10	Outstanding Natural Features Overlay	D10 Outstanding Natural Features Overlay and Outstanding Natural Landscapes Overlay E12 Land disturbance – District E15 Vegetation management and biodiversity E26 Infrastructure F2 Coastal - General Coastal Marine Zone	To manage use and development of outstanding natural features	Yes	1) RMA s6(b) 2) NZCPS policy 15	1) Inferred 2) Stated in D10 Background	B4.2	Value protection (RPS criteria)
D10	Outstanding Natural Landscapes Overlay	D11 Outstanding Natural Features Overlay and Outstanding Natural Landscapes Overlay E12 Land disturbance – District E15 Vegetation management and biodiversity E26 Infrastructure	To manage use and development of outstanding natural landscapes	Yes	1) RMA s6(b) 2) NZCPS policy 15	1) Inferred 2) Stated in D10 Background	B4.2	Value protection (RPS criteria)

Chapter	Overlay Name	Rules	Purpose ¹¹	Relates to national direction?	National direction reference	Source	RPS ref	Group
		F2 Coastal - General Coastal Marine Zone						
D11	Outstanding Natural Character and High Natural Character Overlay	D11 Outstanding Natural Character and High Natural Character Overlay E12 Land disturbance – District E15 Vegetation management and biodiversity E26 Infrastructure F2 Coastal - General Coastal Marine Zone	To manage use and development in areas of outstanding natural character and high natural character.	Yes	1) RMA s6(a) 2) NZCPS policy 13	1) Inferred 2) Stated in D11 background	B8.2	Value protection (RPS criteria)
D12	Waitākere Ranges Heritage Area Overlay	D12 Waitākere Ranges Heritage Area Overlay E26 Infrastructure	To manage subdivision and development in the Waitākere Ranges Heritage Area.	Yes	Waitākere Ranges Heritage Area Act 2008	Referenced in D12 background	B4.4	Value protection (RPS criteria)
D13	Notable Trees Overlay	D13 Notable Trees Overlay E26 Infrastructure	To protect notable trees and notable groups of trees from danger or destruction resulting from development.	Yes	RMA s7(c) and (f)	Inferred. Trees contribute to amenity values and quality of the environment but they are not mentioned in the overlay.	B4.5	Value protection (RPS criteria)
D14	Volcanic Viewshafts and	D14 Volcanic Viewshafts and Height Sensitive Areas Overlay	To appropriately protect significant views of	Yes	RMA s7(c) and (f)	Inferred. Views of volcanic cones	B4.3	Value protection

Chapter	Overlay Name	Rules	Purpose ¹¹	Relates to national direction?	National direction reference	Source	RPS ref	Group
	Height Sensitive Areas Overlay	E26 Infrastructure	Auckland's volcanic cones.			contribute to amenity values and quality of the environment. Amenity is noted in the overlay description.		(RPS criteria)
D15	Ridgeline Protection Overlay	D15 Ridgeline Protection Overlay E26 Infrastructure	To protect identified ridgelines	Yes	1) Waitākere Ranges Heritage Area Act 2008 2) RMA s7(c), s7(f)	1) Inferred - some ridgelines relate to the Waitākere Ranges 2) Inferred from text	B4.3	Value protection (RPS criteria)
D16	Local Public Views Overlay	D16 Local Public Views Overlay E26 Infrastructure	To protect local public views	Yes	1) RMA s7(c) & s7(f)	1) Inferred from D16 and IHP Topic 020 Viewshafts	B4.3	Value protection (RPS criteria)
D17	Historic Heritage Overlay	D17 Historic Heritage Overlay E3 Lakes, rivers, streams and wetlands E7 Taking, using, damming and diversion of water and drilling E12 Land disturbance – District E26 Infrastructure F2 Coastal - General Coastal Marine Zone	To manage the protection, conservation, maintenance, modification, relocation, use and development of scheduled historic heritage places	Yes	1) RMA s6(f) 2) NZCPS policy 17 3) Heritage New Zealand Pouhere Taonga Act 2014	1) Stated in IHP Report Topic 010 Historic Heritage 2) Inferred 3) Referenced in D17 chapter intro	B5.2	Value protection (RPS criteria)/ enabling development

Chapter	Overlay Name	Rules	Purpose ¹¹	Relates to national direction?	National direction reference	Source	RPS ref	Group
D18	Special Character Areas Overlay - Residential and Business	D18 Special Character Areas Overlay – Residential and Business E26 Infrastructure E38 Subdivision – Urban	To retain and manage the special character values of specific residential and business areas.	Yes	1) RMA s7(c) & s7(f) 2) Building Act 2004	1) Stated in IHP Report Topics 010, 029, 030, 079 Special character (p5) "This means the special character provisions remain as streetscape character and amenity issues (in terms of section 7 of the Resource Management Act 1991) rather than historic heritage (in terms of section 6 (f) of the Resource Management Act 1991 - with its focus on protection)." 2) Matters of discretion (D18.8.1.1) specifically reference 'reasonable compliance' with the Building Act 2004.	B5.3	Value protection (RPS criteria) / enabling development
D19	Auckland War Memorial Museum Viewshaft Overlay	D19 Auckland War Memorial Museum Viewshaft Overlay E26 Infrastructure	To protect significant views to and from the Auckland War Memorial Museum.	Yes	1) RMA s6(f), s7(c) and (f)	1) Inferred - intro specially speaks of the historic heritage of the museum and the need to protect views associated with it.	B4.3	Value protection (RPS criteria)

Chapter	Overlay Name	Rules	Purpose ¹¹	Relates to national direction?	National direction reference	Source	RPS ref	Group
D21	Sites and Places of Significance to Mana Whenua Overlay	D21 Sites and Places of Significance to Mana Whenua Overlay E3 Lakes, rivers, streams and wetlands E12 Land disturbance – District E26 Infrastructure F2 Coastal - General Coastal Marine Zone	To protect sites and places of significance to Mana Whenua.	Yes	1) RMA s6(e) & (f) 2) RMA s8 3) NZCPS policy 2	All three inferred	B6.5	Value protection (RPS criteria)
D22	Identified Growth Corridor Overlay	D22 Identified Growth Corridor Overlay	To provide additional opportunity to those retail activities (predominantly large format retail) that may not be appropriate in centres due to size, scale and nature of the activity and are not typically provided for in the underlying zone.	No	NA		B2.5	Enabling development
D23	Airport Approach Surface Overlay	D23 Airport Approach Surface Overlay	To manage obstructions such as buildings and trees so they do not protrude into airport approach surfaces	No	NA	Found nothing in IHP Report 045 Airports to suggest national direction	B3.2	Infrastructure protection

Chapter	Overlay Name	Rules	Purpose ¹¹	Relates to national direction?	National direction reference	Source	RPS ref	Group
D24	Aircraft Noise Overlay	D24 Aircraft Noise Overlay	To manage subdivision and activities sensitive to aircraft noise in areas of high cumulative noise around airports and airfields, so that the continued operation of the airports and airfields is not compromised and reverse sensitivity issues are addressed	No	RMA s5, s7(c)?	IHP Report Topic 45 Airports: "The Panel is satisfied that the primary purpose of noise overlay controls is to protect public health. They also manage, to a degree, the effect of reverse sensitivity on the airport" (p11).	B3.2	Reverse sensitivity
D25	City Centre Port Noise Overlay	D25 City Centre Port Noise Overlay	To manage activities sensitive to port noise	No	RMA s7(c)?	1) The primary purpose of the overlay is to address reverse sensitivity issues. There is a secondary purpose of providing for the amenity of the noise sensitive activities. The background notes that the overlay "will ensure that activities sensitive to noise within the overlay achieve a good standard of amenity and the port is able to operate efficiently".	B3.2	Reverse sensitivity

Chapter	Overlay Name	Rules	Purpose ¹¹	Relates to national direction?	National direction reference	Source	RPS ref	Group
D26	National Grid Corridor Overlay	D26 National Grid Corridor	To ensure the National Grid is not compromised by subdivision, use and development.	Yes	1) National Policy Statement on Electricity Transmission 2008 2) New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001)	1) D26.1 Overlay description (within chapter) and IHP Report Topic 042 Infrastructure 2) D26.3 Policy (1)(a)	B3.2	Infrastructure protection
D27	Quarry Buffer Area Overlay	D27 Quarry Buffer Area Overlay	To avoid reverse sensitivity effects on quarry operations from subdivision, use and development.	No	NA	NA	B7.6	Reverse sensitivity

Appendix 3 Overlay analysis: Activity tables

This table identifies overlay activities that are more enabling than a comparable activity in an underlying zone or Auckland-wide rule, where that may create an issue because the purpose of the overlay is to enable that activity.

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
D9	Significant Ecological Areas Overlay	E15.4.2(A29) Vegetation alteration or removal within a SEA for a building platform and access way for one dwelling per site	C	E15.4.1(A10) Vegetation alteration or removal, including cumulative removal on a site over a 10-year period, of greater than 250m ² of indigenous vegetation that: (a) is contiguous vegetation on a site or sites existing on 30 September 2013; and (b) is outside the rural urban boundary	RD
			C	E15.4.1(A15) Vegetation alteration or removal within 20m of rural lakes	RD
			C	E15.4.1(A16) Vegetation alteration or removal within 20m of rural streams, other than those in Rural – Rural Production Zone and Rural – Mixed Rural Zone	RD
			C	E15.4.1(A17) Vegetation alteration or removal within 10m of rural streams in the Rural – Rural Production Zone and Rural – Mixed Rural Zone	RD
			C	E15.4.1(A18) Vegetation alteration or removal within 20m of a natural wetland, in the bed of a river or stream (permanent or intermittent), or lake	RD
			C	E15.4.1(A19) Vegetation alteration or removal within 10m of urban streams	RD

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
			C	E15.4.1(A20) Vegetation alteration or removal of greater than 25m ² of contiguous vegetation, or tree alteration or tree removal of any indigenous tree over 3m in height, within 50m of mean high water springs in the Rural –Rural Production Zone, Rural –Mixed Rural Zone, Rural –Rural Coastal Zone, Rural –Rural Conservation Zone and Rural – Countryside Living Zone or Future Urban Zone	RD
			C	E15.4.1(A21) Vegetation alteration or removal of greater than 25m ² of contiguous vegetation or tree alteration or tree removal of any indigenous tree over 3m in height within 20m of mean high water springs in all zones other than in a Rural – Rural Production Zone, Rural – Mixed Rural Zone, Rural – Rural Coastal Zone, Rural – Rural Conservation Zone and Rural –Countryside Living Zone or Future Urban Zone	RD
			C	E15.4.1(A22) Vegetation alteration or removal of greater than 25m ² of contiguous vegetation, or tree alteration or tree removal of any indigenous tree over 3m in height, that is within: (a) a horizontal distance of 20m from the top of any cliff with; (b) a slope angle steeper than 1 in 3 (18 degrees); and (c) within 150m of mean high water springs	RD
			C	E15.4.1(A23) Permitted and controlled activities in Table E15.4.1 [Vegetation alteration or removal] that do not comply with one or more of the standards in E15.6	RD

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
D9	Significant Ecological Areas Overlay	E15.4.2(A30) Vegetation alteration or removal within a SEA on Māori land or treaty settlement land for: (a) one marae complex per site; (b) up to 30 dwellings per site; (c) activities associated with a marae complex and with papakāinga	C	E15.4.1(A10) Vegetation alteration or removal, including cumulative removal on a site over a 10-year period, of greater than 250m ² of indigenous vegetation that: (a) is contiguous vegetation on a site or sites existing on 30 September 2013; and (b) is outside the rural urban boundary	RD
			C	E15.4.1(A15) Vegetation alteration or removal within 20m of rural lakes	RD
			C	E15.4.1(A16) Vegetation alteration or removal within 20m of rural streams, other than those in Rural – Rural Production Zone and Rural – Mixed Rural Zone	RD
			C	E15.4.1(A17) Vegetation alteration or removal within 10m of rural streams in the Rural – Rural Production Zone and Rural – Mixed Rural Zone	RD
			C	E15.4.1(A18) Vegetation alteration or removal within 20m of a natural wetland, in the bed of a river or stream (permanent or intermittent), or lake	RD
			C	E15.4.1(A19) Vegetation alteration or removal within 10m of urban streams	RD
			C	E15.4.1(A20) Vegetation alteration or removal of greater than 25m ² of contiguous vegetation, or tree alteration or tree removal of any indigenous tree over 3m in height, within 50m of mean high water springs in the Rural –Rural Production Zone, Rural –Mixed Rural Zone, Rural –Rural Coastal Zone, Rural –Rural Conservation Zone and Rural – Countryside Living	RD

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
				Zone or Future Urban Zone	
			C	E15.4.1(A21) Vegetation alteration or removal of greater than 25m ² of contiguous vegetation or tree alteration or tree removal of any indigenous tree over 3m in height within 20m of mean high water springs in all zones other than in a Rural – Rural Production Zone, Rural – Mixed Rural Zone, Rural – Rural Coastal Zone, Rural – Rural Conservation Zone and Rural –Countryside Living Zone or Future Urban Zone	RD
			C	E15.4.1(A22) Vegetation alteration or removal of greater than 25m ² of contiguous vegetation, or tree alteration or tree removal of any indigenous tree over 3m in height, that is within: (a) a horizontal distance of 20m from the top of any cliff with; (b) a slope angle steeper than 1 in 3 (18 degrees); and (c) within 150m of mean high water springs	RD
			C	E15.4.1(A23) Permitted and controlled activities in Table E15.4.1 [Vegetation alteration or removal] that do not comply with one or more of the standards in E15.6	RD
		E39 Subdivision - Rural E39.4.2(A16) In-situ subdivision creating	RD	E39 Subdivision - Rural E39.4.2(A12) Subdivision in the Rural – Rural	D

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
		additional sites through protection of indigenous vegetation identified in the Significant Ecological Areas Overlay, and complying with Standard E39.6.4.4	RD	<p>Production Zone, Rural – Mixed Rural Zone, Rural – Rural Coastal Zone and Rural – Rural Conservation Zone complying with Standard E39.6.5.1</p> <p>E39.4.2(A14) Subdivision in the Rural – Countryside Living Zone complying with Standard E39.6.5.2</p>	
		E39.4.2(A20) Transferable rural sites subdivision through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay	RD	<p>E39 Subdivision - Rural</p> <p>E39.4.2(A13) Subdivision in the Rural – Rural Production Zone, Rural – Mixed Rural Zone, Rural – Rural Coastal Zone and Rural – Rural Conservation Zone not complying with Standard E39.6.5.1</p> <p>E39.4.2(A15) Subdivision in the Rural – Countryside Living Zone not complying with Standard E39.6.5.2</p> <p>E39.4.2(A19) In-situ subdivision creating additional sites through establishing revegetation planting not complying with Standard E39.6.4.5</p> <p>E39.4.2(A23) Transferable rural sites subdivision through establishing revegetative planting not complying with Standard E39.6.4.6</p> <p>E39.4.2(A25) Transferable rural sites subdivision through the amalgamation of donor sites including sites identified in Appendix 14 Land amalgamation incentivised area not complying with Standard E39.6.4.7</p> <p>E39.4.2(A27) Any other subdivision not provided for in Tables E39.4.1 or E39.4.2</p>	NC
				<p>E39 Subdivision - Rural</p> <p>E39.4.2(A12) Subdivision in the Rural – Rural Production Zone, Rural – Mixed Rural Zone, Rural –</p>	D

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
		complying with Standard E39.6.4.6	RD	Rural Coastal Zone and Rural – Rural Conservation Zone complying with Standard E39.6.5.1 E39.4.2(A14) Subdivision in the Rural – Countryside Living Zone complying with Standard E39.6.5.2	
				E39 Subdivision - Rural E39.4.2(A13) Subdivision in the Rural – Rural Production Zone, Rural – Mixed Rural Zone, Rural – Rural Coastal Zone and Rural – Rural Conservation Zone not complying with Standard E39.6.5.1 E39.4.2(A15) Subdivision in the Rural – Countryside Living Zone not complying with Standard E39.6.5.2 E39.4.2(A19) In-situ subdivision creating additional sites through establishing revegetation planting not complying with Standard E39.6.4.5 E39.4.2(A23) Transferable rural sites subdivision through establishing revegetative planting not complying with Standard E39.6.4.6 E39.4.2(A25) Transferable rural sites subdivision through the amalgamation of donor sites including sites identified in Appendix 14 Land amalgamation incentivised area not complying with Standard E39.6.4.7 E39.4.2(A27) Any other subdivision not provided for in Tables E39.4.1 or E39.4.2	NC

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
D12	Waitākere Ranges Heritage Area Overlay	D12.4.1(A1) Filming that complies with Standard D12.6.1 [Note standard D12.6.1(1) The activity must not involve any filming activity longer than six months from start to finish, irrespective of whether the activity is carried out in different years.]	P	E40.4.1(A16) Filming activities for more than 30 consecutive days	RD
D17	Historic Heritage	D17.4.1(A19) Use of a scheduled historic heritage place for an activity that is not otherwise provided for in the underlying zone or precinct, or not otherwise provided for in Tables D17.4.1 to D.17.4.3 Note – this rule does not override any prohibited activity	D	H1-17, H20-21, H27 (20 zones in total) Activities not provided for	NC

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
D18	Special Character Areas Overlay - Residential and Business	D18.4.1(A4) External alterations or additions to a building on all sites in the Special Character Areas Overlay– Residential or Special Character Areas Overlay - General (with a residential zoning)	RD	H2 Residential - Rural and coastal settlement H2.4.1(A9) Integrated Residential Development H2.4.1(A11) Supported residential care accommodating greater than 10 people per site inclusive of staff and residents H2.4.1(A13) Boarding houses accommodating greater than 10 people per site inclusive of staff and residents H2.4.1(A15) Visitor accommodation accommodating greater than 10 people per site inclusive of staff and visitors H2.4.1(A17) Restaurants and cafes up to 100m ² gross floor area per site H2.4.1(A18) Service stations on arterial roads H2.4.1(A20) Care centres not provided for above accommodating greater than 10 people per site excluding staff H2.4.1(A21) Community facilities H2.4.1(A22) Education facilities H2.4.1(A23) Tertiary education facilities H2.4.1(A24) Emergency services adjoining an arterial road H2.4.1(A27) Veterinary clinics H2.4.1(A29) Marae complex	D
			RD	H2 Residential - Rural and coastal settlement H2.4.1(A1) Activities not provided for H2.4.1(A6) More than one dwelling per site (other than the conversion of a principal dwelling in Rule H2.4.1(A4) or a minor dwelling in Rule H2.4.1(A5) H2.4.1(A26) Healthcare facilities greater than 200m ² gross floor area per site	NC

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
			RD	<p>H3.4.1(A9) Integrated residential development</p> <p>H3.4.1(A11) Supported residential care accommodating greater than 10 people per site inclusive of staff and residents</p> <p>H3.4.1(A13) Boarding houses accommodating up to 10 people per site inclusive of staff and residents</p> <p>H3.4.1(A15) Visitor accommodation accommodating greater than 10 people per site inclusive of staff and visitors</p> <p>H3.4.1(A17) Restaurants & cafes up to 100m2 GFA per site</p> <p>H3.4.1(A18) Service stations on arterial roads</p> <p>H3.4.1(A20) Offices in the city fringe that do not comply with standard H3.6.5</p> <p>H3.4.1(A22) Care centres accommodating greater than 10 people per site excluding staff</p> <p>H3.4.1(A23) Community facilities</p> <p>H3.4.1(A24) Education facilities</p> <p>H3.4.1(A25) Tertiary education facilities</p> <p>H3.4.1(A26) Emergency services adjoining arterial road</p> <p>H3.4.1(A29) Veterinary clinics</p> <p>H3.4.1(A30) Marae complex</p>	D
			RD	<p>H3.4.1(A1) Activities not provided for</p> <p>H3.4.1(A6) More than one dwelling per site (excluding conversion of principle dwelling)</p> <p>H3.4.1(A28) Healthcare facilities greater than 200m2 gross floor area per site</p>	NC

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
			RD	H4 Residential - Mixed Housing Suburban H4.4.1(A7) Home occupations that do not meet Standard 2 H4.6 H4.4.1(A16) Restaurants and cafes up to 100m ² gross floor area per site H4.4.1(A17) Service stations on arterial roads H4.4.1(A21) Education facilities H4.4.1(A22) Tertiary education facilities H4.4.1(A23) Emergency services adjoining an arterial road H4.4.1(A25) Healthcare facilities greater than 200m ² gross floor area per site H4.4.1(A26) Veterinary clinics H4.4.1(A28) Marae complex	D
			RD	H4 Residential - Mixed Housing Suburban H4.4.1(A1) Activities not provided for	NC
			RD	H5 Residential - Mixed Housing Urban Zone H5.4.1(A7) Home occupations that do not meet Standard H5.6.2 H5.4.1(A16) Restaurants and cafes up to 100m ² gross floor area per site H5.4.1(A17) Service stations on arterial roads H5.4.1(A21) Education facilities H5.4.1(A22) Tertiary education facilities H5.4.1(A23) Emergency services adjoining an arterial road H5.4.1(A25) Healthcare facilities greater than 200m ² gross floor area per site H5.4.1(A26) Veterinary clinics H5.4.1(A28) Marae complex	D

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
			RD	H5 Residential - Mixed Housing Urban Zone H4.4.1(A1) Activities not provided for	NC
			RD	H6 Residential - THAB zone H6.4.1(A16) Service stations on arterial roads H6.4.1(A18) Offices within the Centre Fringe Office Control as identified on the planning maps that do not comply with Standard H6.6.4 H6.4.1(A22) Education facilities H6.4.1(A23) Tertiary education facilities H6.4.1(A24) Emergency services adjoining an arterial road H6.4.1(A26) Healthcare facilities greater than 200m2 gross floor area per site H6.4.1(A27) Veterinary clinics H6.4.1(A29) Marae complex Subject to compliance with specified standards	D
			RD	H6 Residential - THAB zone H6.4.1(A1) Activities not provided for Subject to compliance with specified standards	NC
D18	Special Character Areas Overlay - Residential and Business	D18.4.1(A5) Construction of a new building or relocation of a building onto a site on all sites in the Special Character Area Overlay–Residential or Special Character Areas Overlay - General (those sites with a residential zone)	RD	H2 Residential - Rural and coastal settlement H2.4.1(A34) New buildings and additions to buildings The same activity status and standards as applies to the land use activity that the new building or addition to a building is designed to accommodate See different buildings list (dwellings, etc.) below.	NA

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
			RD	<p>H2 Residential - Rural and coastal settlement H2.4.1(A9) Integrated Residential Development H2.4.1(A11) Supported residential care accommodating greater than 10 people per site inclusive of staff and residents H2.4.1(A13) Boarding houses accommodating greater than 10 people per site inclusive of staff and residents H2.4.1(A15) Visitor accommodation accommodating greater than 10 people per site inclusive of staff and visitors H2.4.1(A17) Restaurants and cafes up to 100m² gross floor area per site H2.4.1(A18) Service stations on arterial roads H2.4.1(A20) Care centres not provided for above accommodating greater than 10 people per site excluding staff H2.4.1(A21) Community facilities H2.4.1(A22) Education facilities H2.4.1(A23) Tertiary education facilities H2.4.1(A24) Emergency services adjoining an arterial road H2.4.1(A27) Veterinary clinics H2.4.1(A29) Marae complex</p>	D
			RD	<p>H2 Residential - Rural and coastal settlement H2.4.1(A1) Activities not provided for H2.4.1(A6) More than one dwelling per site (other than the conversion of a principal dwelling in Rule H2.4.1(A4) or a minor dwelling in Rule H2.4.1(A5) H2.4.1(A26) Healthcare facilities greater than 200m² gross floor area per site</p>	NC

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
			RD	H3 Residential - Single House H3.4.1(A36) New buildings and additions to buildings The same activity status and standards as applies to the land use activity that the new building or addition to a building is designed to accommodate See different buildings list below.	NA
			RD	H3.4.1(A9) Integrated residential development H3.4.1(A11) Supported residential care accommodating greater than 10 people per site inclusive of staff and residents H3.4.1(A13) Boarding houses accommodating up to 10 people per site inclusive of staff and residents H3.4.1(A15) Visitor accommodation accommodating greater than 10 people per site inclusive of staff and visitors H3.4.1(A17) Restaurants & cafes up to 100m2 GFA per site H3.4.1(A18) Service stations on arterial roads H3.4.1(A20) Offices in the city fringe that do not comply with standard H3.6.5 H3.4.1(A22) Care centres accommodating greater than 10 people per site excluding staff H3.4.1(A23) Community facilities H3.4.1(A24) Education facilities H3.4.1(A25) Tertiary education facilities H3.4.1(A26) Emergency services adjoining arterial road H3.4.1(A29) Veterinary clinics H3.4.1(A30) Marae complex	D

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
			RD	H3.4.1(A1) Activities not provided for H3.4.1(A6) More than one dwelling per site (excluding conversion of principle dwelling) H3.4.1(A28) Healthcare facilities greater than 200m2 gross floor area per site	NC
			RD	H4.4.1(A36) New buildings and additions to buildings The same activity status and standards as applies to the land use activity that the new building or addition to a building is designed to accommodate See different buildings list (dwellings, etc.) below.	NA
			RD	H4 Residential - Mixed Housing Suburban H4.4.1(A7) Home occupations that do not meet Standard 2 H4.6 H4.4.1(A16) Restaurants and cafes up to 100m ² gross floor area per site H4.4.1(A17) Service stations on arterial roads H4.4.1(A21) Education facilities H4.4.1(A22) Tertiary education facilities H4.4.1(A23) Emergency services adjoining an arterial road H4.4.1(A25) Healthcare facilities greater than 200m2 gross floor area per site H4.4.1(A26) Veterinary clinics H4.4.1(A28) Marae complex	D
			RD	H4 Residential - Mixed Housing Suburban H4.4.1(A1) Activities not provided for	NC

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
			RD	H5 Residential - Mixed Housing Urban Zone H5.4.1(A34) New buildings and additions The same activity status and standards as applies to the land use activity that the new building or addition to a building is designed to accommodate See different buildings list (dwellings, etc.) below.	NA
			RD	H5 Residential - Mixed Housing Urban Zone H5.4.1(A7) Home occupations that do not meet Standard H5.6.2 H5.4.1(A16) Restaurants and cafes up to 100m ² gross floor area per site H5.4.1(A17) Service stations on arterial roads H5.4.1(A21) Education facilities H5.4.1(A22) Tertiary education facilities H5.4.1(A23) Emergency services adjoining an arterial road H5.4.1(A25) Healthcare facilities greater than 200m ² gross floor area per site H5.4.1(A26) Veterinary clinics H5.4.1(A28) Marae complex	D
			RD	H5 Residential - Mixed Housing Urban Zone H4.4.1(A1) Activities not provided for	NC

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
			RD	H6 Residential - THAB zone H6.4.1(A35) New buildings and additions to buildings The same activity status and standards as applies to the land use activity that the new building or addition to a building is designed to accommodate See different buildings list (dwellings, etc.) below.	NA
			RD	H6 Residential - THAB zone H6.4.1(A16) Service stations on arterial roads H6.4.1(A18) Offices within the Centre Fringe Office Control as identified on the planning maps that do not comply with Standard H6.6.4 H6.4.1(A22) Education facilities H6.4.1(A23) Tertiary education facilities H6.4.1(A24) Emergency services adjoining an arterial road H6.4.1(A26) Healthcare facilities greater than 200m2 gross floor area per site H6.4.1(A27) Veterinary clinics H6.4.1(A29) Marae complex Subject to compliance with specified standards	D
			RD	H6 Residential - THAB zone H6.4.1(A1) Activities not provided for Subject to compliance with specified standards	NC
D18	Special Character Areas Overlay - Residential and Business	E38 Subdivision - Urban E38.4.1(A24) Subdivision of sites identified in the Special Character Areas Overlay – Residential and Business complying with Standard E38.8.2.6 [minimum net site area in listed sub-areas	RD	E38 Subdivision - Urban Table E38.4.1 Activity table - Subdivision for specific purposes E38.4.1(A12) Any subdivision listed in this activity table not meeting the standards in E38.6 General standards for subdivision E38.4.1(A13) Any subdivision listed in this activity	D

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
		of the overlay]	RD	<p>table not meeting the permitted, controlled, or restricted discretionary activities standards in E38.7 Standards for subdivision for specific purposes</p> <p>Table E38.4.2 Activity table - Subdivision in residential zones</p> <p>E38.4.2(A17) Vacant sites subdivision involving parent sites of less than 1ha not complying with Standard E38.8.2.3.</p> <p>E38.4.2(A18) Vacant sites subdivision involving parent sites of 1ha or greater complying with Standard E38.8.3.1</p> <p>E38.4.2(A30) Any subdivision listed in this activity table not meeting E38.6 General standards for subdivision</p> <p>E38.4.2(A31) Any subdivision listed in this activity table not meeting the standards in E38.8 Standards for subdivision in residential zones</p> <p>E38.4.2(A32) Any subdivision not otherwise provided for in Tables E38.4.1 and E38.4.2</p> <p>Table E38.4.3 Activity table - Subdivision in business zones</p> <p>E38.4.3(A37) Any subdivision listed in this activity table not meeting the standards in E38.6 General standards for subdivision</p> <p>E38.4.3(A38) Any subdivision listed in this activity table not meeting standards in E38.9 Standards for subdivision in the business zones</p> <p>E38.4.3(A39) Any subdivision not otherwise provided for in Tables E38.4.1 and E38.4.3</p>	
			RD	<p>Table E38.4.2 Activity table - Subdivision in residential zones</p> <p>E38.4.2(A19) Vacant sites subdivision involving parent sites of 1ha or greater not complying with Standard</p>	NC

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
				<p>E38.8.3.1</p> <p>E38.4.2(A21) Subdivision of sites identified in the Subdivision Variation Control not complying with Standard E38.8.2.4</p> <p>E38.4.2(A23) Subdivision involving indigenous vegetation scheduled in the Significant Ecological Areas Overlay not complying with Standard E38.8.2.5</p> <p>Table E38.4.3 Activity table - Subdivision in business zones</p> <p>E38.4.2(A36) Vacant sites subdivision not complying with Standard E38.9.2.3</p>	
D22	Identified Growth Corridor Overlay	D22.4.1 (A1) Food and beverage	D	H17.4.1(A21) Retail not otherwise provided for	NC
D22	Identified Growth Corridor Overlay	D22.4.1 (A2) Retail up to 450m2 gross floor area per tenancy	D	H17.4.1(A21) Retail not otherwise provided for	NC
D22	Identified Growth Corridor Overlay	D22.4.1 (A3) Retail greater than 450m2 gross floor area per tenancy	RD	<p>H13.4.1(A14): Garden centres</p> <p>H13.4.1(A15): Marine retail</p> <p>H13.4.1(A16): Motor vehicle sales</p> <p>H13.4.1(A21): Retail greater than 200m² gross floor area per tenancy</p> <p>H13.4.1(A25): Supermarkets greater than 2000m² gross floor area per tenancy</p>	D
D22	Identified Growth Corridor Overlay	D22.4.1 (A4) Trade suppliers	RD	<p>H13 Business - Mixed Use Zone</p> <p>H13.4.1 (A26) Trade Suppliers</p>	D

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
D23	Airport Approach Surface Overlay	D23.4.1(A1) Removal or topping of a tree that protrudes into the airfield height restriction shown in Standard D23.6.1 Height	P	E16.4.1 (A6) Tree trimming or alteration that does not comply with Standard E16.6.1 E16.4.1 (A10) Tree removal of any tree greater than 4m in height or greater than 400mm in girth	RD
			P	E17.4.1 (A6) Tree trimming or alteration that does not comply with Standard E17.6.1 E17.4.1 (A10) Tree removal of any tree greater than 4m in height or greater than 400mm in girth	RD
			P	E26.4.3.1(A84) Tree trimming or alteration that does not comply with Standard E26.4.5.1	Trees in roads/open space RD/RD
			P	E26.4.3.1(A92) Alteration or removal of trees 4m or more in height and/or 400mm or more in girth	Trees in roads/open space RD/RD
			P	E26.4.3.1(A93) Tree trimming, alteration or removal not otherwise provided for	Trees in roads/open space D/D
D26	National Grid Corridor Overlay	D26.4.1 (A3) Network utilities (excluding buildings and structures for irrigation) and electricity generation that connect to the national grid	P	E26.2.3.1 Activity table - Network utilities and electricity generation – All zones and roads E26.2.3.1 (A16) Network utilities and electricity generation facilities not listed in Table E26.2.3.1 Activity Table	D
			P	E26.2.3.1 (A60) Community-scale electricity generation [in some zones]	RD

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
			P	E26.2.3.1 (A61) Large scale wind farms [in some zones] (A62) Research and exploratory scale investigations for renewable electricity generation activities [in some zones] (A63) Other electricity generating facilities [in some zones]	D
			P	E26.2.3.1(A61) Large scale wind farms [in some zones] (A63) Other electricity generating facilities [in some zones]	NC

Appendix 4 Overlay analysis: Standards

This table identifies overlay standards that are more enabling than a comparable standard in an underlying zone or Auckland-wide rule, where that may create an issue because the purpose of the overlay is to enable that activity. Due to the issues with the Special Character Area – Residential (SCAR) Overlay standards, the table includes some SCAR standards where they are more restrictive or the same as some underlying zones, to provide a full information base for assessing possible plan change options.

Overlay chapter	Overlay name	Overlay standards (only noting aspects that are different in zones/Auckland-wide)	Comparable standards in zones and Auckland-wide	Overlay standard is more enabling, more restrictive, or the same?	Does the zone/AW standard reduce the 'benefit' of the overlay?	Notes, issues or questions
D12	Waitākere Ranges Heritage Area Overlay	D12.6.1. Filming (1) The activity must not involve any filming activity longer than six months from start to finish, irrespective of whether the activity is carried out in different years.	There is no standard in E40 relating to filming but in Activity table E40.4.1(A15) Filming activities up to, and including, 30 consecutive days - Permitted. (A16) Filming for more than 30 consecutive days is RD.	Enabling	Yes	E40 does not apply so having a more enabling overlay is not actually a problem, provided the note operates as a rule. E40 has a note 'Table E40.4.1 Activity table specifies the activity status of temporary activities under section 9(3) and section 12 of the Resource Management Act 1991 unless the activity is subject to a specific rule in an overlay, zone or precinct.' The rule in D12 is presumably a 'specific rule in an overlay' so E40 does not apply.
D18	Special Character Areas Overlay - Residential and Business	D18.6.1.2. Height in relation to boundary (1) Buildings in the Special Character Areas Overlay – Residential must not project above a 45-degree recession plane measured from a point 3m above the ground level along any boundary of the site (3m + 45 degrees).	H3 Residential – Single House Zone, H3.6.7 Height in relation to boundary 2.5m + 45 degrees Additional standard parts relating to common walls, legal rights of way, gable end, dormer or roof projections	Enabling	Yes	Standard H3.6.7(1) does not apply to a boundary adjoining various listed business and open space zones, boundaries with common walls. Standard H3.6.7(5) allows for gable ends, dormer or roof projections. These clauses are not duplicated in the overlay so do they apply to the

Overlay chapter	Overlay name	Overlay standards (only noting aspects that are different in zones/Auckland-wide)	Comparable standards in zones and Auckland-wide	Overlay standard is more enabling, more restrictive, or the same?	Does the zone/AW standard reduce the 'benefit' of the overlay?	Notes, issues or questions
						overlay?
D18	Special Character Areas Overlay - Residential and Business		H4 Residential – Mixed Housing Suburban Zone, H4.6.5 Height in relation to boundary 2.5m + 45 degrees Additional standard parts relating to common walls, legal rights of way, gable end, dormer or roof projections	Enabling	Yes	Standard H4.6.5(1) does not apply to a boundary adjoining various listed business and open space zones, boundaries with common walls. Standard H4.6.5(5) allows for gable ends, dormer or roof projections. Do these points apply to the overlay?
D18	Special Character Areas Overlay - Residential and Business		H4 Residential – Mixed Housing Suburban Zone, H4.6.6 Alternative height in relation to boundary (restricted discretionary activity) 3.6m then 1m setback + 73.3 degrees to 6.9m then 45 degrees - along side and rear boundaries - within 20m of the site frontage	Restrictive	Yes	
D18	Special Character Areas Overlay - Residential and Business		H5 Residential - Mixed Housing Urban Zone, H5.6.5 Height in relation to boundary 3m + 45 degrees Additional standard parts relating to common walls, legal rights of way, gable end, dormer or roof projections	Same	No	
D18	Special Character Areas Overlay - Residential and Business		H5 Residential - Mixed Housing Urban Zone, H5.6.6 Alternative height in relation to boundary (restricted discretionary activity) 3.6m then 1m setback + 73.3 degrees to 6.9m then 45 degrees - along side and rear boundaries - within 20m of the site frontage	Restrictive	Yes	

Overlay chapter	Overlay name	Overlay standards (only noting aspects that are different in zones/Auckland-wide)	Comparable standards in zones and Auckland-wide	Overlay standard is more enabling, more restrictive, or the same?	Does the zone/AW standard reduce the 'benefit' of the overlay?	Notes, issues or questions
D18	Special Character Areas Overlay - Residential and Business		H5 Residential - Mixed Housing Urban Zone, H5.6.7 Height in relation to boundary adjoining lower intensity zones Where MHU sites adjoin MHS or SHZ or sites less than 2000m ² in the public open space zones a HIRB of 2.5m + 45 degrees applies.	Enabling	Yes	Does the overlay standard replace this or not?
D18	Special Character Areas Overlay - Residential and Business		H6 Residential - Terrace Housing and Apartment Buildings Zone, H6.6.6. Building in relation to boundary 3m + 45 degrees where adjoin a site in the same zone or another zone not specified in H6.6.8 Additional standard parts relating to common walls, legal rights of way, gable end, dormer or roof projections	Same	No	The THAB zone has additional HIRB standards regarding the number of gable ends and dormers. Is it clear that the overlay replaces the equivalent part of the standard for the height specification but not the other parts?
D18	Special Character Areas Overlay - Residential and Business		H6 Residential - Terrace Housing and Apartment Buildings Zone, H6.6.7 Alternative height in relation to boundary (restricted discretionary activity) 8m + 60 degrees along side and rear boundaries - within 20m of the site frontage 8m + 60 degrees + 2m perpendicular to side and rear boundaries - further than 20m from site frontage	Restrictive	Yes	Is it clear that the overlay replaces this standard?
D18	Special Character Areas Overlay - Residential and Business		H6 Residential - Terrace Housing and Apartment Buildings Zone, H6.6.8 Height in relation to boundary adjoining lower intensity zones Where THAB sites adjoin MHS or SHZ or sites less than 2000m ² in the public open space zones a HIRB of 2.5m + 45 degrees	Enabling	Yes	Does the overlay standard replace this or not?

Overlay chapter	Overlay name	Overlay standards (only noting aspects that are different in zones/Auckland-wide)	Comparable standards in zones and Auckland-wide	Overlay standard is more enabling, more restrictive, or the same?	Does the zone/AW standard reduce the 'benefit' of the overlay?	Notes, issues or questions
			applies.			
D18	Special Character Areas Overlay - Residential and Business	D18.6.1.3. Yards Front - The average of existing setbacks of dwellings on adjacent sites, being the three sites on either side of the subject site or six sites on one side of the subject site Side - 1.2m Rear - 3m	H1 Residential – Large Lot Zone, H1.6.4 Yards Front - 10m Side - 6m Rear - 6m	Cannot determine - depends on setbacks at adjacent sites	Yes/No	Cannot say whether the front yard is more enabling or restrictive as it is determined relative to adjacent sites in the overlay. Does the overlay replace the riparian, lakeside and coastal yards which are also specified in the zones?
D18	Special Character Areas Overlay - Residential and Business		H2 Residential – Rural and Coastal Settlement Zone, H2.6.7 Yards Front - 5m Side - 1m Rear - 1m	Cannot determine - depends on setbacks at adjacent sites	Yes/No	Cannot say whether the front yard is more enabling or restrictive as it is determined relative to adjacent sites in the overlay.
D18	Special Character Areas Overlay - Residential and Business		H3 Residential - Single House Zone, H3.6.8 Yards Front - 3m Side - 1m Rear - 1m	Cannot determine - depends on setbacks at adjacent sites	Yes/No	Cannot say whether the front yard is more enabling or restrictive as it is determined relative to adjacent sites in the overlay.
D18	Special Character Areas Overlay - Residential and Business		H4 Residential - Mixed Housing Suburban Zone, H4.6.7 Yards Front - 3m Side - 1m Rear - 1m	Cannot determine - depends on setbacks at adjacent sites	Yes/No	Cannot say whether the front yard is more enabling or restrictive as it is determined relative to adjacent sites in the overlay.
D18	Special Character Areas Overlay - Residential and Business		H5 Residential - Mixed Housing Urban Zone, H5.6.8 Yards Front - 2.5m Side - 1m Rear - 1m	Cannot determine - depends on setbacks at adjacent sites	Yes/No	Cannot say whether the front yard is more enabling or restrictive as it is determined relative to adjacent sites in the overlay.

Overlay chapter	Overlay name	Overlay standards (only noting aspects that are different in zones/Auckland-wide)	Comparable standards in zones and Auckland-wide	Overlay standard is more enabling, more restrictive, or the same?	Does the zone/AW standard reduce the 'benefit' of the overlay?	Notes, issues or questions
D18	Special Character Areas Overlay - Residential and Business		H6 Residential - THAB Zone, H6.6.9 Yards Front - 1.5m Side - 1m Rear - 1m	Cannot determine - depends on setbacks at adjacent sites	Yes/No	Cannot say whether the front yard is more enabling or restrictive as it is determined relative to adjacent sites in the overlay.
D18	Special Character Areas Overlay - Residential and Business	D18.6.1.4. Building coverage up to 200 m2 - 55 % net site area 200 - 300 m2 - 45 % 300 - 500 m2 - 35 % 500 - 1000 m2 - 35 % over 1000 m2 - 25 %	H1 Residential - Large Lot Zone, H1.6.6 Building coverage 20 % of the net site area or 400m2, whichever is lesser	Enabling	Yes	The Special Character overlay does not actually go over the Large Lot zone.
D18	Special Character Areas Overlay - Residential and Business		H2 Residential - Rural and Coastal Settlement Zone, H2.6.9 Building coverage 20 % of the net site area or 200m2, whichever is lesser	Enabling	Yes	
D18	Special Character Areas Overlay - Residential and Business		H3 Residential - Single House Zone, H3.6.10 Building coverage 35 % of the net site area	Cannot determine - depends on the site size.	Yes/No	Cannot determine whether the overlay building coverage is more enabling or restrictive as it depends on the size of the site.
D18	Special Character Areas Overlay - Residential and Business		H4 Residential - Mixed Housing Suburban Zone, H4.6.9 Building coverage 40 % of the net site area	Cannot determine - depends on the site size.	Yes/No	
D18	Special Character Areas Overlay - Residential and Business		H5 Residential - Mixed Housing Urban Zone, H5.6.10 Building coverage 45 % of the net site area	Cannot determine - depends on the site size.	Yes/No	
D18	Special Character Areas Overlay - Residential and Business		H6 Residential - THAB Zone, H6.6.9 Building coverage 50 % of the net site area	Cannot determine - depends on the site size.	Yes/No	

Overlay chapter	Overlay name	Overlay standards (only noting aspects that are different in zones/Auckland-wide)	Comparable standards in zones and Auckland-wide	Overlay standard is more enabling, more restrictive, or the same?	Does the zone/AW standard reduce the 'benefit' of the overlay?	Notes, issues or questions
	Business					
D18	Special Character Areas Overlay - Residential and Business	D18.6.1.5. Landscaped area up to 200 m2 - 28 % net site area (minimum) 200 - 500 m2 - 33 % 500 - 1000 m2 - 40 % over 1000 m2 - 50 % The front yard must comprise at least 50 per cent landscaped area.	H3 Residential - Single House Zone, H3.6.11. Landscaped area At least 40 % net site area At least 50 % of the front yard must comprise landscaped area.	Enabling	Yes	
D18	Special Character Areas Overlay - Residential and Business		H4 Residential - Mixed Housing Suburban Zone, H4.6.10. Landscaped area At least 40 % net site area At least 50 % of the front yard must comprise landscaped area.	Cannot determine - depends on the site size.	Yes/No	Cannot determine whether the overlay landscaped area standard is more enabling or restrictive as it depends on the size of the site.
D18	Special Character Areas Overlay - Residential and Business		H5 Residential - Mixed Housing Urban Zone, H5.6.11. Landscaped area At least 35 % net site area At least 50 % of the front yard must comprise landscaped area.	Cannot determine - depends on the site size.	Yes/No	
D18	Special Character Areas Overlay - Residential and Business		H6 Residential - THAB Zone, H6.6.12. Landscaped area At least 30 % net site area	Cannot determine - depends on the site size.	Yes/No	
D18	Special Character Areas Overlay - Residential and Business	D18.6.1.6. Maximum paved area up to 200 m2 - 17 % net site area 200 - 500 m2 - 20 % 500 - 1000 m2 - 25 % over 1000 m2 - 25 %	H1 Residential - Large Lot Zone, H1.6.5 Maximum impervious area 35 % of the site area or 1400 m2 whichever is the lesser	Cannot determine - paved area is different to impervious area	Yes/No	Maximum paved area is not actually the same as maximum impervious area. "Impervious area" is defined to include roofs, paved areas, sealed and compacted metal roads, layers engineered to be impervious such as compacted clay. The paved area would be smaller than impervious area as it would not include roofs.

Overlay chapter	Overlay name	Overlay standards (only noting aspects that are different in zones/Auckland-wide)	Comparable standards in zones and Auckland-wide	Overlay standard is more enabling, more restrictive, or the same?	Does the zone/AW standard reduce the 'benefit' of the overlay?	Notes, issues or questions
D18	Special Character Areas Overlay - Residential and Business		H2 Residential - Rural and Coastal Settlement Zone, H2.6.8 Maximum impervious area 35 % of the site area or 1400 m2 whichever is the lesser	Cannot determine - paved area is different to impervious area	Yes/No	
D18	Special Character Areas Overlay - Residential and Business		H3 Residential - Single House Zone, H3.6.9. Maximum impervious area 60 % site area	Cannot determine - paved area is different to impervious area	Yes/No	
D18	Special Character Areas Overlay - Residential and Business		H4 Residential - Mixed Housing Suburban Zone, H4.6.8. Maximum impervious area 60 % site area	Cannot determine - paved area is different to impervious area	Yes/No	
D18	Special Character Areas Overlay - Residential and Business		H5 Residential - Mixed Housing Urban Zone, H5.6.9. Maximum impervious area 60 % site area	Cannot determine - paved area is different to impervious area	Yes/No	
D18	Special Character Areas Overlay - Residential and Business		H6 Residential - THAB Zone, H6.6.10. Maximum impervious area 70 % site area	Cannot determine - paved area is different to impervious area	Yes/No	
D18	Special Character Areas Overlay - Residential and Business	D18.6.1.7. Fences, walls and other structures Must not exceed a height of 1.2m above ground level.	H2 Residential - Rural and Coastal Settlement Zone, H2.6.10. Side and rear fences and walls On a side or rear boundary or within a side or rear yard must not exceed a height of 2m above ground level.	Restrictive	No	

Overlay chapter	Overlay name	Overlay standards (only noting aspects that are different in zones/Auckland-wide)	Comparable standards in zones and Auckland-wide	Overlay standard is more enabling, more restrictive, or the same?	Does the zone/AW standard reduce the 'benefit' of the overlay?	Notes, issues or questions
D18	Special Character Areas Overlay - Residential and Business		H3 Residential - Single House Zone, H3.6.12. Front, side and rear fences and walls Front - 1.2m, or 1.8m for no more than 50% and 1.2 for remainder, or 1.8m if at least 50% is visually open Side - 2m Rear - 2m	Restrictive	Yes	
D18	Special Character Areas Overlay - Residential and Business		H4 Residential - Mixed Housing Suburban Zone, H4.6.14. Front, side and rear fences and walls Front - 1.2m, or 1.8m for no more than 50% and 1.2 for remainder, or 1.8m if at least 50% is visually open Side - 2m Rear - 2m	Restrictive	No	
D18	Special Character Areas Overlay - Residential and Business		H5 Residential - Mixed Housing Urban Zone, H5.6.15. Front, side and rear fences and walls Front - 1.2m, or 1.8m for no more than 50% and 1.2 for remainder, or 1.8m if at least 50% is visually open Side - 2m Rear - 2m	Restrictive	No	
D18	Special Character Areas Overlay - Residential and Business		H6 Residential - THAB Zone, H6.6.16. Front, side and rear fences and walls Front - 1.2m, or 1.8m for no more than 50% and 1.2 for remainder, or 1.8m if at least 50% is visually open Side - 2m Rear - 2m	Restrictive	No	

Overlay chapter	Overlay name	Overlay standards (only noting aspects that are different in zones/Auckland-wide)	Comparable standards in zones and Auckland-wide	Overlay standard is more enabling, more restrictive, or the same?	Does the zone/AW standard reduce the 'benefit' of the overlay?	Notes, issues or questions
D18	Special Character Areas Overlay - Residential and Business	<p>E38 Subdivision - Urban E38.8.2. Standards – residential restricted discretionary activities E38.8.2.6. Subdivision of sites identified in the Special Character Areas Overlay – Residential and Business Minimum net site area: Isthmus A – 400m² or 500m² where the site does not comply with the shape factor Isthmus B1 and B3 - 1,000m² Isthmus B2 - 600m² Isthmus C1 - 400m² or 500m² where the site does not comply with the shape factor Isthmus C2 - 600m² Isthmus C2a (refer to Figure E38.8.2.6) - 1,000m² on sites identified in Figure E38.8.2.6 below North Shore Area A - 450m² North Shore Area B - 500m² North Shore Area C - 600m²</p>	<p>E38.8.2.3. Vacant sites subdivisions involving parent sites of less than 1 hectare – minimum net site area for vacant proposed sites THAB - 1,200m² MHU - 300m² MHS - 400m² SHZ - 600m² LLZ - 4,000m² RCS - 2,500m²</p> <p>E38.8.3.1. Vacant sites subdivision involving parent sites of 1 hectare or greater - Minimum Net Site Area - SHZ - 480m² MHS - 320m² MHU - 240m² [Also controls on 'Minimum Average Net Site area' and 'Maximum Average Net Site area']</p>	Enabling or restrictive (depends on zone and area)	Yes/No	<p>Policy E38.3(30) the purpose of the RD rule and standards is to maintain the distinctive pattern of subdivision as identified in the character statements for special character areas</p> <p>The notes in E38 are clear that all relevant standards must be met. This would mean the most restrictive minimum net site area standard prevails (i.e. the largest minimum net site area). That may not maintain the pattern of subdivision in the SCAR. It could be difficult to create new small sites even where the neighbouring sites are small.</p>
D19	Auckland War Memorial Museum Viewshaft Overlay	<p>D19.6.1. Building coverage For sites where the view protection height limit surface is lower than the height limit in the zone, the maximum building coverage is 40 per cent, unless a greater building coverage is allowed in the zone.</p>	H3 Residential - Single House Zone, H3.6.10 Building coverage 35 % of the net site area	Enabling	Yes	<p>1) This standard only refers to "activities listed as a permitted activity in Table D19.4.1". However, Table D19.4.1 only has "temporary construction and safety structures" listed as permitted, not a whole range of development (dwellings, commercial activities, etc). Seems like the activity table or the explanation before the standard needs rewording.</p> <p>2) The wording of the standard implies that it overrides the building coverage of the zone, but it does not explicitly</p>

Overlay chapter	Overlay name	Overlay standards (only noting aspects that are different in zones/Auckland-wide)	Comparable standards in zones and Auckland-wide	Overlay standard is more enabling, more restrictive, or the same?	Does the zone/AW standard reduce the 'benefit' of the overlay?	Notes, issues or questions
						say this. It now seems that both standards would apply, thus negating the benefit/purpose of the overlay standard. 3) If there is no building coverage standard for the zone (e.g. in the business zones), does the maximum 40% then apply? 4) The way this standard is written, I don't think it would ever apply (viewshafts over most zones are too high, and heights are not found in the zone for the relevant city centre areas).
D19	Auckland War Memorial Museum Viewshaft Overlay		H4 Residential - Mixed Housing Suburban Zone, H4.6.9 Building coverage 40 % of the net site area	Same	No	See above
D19	Auckland War Memorial Museum Viewshaft Overlay		H5 Residential - Mixed Housing Urban Zone, H5.6.10 Building coverage 45 % of the net site area	Restrictive (but therefore doesn't apply)	No	See above
D19	Auckland War Memorial Museum Viewshaft Overlay		H6 Residential - THAB Zone, H6.6.9 Building coverage 50 % of the net site area	Restrictive (but therefore doesn't apply)	No	See above

Overlay chapter	Overlay name	Overlay standards (only noting aspects that are different in zones/Auckland-wide)	Comparable standards in zones and Auckland-wide	Overlay standard is more enabling, more restrictive, or the same?	Does the zone/AW standard reduce the 'benefit' of the overlay?	Notes, issues or questions
D19	Auckland War Memorial Museum Viewshaft Overlay		Open Space - Sport and Active Recreation H7.11.6(1)(c) - 30% - maximum site coverage	Enabling	Yes	Maximum site coverage seems comparable to building coverage, but this is debatable. 'Building coverage' is defined but 'site coverage' is not. The purpose statement refers to the 'extent of building and development' so presumably it includes structures as well as buildings. See other points above.
D19	Auckland War Memorial Museum Viewshaft Overlay		Open Space - Community Zone H7.11.6(1)(e) - 50% - maximum site coverage	Restrictive (but therefore doesn't apply)	No	Maximum site coverage seems comparable to building coverage, but this is debatable. See other points above.
D19	Auckland War Memorial Museum Viewshaft Overlay		Open Space - Conservation Zone H7.11.6(1)(a) - 1% - maximum site coverage	Enabling	Yes	1) Maximum site coverage seems comparable to building coverage, but this is debatable. 2) Surely this negates the benefits of the zone? 3) See other points above.
D19	Auckland War Memorial Museum Viewshaft Overlay		Open Space - Informal Recreation H7.11.6(1)(b) - 10% - maximum site coverage	Enabling	Yes	Maximum site coverage seems comparable to building coverage, but this is debatable. See other points above.

Overlay chapter	Overlay name	Overlay standards (only noting aspects that are different in zones/Auckland-wide)	Comparable standards in zones and Auckland-wide	Overlay standard is more enabling, more restrictive, or the same?	Does the zone/AW standard reduce the 'benefit' of the overlay?	Notes, issues or questions
D19	Auckland War Memorial Museum Viewshaft Overlay		H8 Business - City Centre No building coverage standard.	NA - see note	Yes/No	Heights for the area covered by the overlay are controlled by precincts (I208 Port Precinct & I209 Quay Park), not the zone. Therefore the overlay standard will be unable to function as designed. Also, the city centre zone largely doesn't have building coverage requirements. Also see above questions.
D19	Auckland War Memorial Museum Viewshaft Overlay		H13 Business - Mixed Use No building coverage standard	NA - see note	Yes/No	See above points.
D19	Auckland War Memorial Museum Viewshaft Overlay	E26 Infrastructure PA Standard E26.12.5.1(8) (8) Temporary construction and safety structures and signs must be removed within 30 days or upon completion of the construction works.	E23 - no standards, but the zone notes that "Signs that are permitted by, or approved pursuant to, the Auckland Transport/Auckland Council Signage Bylaw 2015 or the Auckland Transport Elections Signs Bylaw 2013 are not subject to the provisions of the Plan."	Restrictive	Yes/No	It is unclear how these two provisions relate. Do signs permitted under the bylaw still need to be removed within 30 days?
D19	Auckland War Memorial Museum Viewshaft Overlay	E26 Infrastructure PA Standard E26.12.5.1(9) (9) Road network activities must comply with the following standards: (a) maximum height of 25m for road lighting and associated support structures; and (b) maximum height of 5.3m for traffic and direction signs, road name signs, traffic signals and support structures.	E23 - no standards, but the zone notes that "Signs that are permitted by, or approved pursuant to, the Auckland Transport/Auckland Council Signage Bylaw 2015 or the Auckland Transport Elections Signs Bylaw 2013 are not subject to the provisions of the Plan."	Restrictive	Yes/No	It is unclear how these two provisions relate. Do signs permitted under the bylaw also need to be a maximum height of 5.3m?

Appendix 5 Additional issues: Auckland-wide Mana Whenua provisions

D21 Sites and Places of Significance to Mana Whenua, E20 Māori land, E21 Treaty settlement land, H27 Special Purpose - Māori Purpose Zone

The AUP overlays analysis comparison of equivalent provisions in overlays and Auckland-wide chapters has highlighted several anomalies or inconsistencies in the overlay, Auckland-wide and zone chapters relating to Mana Whenua or Māori land. In some cases, this has highlighted issues relating to E20 and E21 Auckland-wide provisions which could have been expected to replace a similar zone provision. The approach set out in the *Auckland Council v London Pacific Family Trust* Environment Court decisions indicates that both provisions should be applied together. The E20 and E21 provisions are more permissive than the relevant zones and have an enabling intent. This is made clear through a note in E20 and E21 activity tables that the less restrictive rule applies. They are different to the matters listed above in 'Issue 1: Enabling activities' as it is clear that the less restrictive rule will be applied. However, the rules noted below appear to be anomalous. The following matters need further assessment to determine if further action is required. The relevant provisions are listed in the table below.

1. In the Sites and Places of Significance to Mana Whenua Overlay new buildings are a discretionary activity whereas in the Special Purpose – Māori Purpose Zone various new buildings are a permitted activity. It is unclear if the overlay is unduly onerous in this case or whether the difference is because the overlay and zone have different purposes. The objectives of the overlay are to protect/enhance scheduled sites and places of significance to Mana Whenua, while the zone is aimed at providing for development and the social and cultural needs of Mana Whenua and mataawaka.
2. 'Urupā' is a permitted activity in the Special Purpose – Māori Purpose Zone but a controlled activity in E20 Māori land and E21 Treaty settlement land. This appears incongruous and it is not clear why the three chapters would not have consistent provisions. Both E20 and E21 have notes stating that where a zone provides for the same activity, the less restrictive rule applies so it would be clear that a Urupā is a permitted activity. However, that means there would be no consideration of the matters of control that usually apply under the zone: whether an urupā would cause leachate emergence or contamination to groundwater; and measures to mitigate visual effects on neighbouring dwellings. These matters appear to be relevant to Māori land and Treaty settlement land as well as the Special Purpose – Māori Purpose Zone.
3. In E20 Māori land and in E21 Treaty settlement land 'rural industries' are a restricted discretionary activity whereas it is non-complying in some rural zones (Rural Conservation, Waitākere Ranges, Waitākere Foothills). This appears anomalous, but it may have been intentional.
4. E20 Māori land and E21 Treaty settlement land have a permitted activity for 'buildings associated with the above activities' which could include activities which need consent such as dwellings, marae, rural commercial services, rural industries. Such buildings

would need a consent in several zones but E20 and E21 have a note stating that the less restrictive rule applies. It appears that some buildings not expected in the relevant zone could be permitted activities due to the Auckland-wide rules.

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
D21	Sites and Places of Significance to Mana Whenua Overlay	<p>D21.4.1(A5) New buildings and structures</p> <p>D21.4.1(A6) Alterations and additions to existing buildings where the building footprint is increased</p>	D	<p>H27 Special Purpose - Māori Purpose Zone</p> <p>H27.4.1(A24) New structures or buildings associated with Māori cultural activities</p> <p>H27.4.1(A25) Alterations and additions to buildings</p>	P
				<p>H27 Special Purpose - Māori Purpose Zone</p> <p>H27.4.1(A28) New buildings</p> <p>The same activity status and standards as applies to the land use activity that the new building or addition to the building is designed to accommodate</p>	NA
				<p>H27 Special Purpose - Māori Purpose Zone</p> <p>H27.4.1(A4) Up to three dwellings per site</p> <p>H27.4.1(A6) Care centres up to 250m² gross floor area per site</p> <p>H27.4.1(A8) Community facilities up to 250m² gross floor area per site</p> <p>H27.4.1(A10) Education facilities up to 250m² gross floor area per site</p> <p>H27.4.1(A12) Healthcare facilities up to 250m² gross floor area per site</p> <p>H27.4.1(A14) Māori cultural activities</p> <p>H27.4.1(A15) Marae</p> <p>H27.4.1(A19) Urupā</p> <p>H27.4.1(A22) Retail up to 100m² gross floor area per site</p>	P
E20	Māori Land	E20.4.1(A11) Rural industries in rural zones	RD	<p>H19 Rural Conservation zone H19.8.1(A21)</p> <p>H20 Rural Waitākere foothills H20.4.2(A26)</p> <p>H21 Rural Waitākere ranges H21.4.2(A31)</p>	NC

Overlay chapter	Overlay name	Overlay Activity	Overlay Activity Status	Comparable activity in zone/Auckland-wide	Comparable activity status in zone/Auckland-wide
				Rural industries	
E20	Māori Land	E20.4.1(A12) Urupā	C	H27 Special purpose - Māori purpose zone H27.4.1(A17) Urupā	P
E20	Māori Land	E20.4.1(A13) Buildings associated with the above activities [including activities which need consent such as dwellings, marae, rural commercial services, rural industries]	P	Differs between zones and activities.	P – NC
E21	Treaty Settlement Land	E21.4.1(A11) Rural industries	RD	H19 Rural Conservation zone H19.8.1(A21) H20 Rural Waitākere foothills H20.4.2(A26) H21 Rural Waitākere ranges H21.4.2(A31) Rural industries	NC
E21	Treaty Settlement Land	E21.4.1(A12) Urupā	C	H27 Special purpose - Māori zone H27.4.1(A17) Urupā	P
E21	Treaty Settlement Land	E21.4.1(A13) Buildings associated with the above activities [including activities which need consent such as dwellings, marae, rural commercial services, rural industries]	P	Differs between zones and activities.	P – NC

Find out more: phone **09 301 0101**
email **unitaryplan@aucklandcouncil.govt.nz**
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