

IN THE MATTER of the Resource Management Act 1991 (**RMA**)

AND

IN THE MATTER of Private Plan Change 55 .

HEARING DIRECTIONS FROM THE HEARING PANEL

1. Pursuant to section 34A of the RMA, Auckland Council (the Council) has appointed a Hearing Panel consisting of three independent hearing commissioners -Barry Kaye (Chairperson), Basil Morrison and Hugh Leersnyder. The Hearing Panel's function is to hear the application and submissions and make a decision on the Plan Change proposal.
2. The private plan change, Plan Change 55, is requested to enable rezoning of land to provide for the future growth of Patumahoe, a rural village located 9km west of Pukekohe, pursuant to Section 73 and the First Schedule of the Resource Management Act 1991 ("RMA"). The Private Plan Change ("PPC") relates to a 34.98ha area of land owned by multiple parties ("the subject land"), comprising:
 - *Western section*: 3.5ha of land immediately southwest of the Patumahoe Domain, bounded by Mauku Road to the west.
 - *Central section*: 22.4ha of land southeast of the Patumahoe Domain, bounded by Patumahoe Road to the east and the Paerata-Waiuku railway line to the south.
 - *Eastern section*: 9.0ha of land east of Patumahoe Road and bounded by a natural escarpment and Hunter Road.
3. In terms of procedural matters, under section 41B we have already directed in our memorandum of 28th April 2021 that evidence be circulated as set out in that memorandum.
4. We have subsequently been made aware by Mr. Donovan (email of 4th May 2021), the Council's Hearing Advisor, of correspondence between Atkins Holm Majurey (letter dated 14 December 2020 from Helen Atkins/Nicola Buxeda) and the Council in relation to a submitter, Alpito Hill Ltd (Mr. Kraakman) of 28 Mauku Road, with a reply to that being sent by email on 12 February 2021 from Craig Cairncross, Team Leader Central/South, Plans and Places.
5. In Mr. Cairncross's letter he noted that;
"based on advice from our legal department, we consider that this issue is best resolved by the Hearing Chairperson for PC55, once they have been appointed. In our view, it would be most appropriate for the Hearing Chairperson to facilitate the resolution of this matter in the way that they consider most appropriate. We have provided a copy of the letter to democracy services to pass on to the Hearing Chairperson".
6. We have considered this matter and direct as follows.

a) That the applicant specifically addresses the matters raised in the correspondence from Atkins Holm Majurey in their evidence and we attach that correspondence to that end,

and

b) Pursuant to clause 8AA(1) of Schedule 1 to the RMA, we invite the Private Plan Change applicant/requestor to meet with Atkins Holm Majurey and Mr. Kraakman *“For the purpose of clarifying or facilitating the resolution of any matter relating to a proposed policy statement or plan”*. In this case, the purpose of that meeting is to allow the parties to discuss the matters raised by Atkins Holm Majurey and consequentially, for both parties to provide the outcomes of that meeting in a report in accordance with clause 8AA(5) of Schedule 1 to the RMA to be filed to us by Friday the 18th of June (such time being set to allow the Council’s reporting planner to have regard to the results of that meeting when preparing their s42A report).

7. We also note that we agree with Mr. Cairncross wherein he advised Atkins Holm Majurey that seeking additional information under s92 of the RMA or alternatively, that further information be requested under Clause 23(1) or (2) of Schedule 1 to the RMA, are not applicable pathways to secure additional information and thus our clause 8AA approach.

8. We further note that the Mr. Kraakman’s (Alpito Hill Ltd) submission provides the Hearing Panel with adequate scope to address the relief sought through the hearing process.

Any enquiries regarding these Directions or related matters should be directed by email to the Council’s Hearing Advisor bevan.donovan@aucklandcouncil.govt.nz.



Barry Kaye
Chairperson
17 May 2021

From: barrykaye@xtra.co.nz
To: [Bevan Donovan](mailto:Bevan_Donovan); b.k.morrison@xtra.co.nz; leersnyder@gmail.com
Subject: RE: Directions to Applicant and Atkins Holm Majurey (re Kraakman submission and correspondence) 12 May 2021
Date: Monday, 17 May 2021 1:48:02 pm
Attachments: [Directions to Applicant and Atkins Holm Majurey \(re Kraakman submission and corresspondence\) 17 May 2021.doc](#)

Yes Bevan

We need to attach the **Atkins Holm Majurey** correspondence and also the Council replies to that correspondence which you sent to us before

I attach the direction ready to be sent out to the applicant and Atkins Holm Majurey

Thanks

Barry

From: Bevan Donovan <bevan.donovan@aucklandcouncil.govt.nz>
Sent: Monday, 17 May 2021 8:54 AM
To: barrykaye@xtra.co.nz; b.k.morrison@xtra.co.nz; leersnyder@gmail.com
Subject: RE: Directions to Applicant and Atkins Holm Majurey (re Kraakman submission and correspondence) 12 May 2021

Thanks for that Barry, I have forwarded that to Corina as requested and will advise you of her response.

Just to confirm, am I correct that the correspondence to be attached with the approved direction is that from Atkins Holm Majurey?

Ngā mihi

Bevan Donovan | Hearings Advisor
Democracy and Engagement Department
Ph 09 890 8056 | Extn (46) 8056 | Mobile 021 325 837
Auckland Council, Level 25, Te Wharau o Tāmaki - Auckland House, 135 Albert Street, Auckland
Visit our website: aucklandcouncil.govt.nz

Championing inclusive democracy and the public voice for the diverse communities of Tāmaki Makaurau

From: barrykaye@xtra.co.nz <barrykaye@xtra.co.nz>
Sent: Friday, 14 May 2021 4:01 pm
To: b.k.morrison@xtra.co.nz; leersnyder@gmail.com
Cc: Bevan Donovan <bevan.donovan@aucklandcouncil.govt.nz>
Subject: Directions to Applicant and Atkins Holm Majurey (re Kraakman submission and correspondence) 12 May 2021

Hi Gents

Please see my draft attached for your input

I decided this may be a reasonable way to get the matter addressed early on?

Regards

Barry

Bevan—in the interim perhaps its prudent to get Corina Faesenkloet to confirm there are no procedural issues with this?

Also note we have to attach the correspondence when this goes out

[REDACTED]

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From: [Corina Faesenkloet](#)
To: [Bevan Donovan](#)
Cc: [Christian Brown](#); [Sanjay Bangs](#); [Craig Cairncross](#)
Subject: RE: Plan Change 55: Patumahoe South Hearing - Request for legal advice
Date: Monday, 17 May 2021 10:23:54 am
Attachments: [Directions to Applicant and Atkins Holm Maiurev \(re Kraakman submission and correspondence\) 17 May 2021.doc](#)
[image001.png](#)
[image002.png](#)

Hi Bevan,

Yes, I have a few edits – mostly around replacing clause 23 with clause 8AA in the appropriate spots – see **attached**.

Also, in response to your earlier email the advice concluded at paragraph 15 – there was nothing after paragraph 15.

Kind regards

Corina

Corina Faesenkloet | Principal Solicitor
Legal Services - Regulatory & Enforcement

DDI: 09 890 7704 | Mob: 021 605 896

Auckland Council, Level 15, 135 Albert Street, Private Bag 92300, Auckland 1142

Visit our website: www.aucklandcouncil.govt.nz



Excellence award winner - In-house team of the year, New Zealand Law Awards 2020

From: Bevan Donovan <bevan.donovan@aucklandcouncil.govt.nz>
Sent: Monday, 17 May 2021 8:51 AM
To: Corina Faesenkloet <Corina.Faesenkloet@aucklandcouncil.govt.nz>
Cc: Christian Brown <Christian.Brown@aucklandcouncil.govt.nz>; Sanjay Bangs <Sanjay.Bangs@aucklandcouncil.govt.nz>; Craig Cairncross <Craig.Cairncross@aucklandcouncil.govt.nz>
Subject: RE: Plan Change 55: Patumahoe South Hearing - Request for legal advice

Kia ora Corina

The chair for this hearing has asked for you to confirm there are no procedural issues within this direction.

Just let me know if you have any questions of the chair.

Ngā mihi

Bevan Donovan | Hearings Advisor

Democracy and Engagement Department

Ph 09 890 8056 | Extn (46) 8056 | Mobile 021 325 837

Auckland Council, Level 25, Te Wharau o Tāmaki - Auckland House, 135 Albert Street, Auckland

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Championing inclusive democracy and the public voice for the diverse communities of Tāmaki Makaurau

From: Corina Faesenkloet <Corina.Faesenkloet@aucklandcouncil.govt.nz>

Sent: Thursday, 13 May 2021 11:39 am

To: Bevan Donovan <bevan.donovan@aucklandcouncil.govt.nz>

Cc: Christian Brown <Christian.Brown@aucklandcouncil.govt.nz>

Subject: RE: Plan Change 55: Patumahoe South Hearing - Request for legal advice

Hi Bevan,

Please find **attached** the legal advice in response to the request for legal advice from the panel chairperson.

Kind regards

Corina

Corina Faesenkloet | Principal Solicitor

Legal Services - Regulatory & Enforcement

DDI: 09 890 7704 | Mob: 021 605 896

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From: Christian Brown <Christian.Brown@aucklandcouncil.govt.nz>

Sent: Wednesday, 12 May 2021 2:19 PM

To: Corina Faesenkloet <Corina.Faesenkloet@aucklandcouncil.govt.nz>

Subject: FW: Plan Change 55: Patumahoe South Hearing - Request for legal advice

Have you let Bevan know you are looking at this?

From: Bevan Donovan <bevan.donovan@aucklandcouncil.govt.nz>

Sent: Friday, 7 May 2021 8:14 AM

To: Christian Brown <Christian.Brown@aucklandcouncil.govt.nz>

Subject: Plan Change 55: Patumahoe South Hearing - Request for legal advice

Kia ora Christian

Please find the attached request for legal advice from the panel chairperson of this hearing.

I have attached the correspondence received to provide some background to this request. This hearing is set to commence on August 2nd and has not yet been publicly notified.

The chair has requested this request be treated as urgent.

Just let me know if you need anything else.

Ngā mihi

Bevan Donovan | Hearings Advisor

Democracy and Engagement Department

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From: [Bevan Donovan](#)
To: barrykaye@xtra.co.nz
Subject: PC55 - Legal Advice
Date: Thursday, 13 May 2021 1:00:00 pm
Attachments: [Plan Change 55 - Patumahoe - Legal advice - 13 May 2021.pdf](#)

Kia ora Barry

Please find the attached legal advice as requested.

Just let me know if you need anything else.

Ngā mihi

Bevan Donovan | Hearings Advisor

Democracy and Engagement Department

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From: barrykaye@xtra.co.nz
To: [Bevan Donovan](#)
Cc: leersnyder@gmail.com; "Basil Morrison"
Subject: RE: PC55 Patumahoe South - Response to Nicole Buxeda letter
Date: Tuesday, 4 May 2021 5:02:56 pm
Attachments: [image001.png](#)
[Letter regarding PC55 - Atkins Holm Majurey for Mr Kraakman - 14 December 2020.pdf](#)
[34 Alpito Hill Ltd.pdf](#)

Hi Bevan

I would like some legal advice on the request

We have not even read the documentation sufficiently yet to get a proper sense of how to respond appropriately

If, as per the earlier advice from Council's legal team, a s92 or a clause 23 approach are not applicable then what do the Policy planners think by deferring to us to respond that we can do?

If the subject party was and is not (or does not want to be) a party to the land contained within a Private Plan Change which the Council has accepted to process but not adopted as a public plan change then it would seem that the PC could have an issue if this party chose to make a legal issue of being encompassed within a rezoning process that they do not agree to and where simply addressing the matter through their submissions may not be an inappropriate pathway.

Some advice on our options would be very helpful asap.

Cheers

Barry Kaye
Chairperson PC 55.

From: Bevan Donovan <bevan.donovan@aucklandcouncil.govt.nz>
Sent: Tuesday, 4 May 2021 4:00 PM
To: barrykaye@xtra.co.nz
Subject: FW: PC55 Patumahoe South - Response to Nicole Buxeda letter

Kia ora Barry

Please see the email chain below and the attached files received from council's planning team, regarding a request from one of the submitters.

Just let me know if you have any questions.

Ngā mihi

Bevan Donovan | Hearings Advisor
Democracy and Engagement Department
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From: Sanjay Bangs <Sanjay.Bangs@aucklandcouncil.govt.nz>
Sent: Tuesday, 4 May 2021 2:51 pm
To: Bevan Donovan <bevan.donovan@aucklandcouncil.govt.nz>
Cc: Craig Cairncross <Craig.Cairncross@aucklandcouncil.govt.nz>
Subject: FW: PC55 Patumahoe South - Response to Nicole Buxeda letter

Hi Bevan,

As attached, the legal representative for Submitter 34 (Alpito Hill Ltd) to PC55 wrote to Council in December last year.

The letter seeks that Council request further information from the applicant. As per my response in the below email, we considered that this would be best handled by the Chair for PC55. As the Chair and panel have now been formed, can you please forward this letter and submission to the Chair?

This email chain with our initial views below might also be useful for the Chair to see.

Many thanks,
Sanjay

From: Nicole Buxeda <Nicole.Buxeda@ahmlaw.nz>
Sent: Tuesday, 4 May 2021 1:04 PM
To: Craig Cairncross <Craig.Cairncross@aucklandcouncil.govt.nz>
Cc: Sanjay Bangs <Sanjay.Bangs@aucklandcouncil.govt.nz>; Corina Faesenkloet <Corina.Faesenkloet@aucklandcouncil.govt.nz>; Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: RE: PC55 Patumahoe South - Response to Nicole Buxeda letter

Good afternoon Craig

Checking in about this matter, and wondering if our letter has been sent on to the Hearing Chairperson as indicated in your email below?

Kind regards,

Nicole

From: Craig Cairncross <Craig.Cairncross@aucklandcouncil.govt.nz>
Sent: Friday, 12 February 2021 4:03 pm
To: Nicole Buxeda <Nicole.Buxeda@ahmlaw.nz>
Cc: Sanjay Bangs <Sanjay.Bangs@aucklandcouncil.govt.nz>; Corina Faesenkloet <Corina.Faesenkloet@aucklandcouncil.govt.nz>
Subject: PC55 Patumahoe South - Response to Nicole Buxeda letter

Good afternoon Nicole,

Thank you for the letter dated 14 December 2020 prepared by yourself and Helen Atkins regarding Plan Change 55 (Private) Patumahoe South (PC55) to the Auckland Unitary Plan.

We understand that in your capacity representing Mr Kraakman at 28 Mauku Road, Patumahoe, you consider that the Clause 25 decision on PC55 was made in error, as in your view it did not sufficiently consider the effects on enabling people and communities to provide for their social and economic well-being. We also understand that you consider that the applicant did not provide sufficient information on the nature of consultation undertaken on the plan change. As you have identified in the letter, the Clause 25 decision cannot now be 'un-made' by the council.

We understand that you are seeking that the council request further information from the applicant under Section 92 of the Resource Management Act 1991 (RMA) on the nature of consultation undertaken by the applicant. We have reflected on this request and have received advice from our legal department within council on the matters raised in the letter. Section 92 is located in Part 6 of the RMA and relates to Resource Consents, and therefore is not applicable to a Private Plan Change request. As such, we do not consider that further information can be requested under Section 92 of the RMA.

In addition, we have considered whether further information could be sought by council under Clause 23 to Schedule 1 of the RMA. Having read Clause 23 in conjunction with Clause 25 to Schedule 1 RMA, we consider that a further information request under Clause 23(1) or (2) must be made by the Council prior to it making its clause 25 decision on whether to accept, adopt or reject the Private Plan Change request (or whether to treat it as a resource consent application). Therefore we do not consider that the council can request further information on PC55 under Clause 23 at this stage of the process.

Instead, based on advice from our legal department, we consider that the this issue is best resolved by the Hearing Chairperson for PC55, once they have been appointed. In our view, it would be most appropriate for the Hearing Chairperson to facilitate the resolution of this matter in the way that they consider most appropriate. We have provided a copy of the letter to democracy services to pass on to the Hearing Chairperson.

Kind Regards | Ngā mihi

Craig Cairncross
Team Leader
Central South
Plans and Places/Chief Planning Office
T: 021 897163
DDI: 890 8473

Mon	Tue	Wed	Thu	Fri
WFH	✓	✓	✓	WFH

✓ = in the office **WFH** = work from home



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From: barrykaye@xtra.co.nz
To: [Bevan Donovan](#)
Cc: "[Basil Morrison](#)"; leersnyder@gmail.com
Subject: RE: PC55 Patumahoe South - Response to Nicole Buxeda letter
Date: Wednesday, 5 May 2021 7:44:04 am
Attachments: [image001.png](#)

Hi Bevan

Thinking overnight what we can do is request the applicant to clarify this matter obviously and send them the correspondence

But given the nature of the PC I still want a legal setting out options etc as requested earlier

Cheers

Barry

Barry Kaye

BA; MTP

*Barry Kaye Associates Ltd
Town Planners and RMA Specialists
Independent Hearing Commissioner
6 Foster Avenue, Huia 0604
Mobile +64 21764563
Email: barrykaye@xtra.co.nz*

From: Bevan Donovan <bevan.donovan@aucklandcouncil.govt.nz>
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Kia ora Barry

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Bevan Donovan | Hearings Advisor

Democracy and Engagement Department

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Subject: PC55 Patumahoe South - Response to Nicole Buxeda letter

Good afternoon Nicole,

Thank you for the letter dated 14 December 2020 prepared by yourself and Helen Atkins regarding Plan Change 55 (Private) Patumahoe South (PC55) to the Auckland Unitary

Plan.

We understand that in your capacity representing Mr Kraakman at 28 Mauku Road, Patumahoe, you consider that the Clause 25 decision on PC55 was made in error, as in your view it did not sufficiently consider the effects on enabling people and communities to provide for their social and economic well-being. We also understand that you consider that the applicant did not provide sufficient information on the nature of consultation undertaken on the plan change. As you have identified in the letter, the Clause 25 decision cannot now be 'un-made' by the council.

We understand that you are seeking that the council request further information from the applicant under Section 92 of the Resource Management Act 1991 (RMA) on the nature of consultation undertaken by the applicant. We have reflected on this request and have received advice from our legal department within council on the matters raised in the letter. Section 92 is located in Part 6 of the RMA and relates to Resource Consents, and therefore is not applicable to a Private Plan Change request. As such, we do not consider that further information can be requested under Section 92 of the RMA.

In addition, we have considered whether further information could be sought by council under Clause 23 to Schedule 1 of the RMA. Having read Clause 23 in conjunction with Clause 25 to Schedule 1 RMA, we consider that a further information request under Clause 23(1) or (2) must be made by the Council prior to it making its clause 25 decision on whether to accept, adopt or reject the Private Plan Change request (or whether to treat it as a resource consent application). Therefore we do not consider that the council can request further information on PC55 under Clause 23 at this stage of the process.

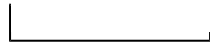
Instead, based on advice from our legal department, we consider that the this issue is best resolved by the Hearing Chairperson for PC55, once they have been appointed. In our view, it would be most appropriate for the Hearing Chairperson to facilitate the resolution of this matter in the way that they consider most appropriate. We have provided a copy of the letter to democracy services to pass on to the Hearing Chairperson.

Kind Regards | Ngā mihi

Craig Cairncross
Team Leader
Central South
Plans and Places/Chief Planning Office
T: 021 897163
DDI: 890 8473

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14 December 2020

Sanjay Bangs
Auckland Council
135 Albert Street
AUCKLAND 1142

CC: Christian Brown, Council Legal Team

Dear Sanjay

PROPOSED PRIVATE PLAN CHANGE 55 – PATUMAHOE SOUTH

1. We write on behalf of Mr Peter Kraakman regarding proposed private Plan Change 55 (**Proposed PC55**) which seeks to rezone 34.5 hectares of land and apply the I403 Patumahoe Precinct with amendments (**Application**).
2. Mr Kraakman owns the property at 28 Mauku Road (**Property**) which falls within the purview of Proposed PC55.
3. In discussions with the Askew Consultants Limited (**Applicant**) Mr Kraakman explicitly requested that any private plan change application not adversely affect his Property. Mr Kraakman was therefore surprised and dissatisfied to find:
 - (a) That his Property was included in the Application and accordingly was subject to a proposed re-zoning;
 - (b) The Application included an 'indicative road' through his Property and the existing buildings; and
 - (c) The Application implied there was neutrality or acceptance of the Application by all neighbours.
4. We consider that Council should have rejected the Application under clause 25 of Schedule 1 to the Resource Management Act 1991 (**Act**) because:
 - (a) Further information was not requested as evidence of the support of neighbours despite clear signals in the Application of deficient consultation;
 - (b) The evaluation report by the Council (**Report**) failed to include a comprehensive assessment of whether the Application is in accordance with sound resource management practice;
 - (c) Due to insufficient analysis the Report inaccurately concluded that the Application is consistent with section 5 of the Act.

HELEN ATKINS
MICHAEL HOLM
PAUL MAJUREY
VICKI MORRISON-SHAW

ATKINS HOLM MAJUREY LIMITED
Environmental and Public Law Specialists
PO Box 1585, Shortland Street,
Auckland 1140, NEW ZEALAND
Level 19, 48 Emily Place, Auckland 1010
PHONE +64 9 304 0294 FAX +64 9 309 1821

5. These factors resulted in Council voting to accept the Application which we submit was erroneous.

BACKGROUND

6. The details of Mr Kraakman's Property are set out in his submission (**Appendix A**). Mr Kraakman has put a significant amount of labour and money into creating a storage business on his Property, including site developments, building additions and construction of business spaces, installation of storage bays, achieving compliance with requirements, and maintenance and repair.
7. Mr Kraakman attended an informal meeting with the Applicant in 2018 in which he stated he did not want a proposal to impact his Property in any way but noted he was not opposed to the Applicant developing their own land. Mr Kraakman notes that one other neighbour was uncertain about the Application but was intimidated by the information and therefore did not register formal dissent during this informal meeting.
8. In 2019 Mr Kraakman was approached by the Applicant with a general update. At no point was Mr Kraakman informed about the proposed road running through the centre of his Property and buildings, or about the zoning change proposed to apply to his Property.
9. Following acceptance of Proposed PC55 by Council Mr Kraakman made a submission on Proposed PC55 in which he sought:
 - (a) the provisions of Proposed PC55 be declined as they relate to the rezoning of 28 Mauku Road and surrounds unless provisions are instated to protect the property's land use activities from the reverse sensitivity effects of the proposed surrounding Single House development and use zoning; and
 - (b) the removal of the indicative road through 28 Mauku Road.

Applicant's report of consultation

10. The Plan Change Request assessment of effects and section 32 assessment submitted by the Applicant on 26 June 2020 (**Application Documentation**) states at [7.2] that '*Each neighbour was either in support of the application or neutral to the application proceeding*'.
11. This is incorrect, as Mr Kraakman explicitly stated he did not want the Application to impact his Property (which it clearly does). Mr Kraakman was totally unaware of the existence of the proposed road across his property (which is clearly indicated in the plans submitted to Council).
12. We submit that this misrepresentation informed the Report which recommended that Council accept the Application.

Legal requirements for further information

13. Schedule 1 of the Act sets out requirements in relation to private and public plan changes. Clause 21 stipulates that any person may request a change to a district or regional plan. Clause 22 requires that such a request shall contain an evaluation report prepared in accordance with section 32. Clause 25 requires the local authority to consider a request made and decide to adopt or accept the request.
14. Clause 23 states that where a local authority receives a request under clause 21 it can require the provision of further information to enable better understanding of 'the nature of any consultation undertaken or required to be undertaken'.
15. With regard to neighbourhood consultation paragraph [7.2] of the Application Documentation shows that there was one meeting in 2018 and another contact made in 2019. This lack of detail should have immediately indicated to Council that further information was required in order to understand the nature, detail, and depth of the consultation including of the purported local support.
16. Council did not request further information relating to the consultation undertaken by the Applicant.

RECOMMENDATION FOR COUNCIL TO ACCEPT REQUEST

17. Clause 25 provides limited grounds upon which the Council can reject a private plan change request:
 - (4) The local authority may reject the request in whole or in part, but only on the grounds that—
 - (a) the request or part of the request is frivolous or vexatious; or
 - (b) within the last 2 years, the substance of the request or part of the request—
 - (i) has been considered and given effect to, or rejected by, the local authority or the Environment Court; or
 - (ii) has been given effect to by regulations made under section 360A; or
 - or
 - (c) **the request or part of the request is not in accordance with sound resource management practice; or**
 - (d) **the request or part of the request would make the policy statement or plan inconsistent with Part 5; or**
 - (e) in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.

[emphasis added]
18. The Council's Report on the Application recommends that proposed PC55 be accepted. In reaching this conclusion the Report assessed the Application to ascertain whether it is in accordance with 'sound resource management

practice',¹ and whether it would make the plan inconsistent with part 5 of the Act.²

In accordance with sound resource management practice?

19. The Report considered that an assessment of whether the Application is in accordance with sound resource management practice *'should involve a coarse assessment of the merits of the private plan change request – "at a threshold level"- and take into account the RMA's purpose and principles...'*³

20. We consider a better framing of this assessment is as set out in *Malory Corporation Limited v Rodney District Council* [2010] NZRMA 392 (HC), as applied by Judge Kirkpatrick in the case of *Orakei Point Trustee v Auckland Council* [2019] NZEnvC 117:

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

[Emphasis added]

21. Rather than the assessment *'tak[ing] the purpose and principles of the RMA into account'*⁴ it should more properly have been *whether the Application accords with the Act's purposes and principles*. Accordingly, an incorrect conclusion was reached that the Application was in accordance with sound resource management practice and as such should not be declined on that basis.⁵

22. Section 5 sets out the purpose of the Act as follows:

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, sustainable management means **managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being** and for their health and safety while—

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

¹ Auckland Council Planning Committee Agenda for meeting held 1 October 2020, Item 9, page 27.

² Ibid page 30.

³ Ibid page 26.

⁴ Ibid page 30.

⁵ Ibid page 30.

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

[emphasis added]

23. In making the assessment of whether the Application is in accordance with sound resource management practice much attention was spent considering the land use capability and productivity of the soil type. The Report did not consider the effects of the Application on people and communities, nor did it consider the ways in which the Application would enable (or dis-enable) people, including Mr Kraakman, to provide for their economic well-being.
24. We consider this lack of assessment as to whether the Application accorded with the Act's purposes and principles to constitute a significant error in this situation.

Inconsistency with Part 5 of the Resource Management Act?

25. When assessing whether the Application would make the Unitary Plan inconsistent with Part 5 of the Act the Report again focuses on elite and prime soils and does not consider effects on enabling people and communities to provide for their social and economic well-being.
26. Accordingly the assessment is deficient, and the recommendation that the Application not be rejected on this ground is erroneous.

COUNCIL DECISION TO PROCEED WITH PROPOSED PC55

27. Based on the recommendations in the Report the Council has voted to accept Proposed PC55 as a private plan change and for it to proceed to a hearing process with independent commissioners.
28. We submit this was the wrong decision for Council to make in this situation as:
 - (a) There is insufficient information in the Application to enable the Council to understand the nature of consultation undertaken by the Applicant and no further information was sought by Council;
 - (b) The extent of local and community support for, or even well-informed acceptance of, the Application is unclear, and no further information was sought by Council;
 - (c) The Council Report's assessment of whether the Application is in accordance with sound resource management practice is deficient;
 - (d) The Council Report did not properly and thoroughly assess the Application against the purposes of the Act.

OUTCOME SOUGHT

29. We do not consider that Proposed PC55 should have either been recommended for acceptance by Council, or accepted by Council without further information having been sought.
30. We consider that such recommendation and acceptance constitutes a significant error of law and process. We accept that having now accepted the Plan Change Council is in a position where it cannot simply un-accept the Plan Change. Our client has raised the issues set out in this letter in his submission, as have other submitters. What is extremely unfortunate for all parties, the Applicant and the Council included, is that everyone is now in a position of having to raise the issue of process error through the submission face rather than it having been addressed before the expense and time associated with notification had occurred.
31. One other option for the Council in this situation would be to request further information regarding the nature of consultation undertaken by the Applicant and the extent of local and community support for the Application.⁶
32. We consider this would go some way towards ameliorating this dearth of information prior to the hearing noting that it will not preclude the submitters raising the issue of error of law and process in the acceptance of the Proposed PC55 in the first instance by Council.
33. What we are seeking at this stage is that Council acknowledge and substantially reply to this letter such that the issue can be fully canvassed and well understood before the commencement of the hearing. We are also requesting the Council to consider seeking further information from the Applicant as to consultation undertaken. It is hoped that this may result in some of the mistakes and misinformation being rectified.

Yours faithfully

ATKINS HOLM MAJUREY

Helen Atkins / Nicole Buxeda

Director / Senior Solicitor

Direct dial: 09 304 0421 / 09 304 0424

Email: helen.atkins@ahmlaw.nz / nicole.buxeda@ahmlaw.nz

⁶ Resource Management Act 1991 section 92(1): 'A consent authority may, at any reasonable time before the hearing of an application for a resource consent or before the decision to grant or refuse the application (if there is no hearing), by written notice, request the applicant for the consent to provide further information relating to the application.'

APPENDIX A – SUBMISSION OF MR PETER KRAAKMAN (ALPITO HILL LIMITED) ON PROPOSED PLAN CHANGE 55

SUBMISSION ON PROPOSED PLAN CHANGE 55 (PRIVATE): PATUMAHOE SOUTH

Submitter: Alpito Hill Limited

The submitter is the owner of 28 Mauku Road in Patumahoe.

Subject Property and Surrounding Environment

The site, 28 Mauku Road (Lot 1 DP 136094 CT NA80A/996) is a 3512m² pan handled shaped site located on the southern side of Mauku Road. The site has a 10m frontage to Mauku Road.

28 Mauku Road (Lot 1 DP 136094 CT NA80A/996) is a 3512m² site with direct frontage to Mauku Road of approximately 10m and an additional 10m of shared right of way access that provides an access leg serving 28 and 28B Mauku Road.

28 Mauku Road is zoned Rural – Rural Production under the Auckland Unitary Plan.

For over thirty years commercial activities have operated from the site in addition to residential use.

A factory was first established on the site around 1974 and was utilised to dehydrate vegetables. Then in the 1980s it was utilised by a different company to prepare, blanch, cool and blast freeze fruit and vegetables. Storage and warehousing activities were granted on the site in 1987.

The site is occupied by an 870m² commercial building. The building is constructed of concrete blocks and features two gables. A lean-to addition is provided at the rear and is utilised for a tradesperson storage.

The building is located 1.7m from the eastern boundary, 8.2m from the southern boundary, 17.1m from the western boundary and 24m from the northern boundary. The building is located approximately 75m from Mauku Road.

Over time the storage facility has been refurbished. “Country Storage” now accommodates approximately forty individual units of various sizes. The units are primarily utilised for long term storage. The occupier of one of the onsite dwellings assists with the management of the storage units.

The rear part of the building, 30m², is utilised as a storage area in association with the submitters building business. Located within the western part of the main building is a dwelling with a fence outdoor area to the west.

A single storey timber dwelling with steep roof is located in front of the commercial building. This dwelling is located 3m from the northern boundary.

The site is located on the edge of Patumahoe village. Three properties north- west of the subject site are zoned Residential – Single House Zone (numbers 26, 26A and 26B Mauku Road). All other adjoining properties are zoned Rural – Rural Production Zone (numbers 24, 28B, and 30 Mauku Road). These 3 adjoining sites ranging from 1.2 hectares to 2.4 hectares are developed with a dwelling on each.

Numbers 24 and 28B Mauku Road are presently utilised as lifestyle blocks for grazing of stock. 30 Mauku Road is currently used as a market garden and is screened from the site by an established hedge.

On the same side of Mauku Road the Business - Local Centre Zone is located within 75m, and the Open Space – Community Zone (Patumahoe Domain) is within 60m.

The property across the road is presently being utilised as Market Gardens, but is zoned Residential – Single House Zone. Residential development of this site, enabled by private plan change 27 to the Franklin District Plan has begun.



Figure 1: Auckland Council GIS Aerial

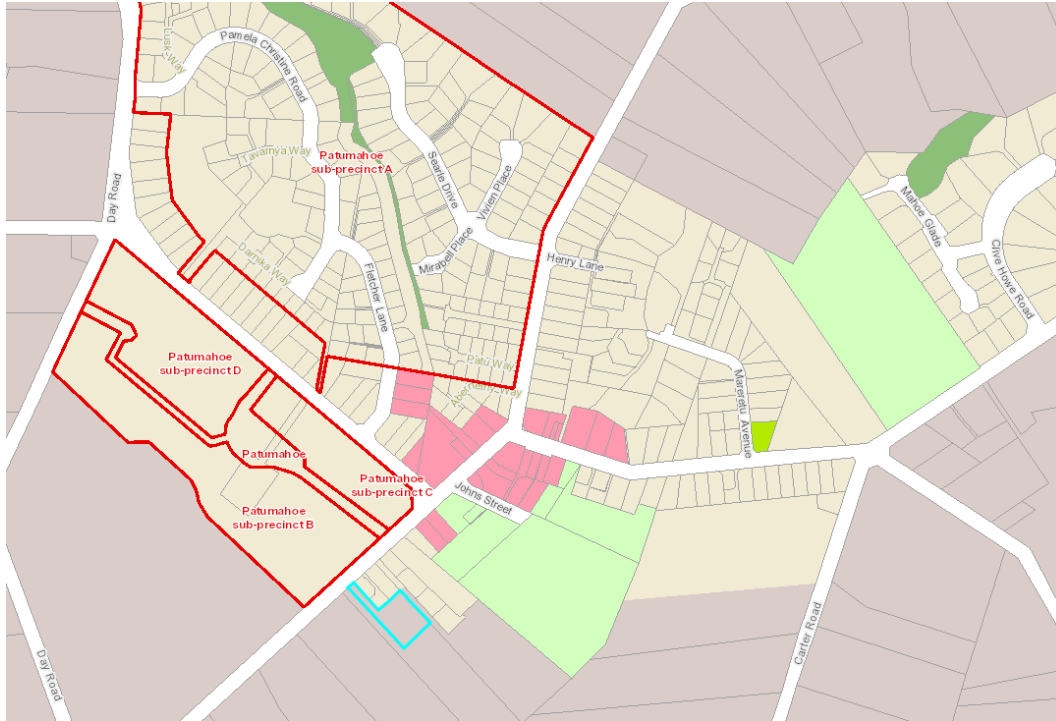


Figure 2: Unitary Plan Zoning

Resource consent (LUC60319893)

On 20/08/2018 land use resource consent (LUC60319893) was approved by Auckland Council to extend the existing building to provide four small additional units. The consent approved additions and alterations to the existing warehouse totalling 268m² to be split into four 59m² units that will be utilised as either an extension of the existing warehouse and storage facility; as well as associated earthworks, landscaping and signage. Copy provided in **Attachment 1**.

The submitter has given effect to the consent and is working through building consent requirements through the additions and alterations.

The existing infrastructure and investment in the property is significant.

Proposed Plan Change 55 (Private) Patumahoe South

Consultation

The submitter has been aware of the development and progression of the private plan change request.

The submitter expressed to the proponents of the private plan change a request that 28 Mauku road not be adversely affected by the proposal.

These views have not been expressed in the plan change application documents or in the planning response proposed by the applicants. Notably the consultation section of the *Plan Change Request Assessment of Effects and Section 32 Assessment*¹ states as follows:

7.2 Landowners within Plan Change Area

In the preparation of this plan change members of the applicant group have made contact a number of times with all relevant neighbouring landowners. A meeting was held in Patumahoe with all neighbours at the Patumahoe Rugby Club in August 2018 to establish neighbourhood support for the plan change. Each neighbour was either in support of the application or neutral to the application proceeding. In September 2019 members of the applicant group have contacted each neighbour to update them on progress of the application. The only neighbours that they have not been able to contact are the owners of the property at 104 Patumahoe Road

This should have been a flag for Council to consider whether sufficient information had been provided with the application or whether further information was required pursuant to Schedule 1, Clause 23 of the Resource Management Act 1991 to undertake a merits assessment pursuant to Clause 25:

Cl.23:

Where a local authority receives a request from any person under clause 21, it may within 20 working days, by written notice, require that person to provide further information necessary to enable the local authority to better understand—

- a) the nature of the request in respect of the effect it will have on the environment, including taking into account the provisions of Schedule 4; or*
- b) the ways in which any adverse effects may be mitigated; or*
- c) the benefits and costs, the efficiency and effectiveness, and any possible alternatives to the request; or*
- d) the nature of any consultation undertaken or required to be undertaken—***

The *Traffic Impact Assessment*² states as follows:

3.1 Proposed Connections to the Existing Road Network

Intersection D - It is proposed to provide a road into the site from 26B Mauku Road, approximately 120m south of Kingseat Road, which would provide a western link for the development, relieving the traffic volume from the development via Patumahoe Road. It is understood that there is currently a consented development (sub-precincts B, C, and D) to the west of this proposed intersection, and that this development is proposing to install a new intersection near this location. That intersection would be approximately 45m north of the location of intersection D. It is considered that such separation between these intersections is sufficient to design safely operating staggered T-intersections. It is understood that the development can be built in two stages due to

¹ Private Plan Change Request to The Auckland Unitary Plan: Operative In Part Patumahoe South, Plan Change Request Assessment of Effects and Section 32 Assessment, 26 June 2020. Envivo.

² Integrated Transportation Assessment Patumahoe Plan Change. Prepared for Askew Partnership June 2020. Stantec

the ongoing negotiations with the existing residents regarding road access at Intersection D off Mauku Road. In that case, the development would initially be progressed with road links to Patumahoe Road only at Intersections A, B and C.

Again, this would appear to raise significant uncertainty on the adequacy of the assessment, effects on other landowners, and likelihood of the outcomes sought by the plan change or required in terms of a viable traffic response being achieved.

The further information request on urban design issues³ provides the following:

UD2 – UD 5 – Landownership

It is envisaged that sites will be purchased at different times over a period of time. Please confirm whether this is the case Please explain how the Section 7 Assessment matters set out at pages 16-26 of the Urban Design Assessment (i.e. matters of good urban design) that require walkable block sizes, optimal road layout, regular site sizes, sites facing onto streets and the like, can be proposed/achieved unless all the sites are purchased concurrently. Please explain how (any) new roads will be planned for and built given the multiple site owners. Please clarify if any new roads in the PPC area will be public or private roads. If this above is not yet known, please explain how acceptable urban design outcomes (refer UD3 above) can be achieved if the roads are not public streets. It is envisaged that sites will be purchased at different times over a period of time.

Response:

The PPC seeks to facilitate the future subdivision and development of the subject land within the spatial framework established by Patumahoe Precinct Plan 3 and the associated precinct provisions. The application of an integrated planning process to the subject land has enabled that spatial and planning framework to be defined in a manner that will guide future subdivision to achieve a comprehensive and fully integrated development outcome for the subject land. As is common in many "structure planned" areas where land ownership is fragmented, the precinct plan and precinct provisions are the primary method by which high quality urban design outcomes (for the land as a whole) are achieved. The staged construction of roading is common in new development areas (as shown in the Aerial Photos below of Karaka Lakes (taken in 2012 and 2017). As each land parcel within the subdivision is developed roading (and associated services) are constructed to the boundary of that allotment allowing the future extension of those services across the subject land. All proposed road are proposed to be Public Roads.

The strategy employed is to rezone land not owned by the applicants and buy it later to achieve the plans outcomes. This is unfair and uncertain for other landowners and adversely effects there current and future land use. The outcome may be that some elements of the plan change are unachievable i.e. the Mauku Road linkage, noting that the proposed plan includes a **Non-Complying Activity** status for subdivision that precedes a new road access either from Patumahoe Road or from Mauku Road into the precinct within 50m of one of the indicative locations shown on Patumahoe: Precinct plan 3.

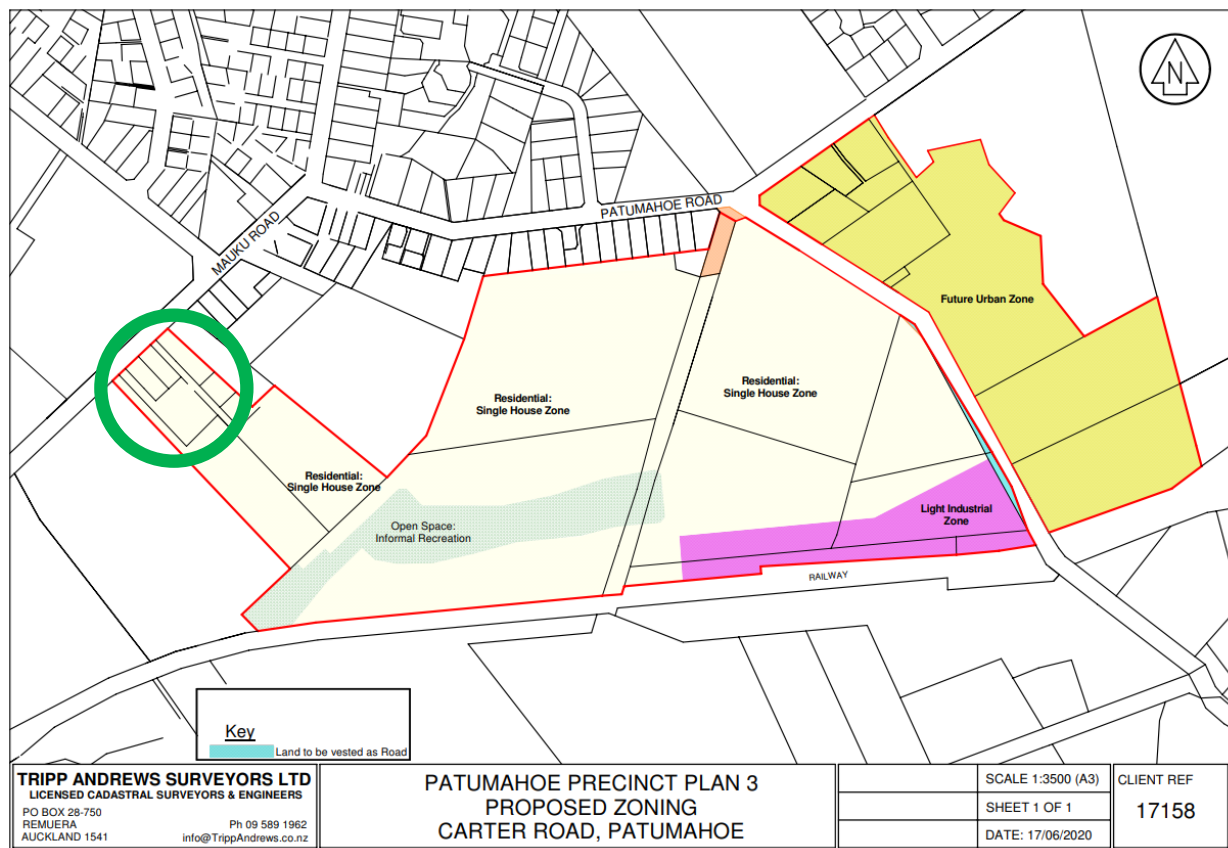
³ Tripp Andrews. 16 April 2020

This significant issue does not appear to have been addressed in Councils merits assessment pursuant to Schedule 1, Clause 25 of the Resource Management Act 1991 and in particular whether Council considered rejecting the plan change relative to CI25(4)(c):

CI25(4):
 (c) the request or part of the request is not in accordance with sound resource management practice;

Proposed Single House Zone

As notified PC55 proposes that 28 Mauku Road is zoned from Rural Production to Single House Zone.



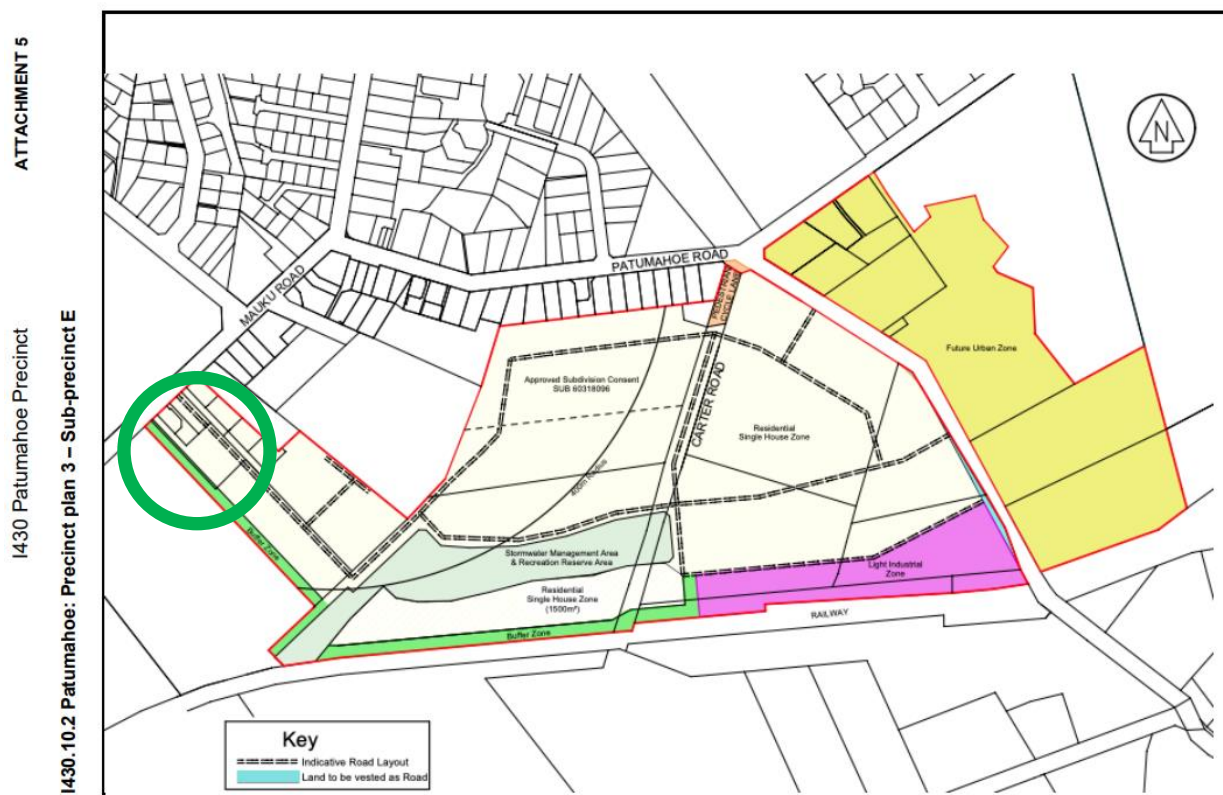
The rezoning does not recognise the historical, current and future land use of the property.

A Single House zoning of the site and surrounds is likely to create operational constraints for the site.

The plan change assessment (Section 32) fails to assess this matter and the plan change is therefore deficient.

1430.10.2 Patumahoe: Precinct plan 3 – Sub-precinct E

Precinct Plan 3 proposes an *Indicative Road* through 28 Mauku Road – effectively through the buildings.



This is a significant effect on the submitter.

The submitter has no intention to sell the property or remove the buildings and infrastructure that support the sites consented land use.

The plan change assessment (Section 32) fails to assess this matter and the plan change is therefore deficient.

The plan change assessment (Section 32) fails to assess alternatives should this linkage not be achievable.

I seek the following decision by Council

The submitter seeks that the plan change be declined as it relates to the rezoning of 28 Mauku Road and surrounds to Single House Zone unless provisions are put in place to protect the site's land use activities from the effects of Single House development and use (ie reverse sensitivity).

The submitter seeks the removal of the Indicative Road through 28 Mauku Road from Precinct Plan 3.

Submission on a notified proposal for policy statement or plan change or variation

Clause 6 of Schedule 1, Resource Management Act 1991
FORM 5



Send your submission to unitaryplan@aucklandcouncil.govt.nz or post to :

Attn: Planning Technician
Auckland Council
Level 24, 135 Albert Street
Private Bag 92300
Auckland 1142

For office use only
Submission No:
Receipt Date:

Submitter details

Full Name or Name of Agent (if applicable)

Mr/Mrs/Miss/Ms(Full Name) Mr Peter Kraakman

Organisation Name (if submission is made on behalf of Organisation) Alpito Hill Limited

Address for service of Submitter

187 Titi Rd, Mauku RD3, Pukekohe, 2678

Telephone: 021 756 147 Fax/Email: petrus_kraakman@hotmail.com

Contact Person: (Name and designation, if applicable)

Scope of submission

This is a submission on the following proposed plan change / variation to an existing plan:

Plan Change/Variation Number PC 55

Plan Change/Variation Name Putamahoe South

The specific provisions that my submission relates to are:

(Please identify the specific parts of the proposed plan change / variation)

Plan provision(s)

Or
Property Address 28 Mauku Road

Or
Map

Or
Other (specify) I430.10.2 Patumahoe Precinct Plan 3 Support precinct and Reinforcement

Indicate Road through and proposed Single House zone on 28 Mauku Rd

Submission

My submission is: (Please indicate whether you support or oppose the specific provisions or wish to have them amended and the reasons for your views)

I **support** the specific provisions identified above

I **oppose** the specific provisions identified above

I wish to have the provisions identified above amended Yes No

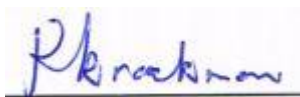
The reasons for my views are: Refer attached.

(continue on a separate sheet if necessary)

I seek the following decision by Council:

- Accept the proposed plan change / variation
- Accept the proposed plan change / variation with amendments as outlined below
- Decline the proposed plan change / variation
- If the proposed plan change / variation is not declined, then amend it as outlined below.

- I wish to be heard in support of my submission
- I do not wish to be heard in support of my submission
- If others make a similar submission, I will consider presenting a joint case with them at a hearing



Signature of Submitter
(or person authorised to sign on behalf of submitter)

17 October 2020
Date

Notes to person making submission:

If you are making a submission to the Environmental Protection Authority, you should use Form 16B.

Please note that your address is required to be made publicly available under the Resource Management Act 1991, as any further submission supporting or opposing this submission is required to be forwarded to you as well as the Council.

If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by clause 6(4) of Part 1 of Schedule 1 of the Resource Management Act 1991.

I could /could not gain an advantage in trade competition through this submission.

If you could gain an advantage in trade competition through this submission please complete the following:

I am / am not directly affected by an effect of the subject matter of the submission that:

- (a) adversely affects the environment; and
- (b) does not relate to trade competition or the effects of trade competition.

SUBMISSION ON PROPOSED PLAN CHANGE 55 (PRIVATE): PATUMAHOE SOUTH

Submitter: Alpito Hill Limited

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Subject Property and Surrounding Environment

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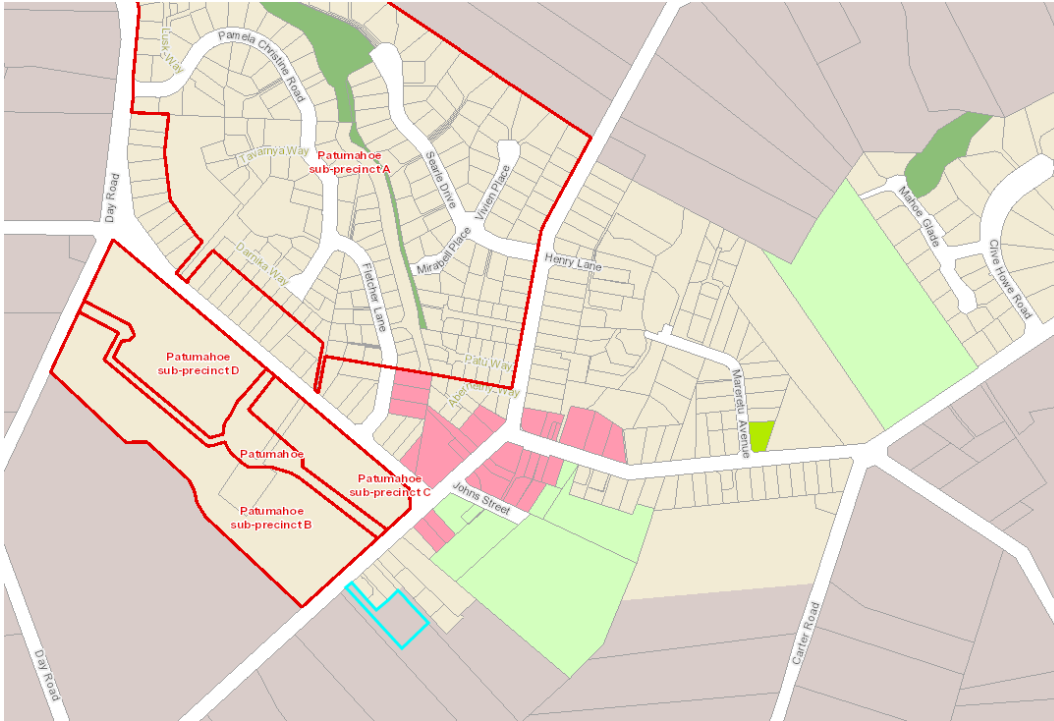


Figure 2: Unitary Plan Zoning

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Response:

The PPC seeks to facilitate the future subdivision and development of the subject land within the spatial framework established by Patumahoe Precinct Plan 3 and the associated precinct provisions. The application of an integrated planning process to the subject land has enabled that spatial and planning framework to be defined in a manner that will guide future subdivision to achieve a comprehensive and fully integrated development outcome for the subject land. As is common in many "structure planned" areas where land ownership is fragmented, the precinct plan and precinct provisions are the primary method by which high quality urban design outcomes (for the land as a whole) are achieved. The staged construction of roading is common in new development areas (as shown in the Aerial Photos below of Karaka Lakes (taken in 2012 and 2017). As each land parcel within the subdivision is developed roading (and associated services) are constructed to the boundary of that allotment allowing the future extension of those services across the subject land. All proposed road are proposed to be Public Roads.

The strategy employed is to rezone land not owned by the applicants and buy it later to achieve the plans outcomes. This is unfair and uncertain for other landowners and adversely effects there current and future land use. The outcome may be that some elements of the plan change are unachievable i.e. the Mauku Road linkage, noting that the proposed plan includes a **Non-Complying Activity** status for subdivision that precedes a new road access either from Patumahoe Road or from Mauku Road into the precinct within 50m of one of the indicative locations shown on Patumahoe: Precinct plan 3.

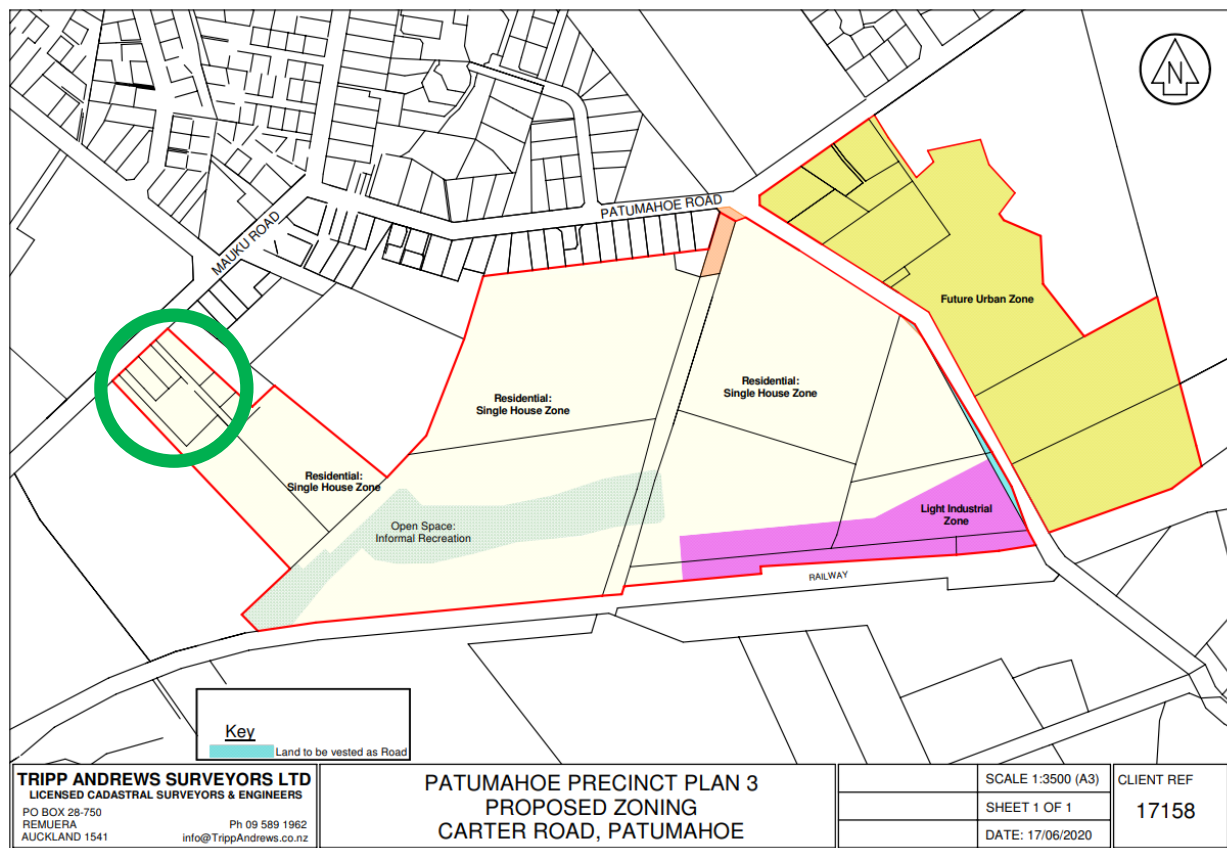
³ Tripp Andrews. 16 April 2020

This significant issue does not appear to have been addressed in Councils merits assessment pursuant to Schedule 1, Clause 25 of the Resource Management Act 1991 and in particular whether Council considered rejecting the plan change relative to CI25(4)(c):

CI25(4):
(c) the request or part of the request is not in accordance with sound resource management practice;

Proposed Single House Zone

As notified PC55 proposes that 28 Mauku Road is zoned from Rural Production to Single House Zone.



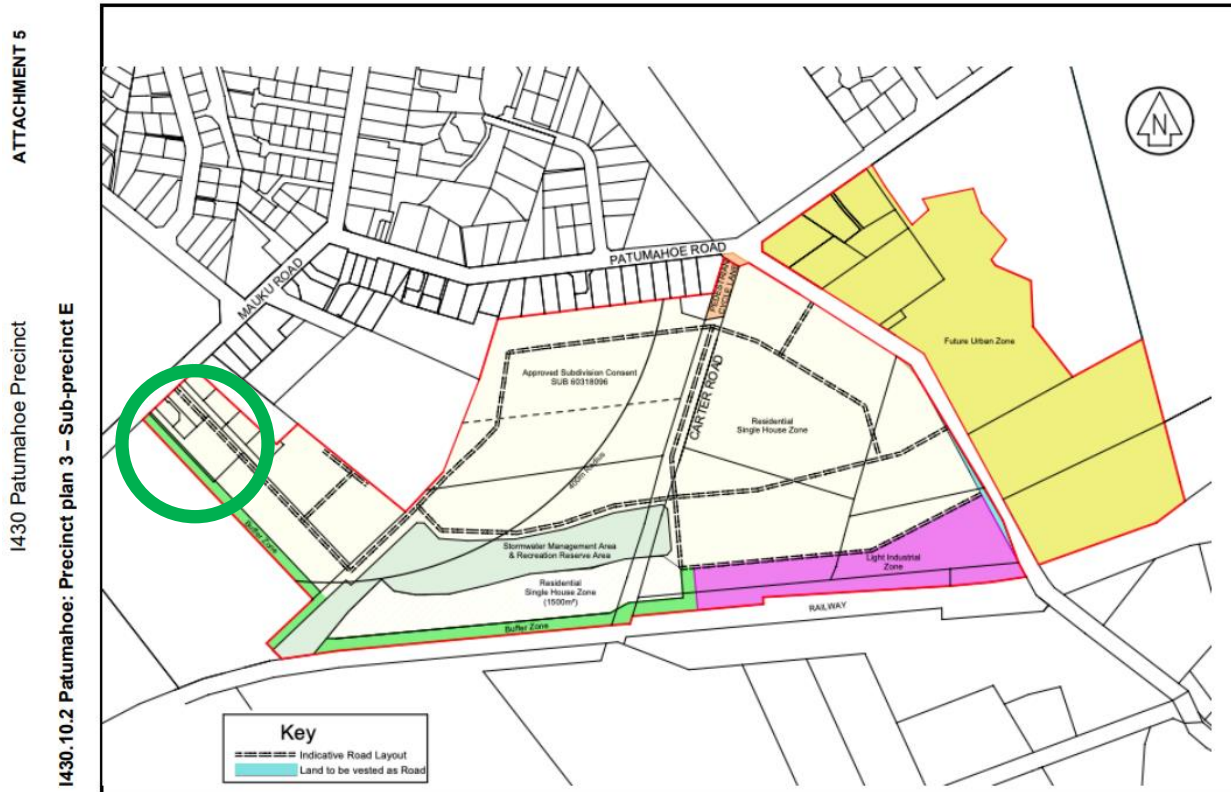
The rezoning does not recognise the historical, current and future land use of the property.

A Single House zoning of the site and surrounds is likely to create operational constraints for the site.

The plan change assessment (Section 32) fails to assess this matter and the plan change is therefore deficient.

1430.10.2 Patumahoe: Precinct plan 3 – Sub-precinct E

Precinct Plan 3 proposes an *Indicative Road* through 28 Mauku Road – effectively through the buildings.



This is a significant effect on the submitter.

The submitter has no intention to sell the property or remove the buildings and infrastructure that support the sites consented land use.

The plan change assessment (Section 32) fails to assess this matter and the plan change is therefore deficient.

The plan change assessment (Section 32) fails to assess alternatives should this linkage not be achievable.

I seek the following decision by Council

- 34.1 | The submitter seeks that the plan change be declined as it relates to the rezoning of 28 Mauku Road and surrounds to Single House Zone unless provisions are put in place to protect the site's land use activities from the effects of Single House development and use (ie reverse sensitivity).
- 34.2 | The submitter seeks the removal of the Indicative Road through 28 Mauku Road from Precinct Plan 3.

Decision on an application for resource consent under the Resource Management Act 1991



Discretionary activity

Application number: LC603183
Applicant: Alpito Hills Limited
Site address: 28 Mauku Road, Patumahoe
Legal description: Lot 1 DP 13604
Proposal:

To construct additions and alterations to the existing warehouse totalling 268m² which will be split into four 5m² units that will be utilised as either an extension of the existing warehouse and storage facilities as well as associated earthworks, landscaping and signage.

The resource consents required are

Land use consents s33 – LC603183

Auckland Unitary Plan (Operative in part)

District land use

H19 Rural Zones

- The proposal involves additions and alterations to an existing building that fails to meet the zoning standard and is a Restricted Discretionary Activity under C1.2
 - The side yard setbacks are infringed along the western site boundary as the proposed commercial units are set back 6.8m from the site boundary, infringing the 12m side yard setback by 5.2m H1.10.3
- The use of the building addition for storage and lock up facilities requires consent as a Discretionary Activity H1.8.1A40

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

- The proposal involves a change of use which requires consent as a Controlled Activity under Regulation of the NESCS.

Decision

I have read the application, supporting documents, and the report and recommendations on the application for resource consent. I am satisfied that I have adequate information to consider the

matters required by the Resource Management Act 1991 (RMA) and make a decision under delegated authority on the application.

Acting under delegated authority, under sections 104, 104B, and Part 2 of the RMA, the resource consent is **GRANTED**.

Reasons

The reasons for this decision are:

1. In accordance with an assessment under s104B and a100 of the RMA the actual and potential effects from the proposal will be acceptable, subject to the conditions of this consent, as:
 - a. The proposed addition will complement the existing building and will not be readily visible beyond the existing development on 26 Mauku Road. The limited height, being less than 5m, will be submissive to the existing warehouse and will not dominate the site.
 - b. The addition is designed to align with the existing warehouse and is in keeping with the surrounding environment in terms of the rural zoning and smaller scale urban development.
 - c. The additional storage units will be of an appropriate scale and use, when considering the growth of the Patumahoe area, especially as the area is subject to future growth enabled under the Auckland Unitary Plan.
 - d. The site adjacent to the road reserve is of a limited bulk and height and is existing. This is an appropriate site identifier and the proposed signage on the individual commercial unit signage will not be visible from the street. The level of signage proposed is acceptable for the site and will not result in an dominance effects, provided that the condition of this consent is complied with.
 - e. The parking and access area is suitable and appropriate manoeuvring capacity is achieved. It is expected that this will result in a reduction in traffic utilising the existing right of way.
 - b. The limited size and scale of the addition will not generate traffic that will adversely affect the surrounding transport network. It is estimated that the proposal will generate roughly 50 vehicle trips per day, with a peak of approximately 6 vehicles per hour. As a majority of this traffic will utilise the new vehicle access area, it is not expected that this will adversely affect the existing right of way, as this will be primarily used by the owner to access their storage area at the rear of the existing building.
 - c. There are existing service connections on the site and an additional soakpit is proposed to mitigate and manage the additional impervious areas proposed. This is suitable and acceptable for the site.
 - f. Noise effects are anticipated to be limited as the anticipated uses are not expected to include those that could emit noise beyond the site boundaries. When considered against the receiving environment and permitted baseline in terms of permitted activities within the rural production zone, it is expected that any noise generated from the site

- will be less than that of some permitted activities, such as rural airstrips, intensive quarries, compliant quarries etc.
- i. The proposed lighting will not have any adverse effects on the wider environment due to the setback from the road and the proposed lighting being a sensor light in line with a residential standard of lighting.
 - j. A Detailed Site Investigation (DSI) as provided and has been reviewed by Council specialist Claire Lacina. Ms Lacina's review agrees within the DSI provided, which states that low level contamination in the soil on site can be mitigated to minimise the risks to human health, provided that the Site Management Plan (SMP) is implemented. Compliance with the SMP is required as a condition of this consent as recommended by Ms Lacina, and will ensure that the effects will be acceptable.
 - k. The application has been reviewed by Council engineer Marusha Pandian who has not raised any concerns with the proposal and has confirmed that the servicing and earthworks are acceptable, subject to compliance with the conditions proposed under this consent. In addition, the signage proposed has been reviewed by Council traffic engineer Dean Thamiah, who has provided a condition requiring alteration to the existing sign adjacent to the road reserve.
 - l. Regarding 26A Kinseal Road, the proposal will not adversely affect this site or its occupants, as the land is to be developed as part of Patumahoe Sub Precinct. In addition, the existing dwelling on this land is over 140m from Mauku Road, making any adverse traffic, noise or visual effects negligible.
 - m. Regarding 28 Mauku Road, the proposed addition is setback from the shared southern boundary further than the existing warehouse and the infill is towards the right of way rather than the area where the dwelling is located. The proposed units will face towards the right of way on 28 Mauku Road and will be separated by a 1m high fence which will have 5 parallel parking spaces running alongside it. In addition, the area between the new driveway and the existing right of way will have a landscaped strip. This will provide visual separation between the sites, whilst maintaining the rural character in terms of visual openness.
 - n. The proposed new sensor light will face towards the existing right of way and there is the potential for some light spillage. However, as the light will be a sensor light of a residential nature, it is expected that the light will create adverse effects that are less than minor. In addition, there is existing vegetation along the property boundary between 28 and 28 Mauku Road, which will further screen the lighting produced from the sensor lights.
 - o. With regard to the traffic effects, it is expected that there will be positive effects for the property at 28 Mauku Road as there will be less traffic utilising the shared existing right of way. There is still a need to retain the right of way in order for the storage area to the rear of the warehouse to be accessed.
 - p. 30 Mauku Road and its occupants and users will not be affected by the proposal due to the existing shelter belt between the right of way on 28 Mauku Road and the location of the dwelling on the 30 Mauku Road site. It is not expected that any noise, traffic or amenity effects will not be noticeable to this site and its users.

- q. In terms of positive effects, the proposal will provide for commercial activities that will support planned urban development within the surrounding Patumahoe area and is a good use of the site which is already utilised for warehousing and storage.
 - r. With reference to s104(1)(a), there are no specific offsetting or environmental compensation measures proposed or agreed to by the applicant to ensure positive effects on the environment.
2. In accordance with an assessment under s104(1)(b) of the RMA the proposal is consistent with the relevant statutory documents. In particular

a. Auckland Unitary Plan (Operative in Part)

i. H1 Rural Zones

- Objectives and Policies H1.2.1, H1.2.2(5)(a)(c), H1.2.3(1), H1.2.4(1), H1.2.5(1)(4), H1.2.6(1)(2), H1.3.2 and H1.3.3(1)
- Assessment Criteria H1.12.2(1) It is noted that although these criteria apply to restricted discretionary activities, the assessment matters provide guidance for the relevant matters to be considered and expected levels of effects.

The addition to the existing building will not result in noticeable bulk effects nor will the materials result in an adverse glare or reflectivity effects, as the building is in keeping with the form of the existing warehouse, which is in line with a building form that could be found within rural areas.

Limited earthworks are required to establish the addition as the site is already level and the building will not result in adverse amenity effects to adjacent sites as the addition will overlook a right of way and existing screen hedging.

The visibility of the addition from the road will be limited as the majority of the building will be located behind the site fronting the street. The proposed signage for the individual units is on an appropriate scale and will not create adverse effects towards adjacent sites or the wider environment. The existing sign located adjacent to the road reserve is also on an appropriate scale and does not detract from the surrounding character due to its limited bulk.

Noise and light emitted from the site will be acceptable as the proposed hours of operation and likely activities on site will not result in noise or light effects that will adversely affect adjacent sites. Noise from the activities is expected to be within the permitted limits and the lighting proposed will also comply with the standards. The A10 provided as part of the application and referenced in Condition 1, ensure compliance with these standards.

A new 1m fence and landscaped strip will delineate the entrance access and provide improved visual amenity.

The new access to service the site is appropriate and will reduce the traffic movements utilising the existing right of way. Appropriate parking is also provided to ensure there is no spill over on to the street.

Stormwater mitigation such as a soakaway pit is proposed to mitigate the additional impervious areas and stormwater runoff generated by the building.

The proposed commercial activities will support the surrounding area as it develops and will provide services to support the surrounding residential and rural community. As the site is already utilised for warehousing and storage, the proposal does not result in an fragmentation of rural land. The site has been utilised for warehousing and storage for at least 20 years and therefore the proposal does not adversely affect the potential of rural production activities and is an appropriate site for such development within the edge of the Patumahoe village. In addition, the site's location adjacent to residential zoned land and the Patumahoe centre, makes this a good location for the proposed commercial use.

The character and amenity of the area is maintained as the addition is in keeping with the existing warehouse, whilst also being reflective of a more urban land use, which is acceptable given its location adjacent to residential and business land uses. Further, the addition is of an intensity and scale suitable to the small Patumahoe centre and will enable people and the community to provide for commercial needs within the surrounding rural setting. The proposal is consistent with the policies under H1.2.6 as it provides commercial services in line with the character of the area and will not result in an adverse sensitivity effects given the residential uses of the surrounding sites. It is expected that at least some of the units proposed will be utilised by businesses focused towards rural services, given the location within a rural township.

ii. 27 Transport

- Objectives and Policies 27.2 and 27.3

The proposed vehicle crossing, access and parking will be appropriate to support the addition whilst minimising adverse effects on adjacent properties and road users. The location of the parking area set back from the road frontage will minimise adverse visual effects, as a majority of the parking spaces will not be visible from the street. In addition, the proposal will remove a majority of traffic utilising the existing right of way. Sufficient separation is provided between adjacent vehicle crossings.

The expected trip generation is acceptable given the expected growth in the Patumahoe area and is not expected to result in noticeable adverse effects with regard to the operation of the surrounding transport network. The ability to reverse manoeuvre on site also ensures safe movements entering and exiting the site.

Appropriate loading space is provided for on site and will not be readily visible to adjacent sites or the wider environment. There is already an existing loading space on the site, which will not change.

Landscaping along the proposed access will also mitigate the visual effects of the new crossing and provide sufficient delineation between adjacent sites.

iii. 23 Signs

- Objectives and Policies 23.2 and 23.3
- Assessment Criteria 23.8.2

The existing sign adjacent to the road reserve is of a scale which does not adversely affect the character and amenity of the area as it has a wooden frame, is not

illuminated and is under 2m in height. As the area develops over time, this may come in to look out of character, however currently it is in keeping with the local character of the area. It is considered that this existing sign is usually recessive due to the materials, colour scheme and size and does not detract from the streetscape nor will it distract motorists.

Provided that the related condition is complied with, the sign will not produce adverse effects beyond a less than minor degree.

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

The DSI provided has been reviewed by Council specialist Ms Lacina, who has provided the following assessment:

“The proposed 140m³ volume of soil disturbance meets the Permitted Activity criteria under Regulation 8(3) of the NES:CS. The DSI has indicated the proposed development will not result in a change of use. However, given the area of development is currently vacant, unsealed land, and there is a residential dwelling on site, the proposed works are also assessed as a change of use under the NES:CS.

A DSI for the proposed application has been prepared, and shows the contaminants of concern are below SCSs (health) criteria – Commercial/industrial outdoor worker (unpaved), and the AUP(OP) E.30.6.1.4.1 Permitted activity soil acceptance criteria, but exceed regional background concentrations.

Therefore, the application is assessed as a Controlled Activity under Regulation 9 of the NES:CS Regulation (MfE, 2011).

I agree with the conclusions of the DSI that the low level contamination in the soil on site can be mitigated to minimise the risks to human health from the proposed commercial storage extension. The SMP (GSL, 2018) is considered sufficient to control the proposed development within soils exhibiting low level contamination, and implement procedures for future removal of the existing septic tank.”

Compliance with the Site Management Plan is required as a condition of this consent to ensure that the soil contamination is appropriately managed.

- 3. In accordance with an assessment under s104 of the RMA the following other matters are considered appropriate:

a) Auckland Council Signage Code 2015

The proposal includes the provision of signs on each of the units for identification purposes. The signs will only be visible from within the site and the adjacent right of way and will not be usually dominant in an area. These signs will be a compliant size and location on the building and are therefore acceptable.

- 4. This proposal achieves the sustainable management purpose of the RMA under Part 2 because it will provide for the social and economic wellbeing of both the site owner as well

as future occupants. In addition, it is an appropriate use of land that has already been developed for commercial purposes and is in close proximity to an urban centre.

5. Overall the proposal is acceptable and will result in less than minor effects on the environment, provided that the conditions imposed are met.

Conditions

Under section 108 of the RMA, this consent is subject to the following conditions:

- The addition of the four 5m² storage units, associated access, earthworks, landscaping and signage activities, shall be carried out in accordance with the documents and drawings and all supporting additional information submitted with the application, detailed below, and all referenced to the council as resource consent number LC603183.

- Application Form, Assessment of Environmental Effects and Unitary Plan Assessment prepared by Hodson Planning Consultants Limited, dated 17 August 2018

Report title and reference	Author	Ref	Dated
Geotechnical Assessment and Stormwater Management Report Ref RD4062	Tisle Engineering Limited		17 April 2017
Detailed Site Investigation (DSI), 28 Mauku Road, Patumahoe, Auckland	Geosciences Limited	1	24 July 2018

Drawing title and reference	Author	Ref	Dated
Kraakman 2121 Site Development Plan, 28A Mauku Road, Patumahoe	Douglas Mills		28 June 2018
Kraakman 2121 Landscaping Plan, 28A Mauku Road, Patumahoe	Douglas Mills		28 June 2018
Kraakman, 2121, 28A Mauku Road, Patumahoe North West and South West Elevation	Douglas Mills		June 2018
Kraakman, 2121, 28A Mauku Road, Patumahoe South East Elevation	Douglas Mills		October 2017
Proposed Additions at 28A Mauku Road, Patumahoe for P and S Kraakman – Floor Plan, RC1, 2121	Douglas Mills		October 2017
Proposed Additions at 28A Mauku Road, Patumahoe for P and S Kraakman – Part Long Section, RC2, 2121	Douglas Mills		October 2017
Proposed Additions at 28A Mauku Road, Patumahoe for P and S Kraakman – Foundation Plan, RC3, 2121	Douglas Mills		August 2017
Proposed Additions at 28A Mauku Road, Patumahoe for P and S Kraakman – Roof Framing Plan, RC4, 2121	Douglas Mills		August 2017

2. Under section 125 of the RMA, this consent lapses if it ceases to have effect after the date it is granted unless
 - a. The consent is given effect to or
 - b. The council extends the period after which the consent lapses.
3. The consent holder shall pay the council an initial consent compliance monitoring charge of \$320 inclusive of GST, plus an further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to this consent.

Advice note:

The initial monitoring deposit is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent. In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge. Only after all conditions of the resource consent have been met, will the council issue a letter confirming compliance on request of the consent holder.

Vehicle crossing

4. The new vehicle crossing shall be designed and formed in accordance with Auckland Transport Code of Practice Standards D020. The new crossing shall maintain an at-grade level pedestrian footpath across the length of the crossing, using the same materials, kerbing, pavings, patterns and finish as the footpath on each side of the crossing. The term shall be reinstated to Council’s “Code of Practice for Working in the Road.” (<https://at.govt.nz/about-us/working-on-the-road/>)

Advice note:

Works within the road reserve require prior approval from Auckland Transport. The consent holder should contact Auckland Transport as soon as possible to ensure any required approvals are issued prior to construction.

5. The drainage and manoeuvring areas shall be constructed, with stormwater control, in compliance with Council’s current Auckland Council Engineering Standards, prior to the occupation of the commercial units, and to the satisfaction of the Council Team Leader Compliance Monitoring South.
6. The drainage is to be sealed for the first 5 metres from the road into the site.

Soakage Trench

7. The stormwater soakage trench system is part of the private drainage system of the lot. The owner and all future owners of the lot are responsible for the maintenance of the soakage recharge pit system at all times, to the satisfaction of the Council Team Leader – Resource Compliance at the consent holder’s expense.

Signage

8. The existing sign adjacent to the road reserve shall be amended or replaced, and only one phone number shall be displayed on the free standing identification sign. The sign must retain the 1.2m height and 1.8m width of the existing sign. The lettering size of message that does not comply with Traffic Control Devices Manual 2011 (TCDM) of the New Zealand Transport Agency shall be replaced with specified size of letterings.

Noise

9. Noise from the activity shall not exceed the following limits when measured at or on the boundary of the subject site
- 50dB LAeq between 7am and 10pm Monday to Friday inclusive
 - 50dB LAeq between 7am and 6pm Sunday and
 - 40dB LAeq 75dB LAmax at all other times.

Advice Note:

The consent holder is reminded of their general obligation under section 16 of the Resource Management Act 1991 to adopt the best practicable option to ensure that the emission of noise does not exceed a reasonable level.

Hours of operation

10. The storage and lock up activity shall be restricted to between the hours of 7:30am to 7:00pm.

Lighting

11. The new sensor light to be located on the verandah of Unit D as shown on the South West elevation plan, dated June 2018, shall face downwards and away from the adjacent right of way to ensure no light spill occurs on the neighbouring property.

Contamination

12. Earthworks shall be undertaken in accordance with the Site Management Plan, dated 10 July 2018, submitted as part of the Detailed Site Investigation dated 24 July 2018. Any variation to this Site Management Plan shall be submitted to the Team Leader Compliance Monitoring Southern, Licensing & Regulatory Compliance, Auckland Council for certification.
13. In the event of unexpected contamination (e.g. refuse, asbestos, discoloured, stained or odorous soil or groundwater) is discovered during any earthworks, the consent holder shall immediately cease the works in this vicinity and notify the Team Leader Compliance Monitoring Southern, Licensing & Regulatory Compliance, Auckland Council, and provide a contamination report to the satisfaction of the Team Leader Compliance Monitoring Southern, Licensing & Regulatory Compliance, Auckland Council.
14. Excess soil or waste materials removed from the subject site shall be deposited at a disposal site that holds a consent to accept the relevant level of contamination. Where it

can be demonstrated that the soil or waste materials have been fully characterised in accordance with the cleanfill criteria as outlined in the Auckland Unitary Plan (Operative in Part A) PUP and meets the definition of 'cleanfill', the removal to a consented disposal site is not required. Copies of the disposal dockets for the material removed from the site shall be retained and provided to Auckland Council upon request.

15. The consent holder shall ensure that the contamination level of an imported soil complies with the cleanfill criteria as outlined in the Auckland Unitary Plan (Operative in Part A) PUP, and evidence thereof provided to the Team Leader Compliance Monitoring Southern, Licensing & Regulator Compliance, Auckland Council.
16. The consent holder shall at all times control and dust from the site in accordance with the Good Practice Guide for Assessing and Managing the Environmental Effects of Dust Emissions, Ministry for the Environment (2016).
17. If required, stockpiles shall be placed within the excavation foot print and fully covered with polythene or equivalent impermeable material and anchored at the edges. Stockpiles shall be placed on impermeable surfaces and retained within the area of sediment controls. Stockpiles shall be completely covered with polythene or equivalent impermeable material.
18. Following completion of earth works, the consent holder shall provide to the satisfaction of the Team Leader Compliance Monitoring Southern, Licensing & Regulator Compliance, Auckland Council, a works completion report, which shall include but not limited to the following
 - Soil test results for an imported soils
 - Total volume of excavated soil disposed on site
 - Waste transfer notes of soils disposed to a licensed facility and fill.
19. In the event the proposed earth works are carried out in the location of the septic tank, the applicant's attention is drawn to the below conditions to assess if a health risk may be present
 - a description of the treatment system i.e. type, age, use, maintenance
 - a map identifying the location of the system
 - intended future use of the wastewater disposal field
 - any soil disturbance volume in the affected areas
 - any system failures or complaints in the past
 - evidence of testing results of discharge water quality to the soakaway field, in a failed any LIM tasks arising from methamphetamine production in the property
 - validation soil sampling from the tank pit and associated areas of overtopping and disposal.

Advice notes

1. Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.
2. For the purpose of compliance with the conditions of consent, "the council" refers to the council's monitoring inspector unless otherwise specified. Please contact Auckland Council (Southern) on (09) 301 0101 or monitoring@aucklandcouncil.govt.nz to identify your allocated officer.
3. For more information on the resource consent process with Auckland Council see the council's website: www.aucklandcouncil.govt.nz. General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment's website: www.mfe.govt.nz.
4. If you as the applicant disagree with any of the above conditions, or disagree with the additional charges relating to the processing of the application, you have a right of objection pursuant to sections 357A or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of your receipt of this decision (for s357A) or receipt of the council invoice (for s357B).
5. The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.

Delegated decision maker

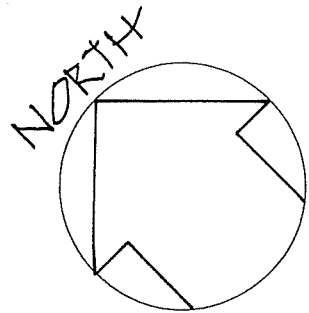
Name Ian Masters
 Title Team Leader, Resource Consents
 Signed



Date 20/8/2018

KRAAKMAN #Z1Z1
 Landscaping Plan
 ZBA Mauku Road,
 Patimatōe

1:200 ZB JULY 2018



BOTANICAL NAME	COMMON NAME	GRADE	MATURE HxW	SPACING	NUMBER
Pseudopanax	Cyril Watson	PB 3	2.0x2.0	6m	8
Corokia Cotoneaster	Korokio	PB 3	2.0x1.5	6m	8
Acaena Purpurea	Bidibidi	PB 2	0.1x1.0	random	15
Festuca Coxii	Blue grass	PB 2	0.3x0.3	random	30
Carex Comans	Carex grass	PB 2	0.3x0.3	random	30

LANDSCAPING NOTES

Planting is adjacent to the existing driveway – this will partially screen the Storage Building and the car parks from the road.

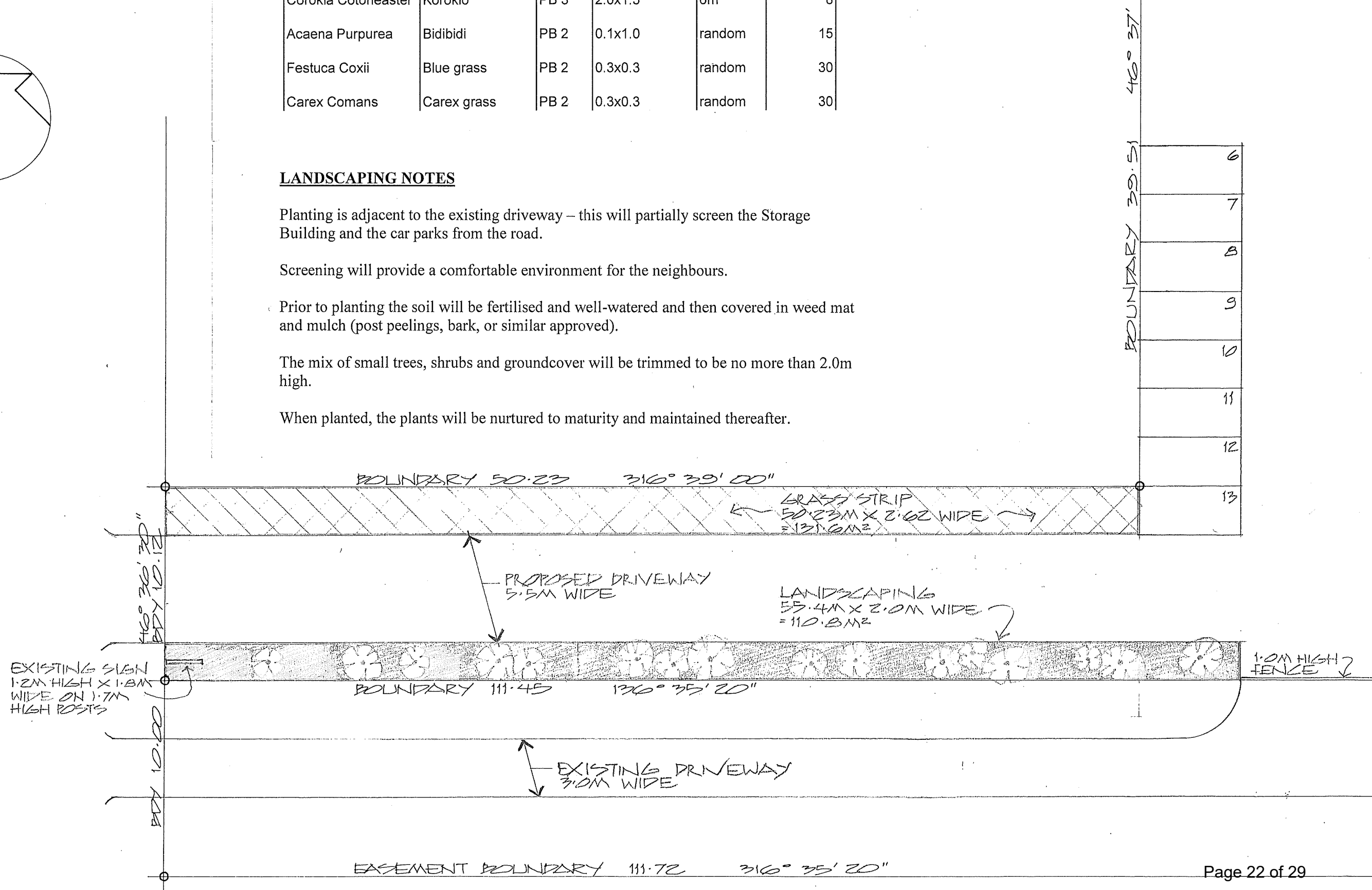
Screening will provide a comfortable environment for the neighbours.

Prior to planting the soil will be fertilised and well-watered and then covered in weed mat and mulch (post peelings, bark, or similar approved).

The mix of small trees, shrubs and groundcover will be trimmed to be no more than 2.0m high.

When planted, the plants will be nurtured to maturity and maintained thereafter.

MAUKU ROAD

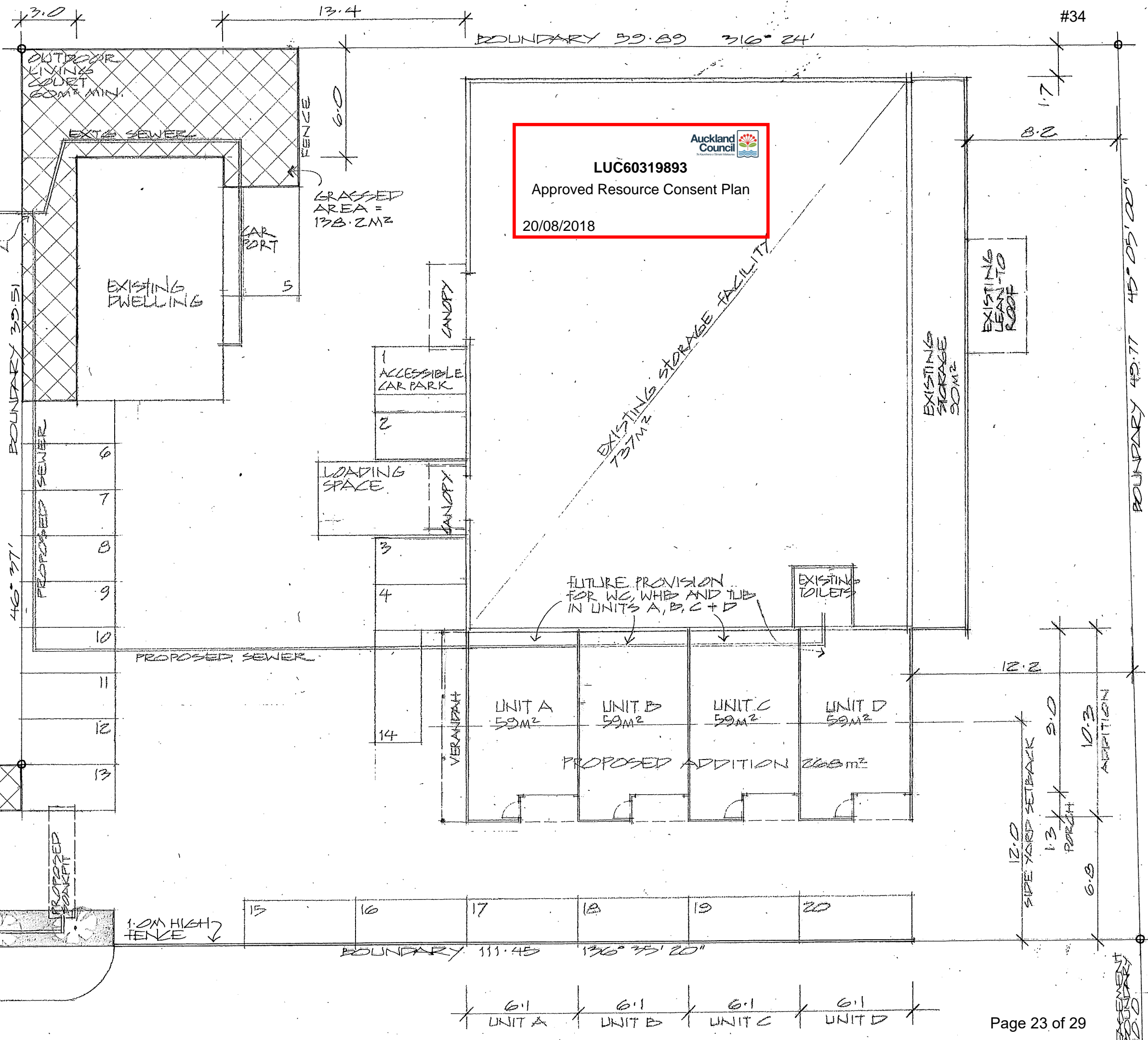
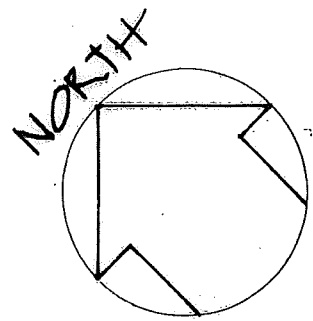


KRAAKMAN #2121
 Site Development Plan
 ZBA Maluku Road,
 Pāhūmahoe


1:200 28 JUNE 2018

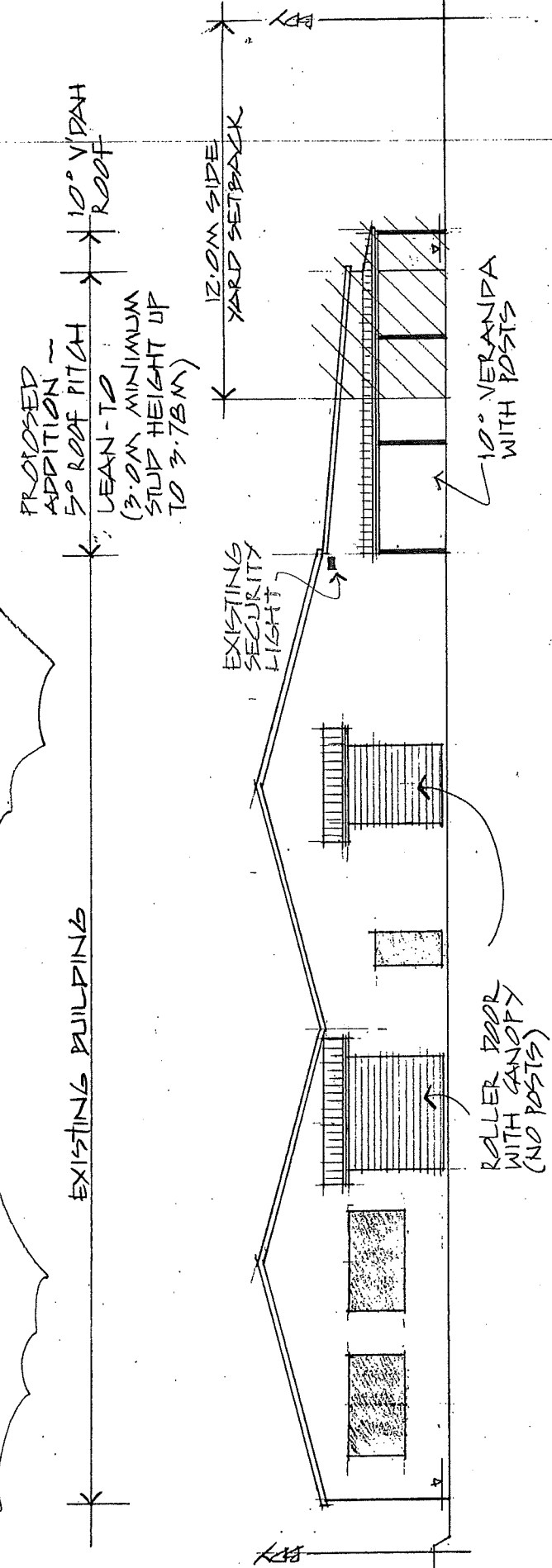
LEGAL DESCRIPTION

LOT 1
 DP 136094
 3514 m²

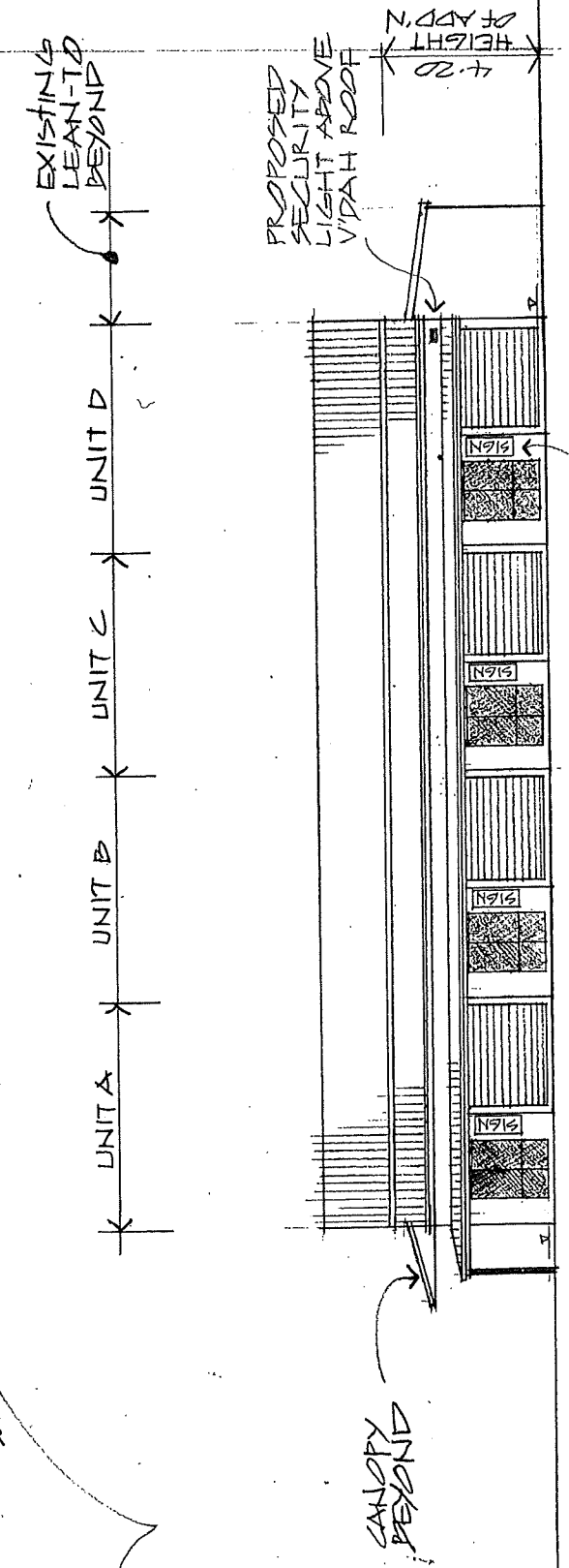


Auckland Council
LUC60319893
 Approved Resource Consent Plan
 20/08/2018

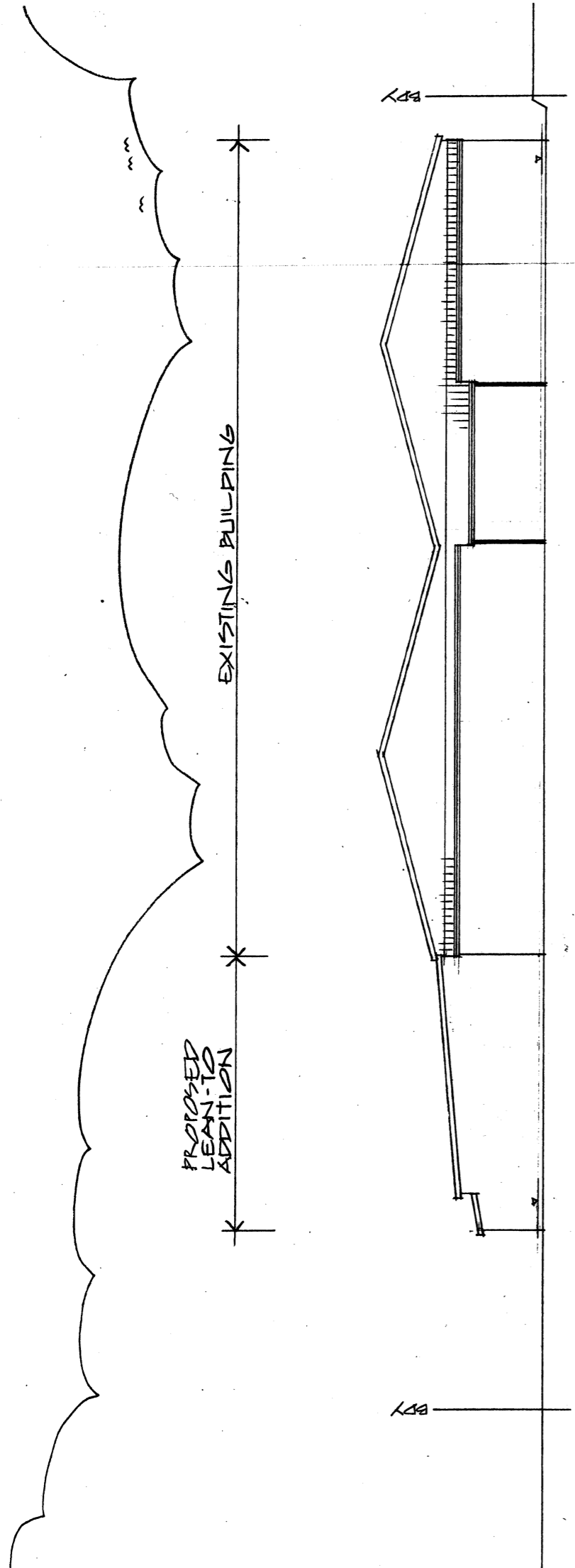

LUC60319893
 Approved Resource Consent Plan
 20/08/2018



KRAAKMAN #2121 NORTH-WEST 1:200
 ZBA MAUKU ROAD, PATEMANOE JUNE 2018

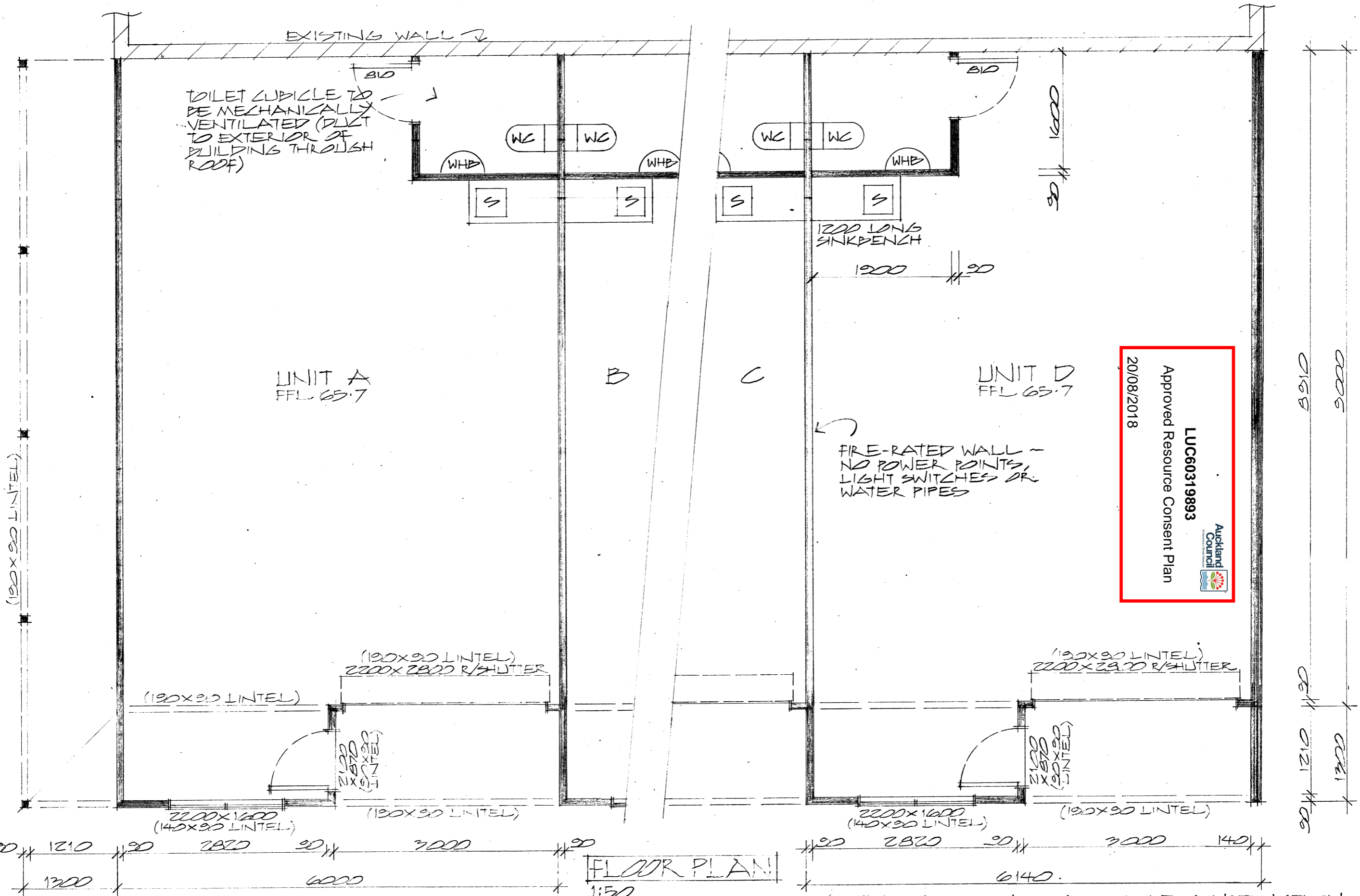


KRAAKMAN #2121 SOUTH-WEST 1:200
 ZBA MAUKU ROAD, PATEMANOE JUNE 2018



KRAAKMAN #2121
 20A MAUKU ROAD, PATALMOROE

SOUTH-EAST 1:200
 October 2017



**PROPOSED ADDITIONS at
28A MAUKU ROAD, PATUMAHOE, for
P and N KRAAKMAN**

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	doug@dmrdesign.co.nz	09 2353714	

TRAPEZOIDAL PROFILE STEEL ROOFING ON SELF-SUPPORTING UNDERLAY ON 240X45 HI.Z HYPAN PURLIN-RAFTERS AT 900 CRS

CORRUGATED PROFILE STEEL ROOFING ON SELF-SUPPORTING UNDERLAY ON 20X45 (ON FLAT) PURLINS AT 900 CRS

90X45 S6B HI.Z STUDS AT 600 CRS WITH NOBS AT 800

12mm H31 PLYWOOD DIRECT FIX OVER BUILDING WRAP TO FRAMING

12mm PLYWOOD ON 90X45 S6B HI.Z JOISTS AT 600 CRS

NOTE - EAST WALL OF UNIT D - 140X45 S6B HI.Z STUDS AT 600 CRS WITH NOBS AT 800 CRS

UNIT A
FFL 65.7

TYPICAL SECTION

INTERNAL FIRE WALLS - 90X70 S6B HI.Z STUDS AT 600 CRS WITH NOBS AT 800

WEST WALL - 90X45 S6B HI.Z STUDS AT 600 CRS WITH NOBS AT 800 CRS

90X90 HI.Z TIMBER POST SUPPORTING 130X90 S6B HI.Z BEAM

UNIT A
FFL 65.7

UNIT B
FFL 65.7

PART LONG SECTION 1:50

VERIFY ALL DIMENSIONS BEFORE CONSTRUCTION

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450 X 450 X 500
DEEP (0.1m³)
ISOLATED POST
FOOTINGS

#

EXISTING
BUILDING

20MPa
100mm THICK
CONCRETE SLAB
SE 62 MESH
FFL 65.7

300 X 300 PERIMETER FOOTINGS

2000
10300
1/2 BLOCKWORK

3000 X 3000 X 3000 X 3000 X 3000 X 3000 X 3000 X 3000 X 140
24140
1/2 BLOCKWORK

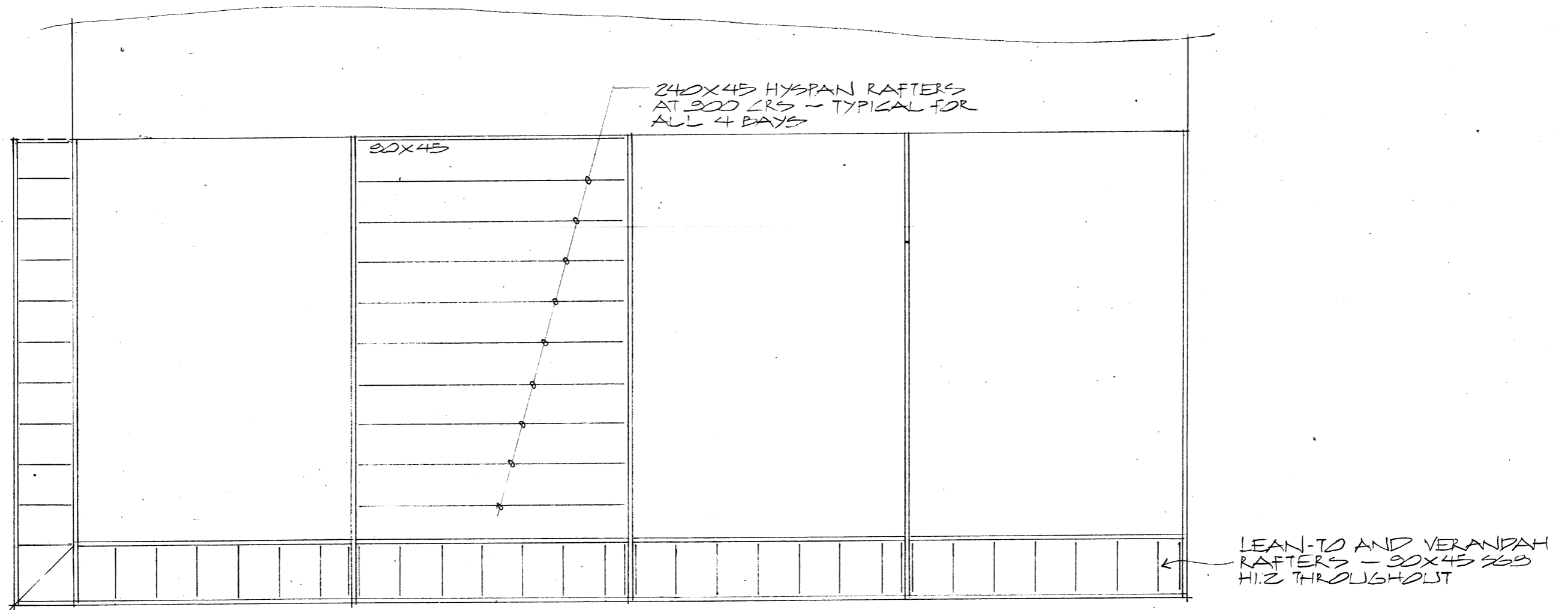
FOUNDATION PLAN 1:100

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doug@dmrdesign.co.nz
BOX 918
PUKEKOHE
09 2353714
RC3
2121



ROOF FRAMING PLAN 1:100

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