

# DECISION FOLLOWING THE HEARING OF A PLAN CHANGE TO THE AUCKLAND UNITARY PLAN UNDER THE RESOURCE MANAGEMENT ACT 1991



## Proposed Private Plan Change 99 to the Auckland Unitary Plan

### PROPOSAL

Private plan change request to rezone 13 Cresta Avenue and 96 Beach Haven Road, Beach Haven from Residential - Single House to Residential - Mixed Housing Urban and to introduce a precinct which is required to include the Medium Density Residential Standards from Schedule 3A of the RMA in accordance with section 77G(1) of the RMA.

This plan change is **APPROVED**. The reasons are set out below.

<b>Private Plan Change:</b>	99
<b>Applicant:</b>	Beach Haven Road Apartments Limited
<b>Hearing commenced:</b>	Thursday 12 September 2024 at 9.30 am
<b>Hearing panel:</b>	Karyn Kurzeja Peter Kensington Cherie Lane
<b>Appearances:</b>	<p><u>For the Applicant:</u> Beach Haven Road Apartments Limited represented by: Jeremy Brabant (Legal Counsel) Michael Williams (Civil) Mike Nixon (Transport) Frank Pierard (Urban Design) Rachel Morgan (Planning)</p> <p><u>Kaipātiki Local Board:</u> Represented by John Gillon</p> <p><u>For the Submitters:</u> Elisabeth Morgan-Reeve Crispin Robertson Keith Salmon (MS-Teams) Cherylee Lonsdale represented by John Hudson (MS-Teams)</p> <p><u>Tabled Statements</u> New Zealand Defence Force Auckland Council, as Submitter</p>

	<p><u>For the Council:</u>  Jo Hart, Planner  Andrew Temperley, Traffic Engineer  Amber Tsang, Healthy Waters Specialist (Consultant)  Carmel O'Sullivan, Healthy Waters Senior Specialist  Bevan Donovan, Hearings Advisor</p>
<b>Hearing adjourned</b>	12 September 2024
<b>Commissioners' site visit</b>	30 August 2024
<b>Hearing Closed:</b>	8 November 2024

## INTRODUCTION

1. The private plan change request by Beach Haven Road Apartments Limited (formerly known as Bentley Studios Limited) ("the Applicant") was made under Clause 21 of Schedule 1 to the Resource Management Act 1991 ("**RMA**") on 16 April 2021 and, following receipt of all further information, Private Plan Change 99 was accepted for processing by Auckland Council ("**the Council**") under Clause 25 of Schedule 1 of the RMA on 27 March 2024<sup>1</sup>.
2. A report in accordance with section 32 and 32AA (in relation to the changes sought) of the RMA was prepared in support of the proposed plan change for the purpose of considering the appropriateness of the proposed provisions.
3. This decision is made on behalf of the Council by Independent Hearing Commissioners Karyn Kurzeja, Peter Kensington and Cherie Lane and appointed and acting under delegated authority under sections 34 and 34A of the RMA.
4. The Commissioners have been given delegated authority by the Council to make a decision on Plan Change 99 ("**PC 99**") to the Auckland Council Unitary Plan Operative in Part ("**AUP(OP)**") after considering all the submissions, the section 32 evaluation, the reports prepared by the officers for the hearing and evidence presented during and after the hearing of submissions.
5. PC 99 is a private plan change that has been prepared following the standard RMA Schedule 1 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as enabled under the RMA).
6. The plan change was publicly notified on 18 April 2024 following a feedback process involving Iwi, as required by Clause 4A of Schedule 1. Notification involved a public notice as well as letters to directly affected landowners and occupiers alerting them to the plan change. The latter step was aimed at ensuring that landowners and occupiers of properties affected by potentially significant changes were made aware of the changes.

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<sup>1</sup> Full details of the background to the notification timing of this plan change are discussed further in paragraphs 8-11 of this decision.

7. The submission period closed on 17 May 2024. A summary of submissions was notified for further submissions on 14 June 2024. A total of 90 submissions were made on the plan change. There were no late submissions or further submissions received.
8. When PC 99 was lodged with the Council on 16 April 2021 the purpose of PC 99 as outlined in section 4.2 (page 7) in the s32 evaluation<sup>2</sup> report was to:

*“...enable greater density to make efficient use of highly accessible land close to the Beach Haven Local Centre and public transport. The reason for this Plan Change is that the applicant, who is a majority landowner of the Plan Change area, intends to develop the site in a manner consistent with the MHU zones, which this Plan Change request will enable.”*
9. At the time of lodgement in 2021, an assessment of the request was undertaken by the Council. A Clause 23 request was provided to the Applicant, with the last part of their response being received on 14 September 2021. Auckland Council was then required at that time to both decide whether to accept the request and the level of notification required i.e. limited or full notification.
10. On 23 October 2021, the Applicant sought that the plan change request be put on hold. The Applicant then sought separate resource consent applications for subdivision and development of the two sites on 25 February 2022. The bundled applications were publicly notified on 14 December 2022, with the submission period ending 3 February 2023. A hearing was held on 4 and 5 July 2023. The Independent Hearing Panel’s decision, made on behalf of the Council, was issued on 31 August 2023. This decision refused the resource consents on the basis that the proposal was contrary to the objectives and policies of the Residential – Single House Zone, and in general, the AUP(OP).
11. On 16 October 2023, the Applicant advised the Council that it wished to recommence the previously lodged request to rezone the two sites from Residential - Single House zone to Residential - Mixed Housing Urban zone. Updated documents were provided to support the recommended request, including the precinct provisions to incorporate the MDRS as required by the RMA. The last of the updated material was provided to the Council on 21 February 2024.
12. It should be noted that Auckland Council’s intensification plan change, Proposed Plan Change 78 (“**PC 78**”) is also proposing the Residential – Mixed Housing Urban Zone for the two sites. PC 78 is the Council’s response to give effect to the National Policy Statement on Urban Development 2020 and the MDRS in s77G(1) and Schedule 3A of the RMA.
13. PC 99 is a separate process to PC 78 under Schedule 1 of the RMA, and the zoning change is sought to amend the operative Residential – Single House Zone in the AUP. Further discussion on the relationship between PC 78 and PC 99 can be found in sections 7.7.1 and 9.3 of the s42A Hearing Report. At this time, the Independent Hearing Panel for the PC 78 hearings has indicated that the hearing

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<sup>2</sup> Section 4.2, page 7, of the report titled ‘Beach Haven Road Apartments Limited Section 32 Report’ by Jess Parulian of Barkers and Associates Limited dated November 2023 (see Attachment 1).

of the residential zones are on hold until the Government provides further direction on its 'Housing for Growth' policy and the associated statutory changes required to the RMA<sup>3</sup>. This decision on PC 99 will therefore be issued before the PC 78 hearings and/or decision processes have been completed.

## **SUMMARY OF THE PLAN CHANGE**

14. The proposed plan change is described in detail in the s42A Hearing Report. A summary of key components of the plan change is set out below.
15. PC 99 as notified, seeks a change in zone from Residential – Single House zone (“**R-SH**”) to Residential – Mixed Housing Urban (“**R-MHU**”) in the AUP(OP) for 13 Cresta Avenue and 96 Beach Haven Road, Beach Haven. PC 99 also seeks a new precinct to incorporate the Medium Density Residential Standards (“**MDRS**”) as required by s77G(1) and Schedule 3A of the RMA. No changes to any other spatial layers or text in the AUP are proposed.
16. The private plan change request is statutorily required under Schedule 1, Clause 25(4A) of the RMA to incorporate the MDRS. The method to do this in the AUP, so that it applies to these two sites, is through a precinct. The objectives, policies, and standards in the proposed precinct, as shown in the Applicant’s s32 report, reflect the statutory requirements in Schedule 3A of the RMA.
17. Unless otherwise stated in the proposed precinct provisions, the objectives, policies, and standards of the operative R-MHU zone, and any other relevant provisions of the AUP(OP), will apply to the two sites.

## **THE SITE AND SURROUNDING ENVIRONMENT**

18. The Applicant’s Assessment of Environmental Effects (AEE) provided a detailed description of the PC 99 area and the surrounding environment. In summary, the land comprises two contiguous sites with a total area of 7,147m<sup>2</sup>. The sites are located close to the Beach Haven Local Centre with the driveway to 96 Beach Haven Road situated immediately to the west of the centre. The subject sites are currently vacant with buildings having recently being removed from 96 Beach Haven Road.
19. The plan change area is located within the R-SH zone. The plan change area is irregular in shape and it consists of two panhandle shaped allotments. The 13 Cresta Avenue allotment has a 15m wide frontage to Cresta Avenue. This is consistent with the width of other sites along Cresta Avenue, with a pattern of infill development within the immediate neighbourhood. The Hearing Panel noted the generous formed width of Cresta Avenue during our site visit to the area. The second panhandle is 3.05m wide and has frontage to Beach Haven Road.
20. The topography of the plan change area varies across the site. There are two large areas of relatively flat land on the south-eastern portion of the site. There is a large

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<sup>3</sup> The Hearing Panel notes that the Resource Management (Consenting and Other System Changes) Amendment Bill was introduced to the House recently, but it has not yet proceeded through the readings and the Select Committee process, as such the statutory amendments do not have weight until the Act is in force.

gully which traverses the middle of the site which conveys the flood hazards on site, at the low point of the site. Auckland Council's Geomaps indicates that the central portion of the plan change area is subject to a flood plain and traversed by overland flow paths.

21. Adjoining the site to the north are two other R-SH zoned sites. These properties, 29 and 29A Cresta Ave both contain a single dwelling and garage and the property is covered with mature vegetation. Adjoining the eastern boundary of the plan change area, at 118-122 Beach Haven Road, is a multi-unit residential development comprising of 41 units in four three storey buildings. Consent for these residential units was granted in 2016. To the south and west of the plan change site is established residential housing, largely characterised by one and two storey dwellings.
22. The Beach Haven Local Centre is located in and around a roundabout at the intersection of Beach Haven Road and Rangatira Road. This area comprises of single and two storey commercial buildings with a range of land uses comprising superettes, real estate agencies, hairdressers, a pharmacy as well as food and beverage outlets. The centre also includes a landscaped central public open space. There are three bus stops located in the local centre. Beach Haven Road and Rangatira Road are both arterial roads and are serviced by the Frequent Transit Network (FTN) with buses going to the Central Business District ("CBD"), Newmarket and the Auckland City Hospital via Ponsonby Road. There are also frequent connections to Smales Farm, Takapuna and the North Shore Hospital.
23. The Beach Haven Wharf is located approximately 800m to the west of the Beach Haven Local Centre which is accessible by bus. At the wharf a ferry provides a 40-minute service to the Auckland CBD via Hobsonville. These services operate every 20-60 minutes during peak commuting hours.
24. Shepherds Park is located to the north of the subject site and it provides multiple recreation facilities across the large park area; including fitness equipment, a learn to ride bike trail, play equipment, as well as sports fields and facilities for a range of sports including: football, futsal, squash and tennis.

## HEARING PROCESS

25. We directed the pre-circulation of expert evidence to provide all parties involved the opportunity to have read and considered any legal submissions, evidence or statements in advance of the hearing, and to assist the Hearing Panel in understanding the case being presented.
26. The s42A Hearing Report released on 12 August 2024 recommended that the Auckland Unitary Plan be amended by:
  - a) rezoning the land at 13 Cresta Avenue and 96 Beach Haven Road, Beach Haven to R-MHU, as proposed by PC 99, in the AUP(OP).
  - b) the inclusion of the Beach Haven Precinct to incorporate the MDRS in accordance with Schedule 3A and s77G(1) of the RMA with the

recommended amendments as set out in Attachment 7 to the Hearing Report.

27. Prior to the hearing, the Commissioners undertook a joint site visit on 30 August 2024 to the subject site and the local surroundings.

## **RELEVANT STATUTORY PROVISIONS CONSIDERED**

28. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. These requirements were set out in the s42A Report<sup>4</sup>.
29. The Applicant in their Plan Change Request<sup>5</sup> dated November 2020, provided an evaluation pursuant to s32, and the additional information (Clause 23) requested by the Council.
30. We do not need to repeat contents of the Applicant's plan change request and s32 assessment report in any detail, as we accept the appropriate requirements for the formulation of a plan change have been comprehensively addressed in the material before us. However, in its evidence and at the hearing, we note that the Applicant proposed some changes to the plan change in response to concerns raised by the Council in the s42A Hearing Report and the submissions received. A s32AA assessment was provided as a basis for the additional changes being sought. We observed that the majority of the submissions received in opposition to PC 99 were not actively pursued at the hearing.
31. We also note that the s32 assessment report clarifies that the analysis of the efficiency and effectiveness of the plan change is to be at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal. Having considered the application and the evidence, we are satisfied that PC 99 has been developed in accordance with the relevant statutory requirements.
32. Clause 10 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions, while clause 29 (4) requires us to consider the plan change and to give reasons for (in this case) approving it. This decision gives effect to those clauses of the RMA. The decision must also include a further evaluation, in accordance with section 32AA of the RMA, of any proposed changes to the plan change. We address these matters below, as well as setting out our reasons for accepting, accepting in part, or rejecting submissions.

## **SUMMARY OF EVIDENCE**

33. The s42A Hearing Report was circulated prior to the hearing and taken as read. Expert evidence from the Applicant team was pre-circulated and it was then summarised at the hearing. In doing so, the Applicant responded to the issues and

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<sup>4</sup> Section 42A Report at Section 3

<sup>5</sup> Plan Change Request – Assessment of Effects & Statutory Assessment. Mt Hobson Group November 2020 at Section 9

concerns identified in the Council planning officer's report, the application itself and the submissions made on the application.

34. The evidence presented by the Applicant at the hearing is summarised below.

### **Applicant Team**

#### Opening Legal Submissions

35. Mr Jeremy Brabant presented opening legal submissions which were filed on behalf of the Applicant. It was his submission that PC 99:

- a. Gives effect to the relevant statutory documents including the:
  - i. National Policy Statement on Urban Development 2020 (NPS-UD);
  - ii. National Policy Statement 2020 (NPS-FM); and for Freshwater Management; and
  - iii. National Environmental Standard for assessing and managing contaminants into soil to protect human health (NES-CS).
- b. Gives effect to the AUP's Regional Policy Statement;
- c. Is consistent with the Auckland Future Development Strategy (FDS); and
- d. Is the most appropriate means of achieving the purpose of the RMA by reference to s 32.

36. He submitted that the PC 99 application and evidence lodged on behalf of the Applicant comprehensively address the proposed rezoning and proposed precinct provisions and conclude that they are the most appropriate method to achieve the purpose of the RMA.

37. Mr Brabant observed that there is a high level of agreement between the Applicant's witnesses and the expert witness team engaged by the Council. He noted that the s42A Hearing Report prepared by Ms Hart on behalf of the Council is generally supportive of PC 99 subject to some recommended modifications to the precinct provisions.

38. He advised that the Applicant has responded to matters raised by submitters through making appropriate amendments to the precinct provisions. Mr Brabant informed us that the suggested amendments that are not agreed have been the subject of detailed analysis by the Applicant's experts. Further, due to the number of submissions received, the Applicant has addressed submitters' concerns thematically.

39. Mr Brabant observed that evidence lodged by the Council and Watercare Services Limited ("**Watercare**") raised issues regarding water supply and wastewater network capacity. He then noted that subsequent witness caucusing undertaken by the parties' planning witnesses has resulted in a significant narrowing of issues

with respect to capacity and servicing, such that he understands the concerns have been resolved.

40. As a result of significant amendments made to the precinct provisions through the Applicant's evidence and subsequent caucusing, Mr Brabant advised the only matter of disagreement as between the Applicant and the Council's reporting officers relates to the appropriateness of expressly requiring in precinct provisions that a pedestrian crossing be installed across Beach Haven Road.
41. In response to questions from the Hearing Panel, Mr Brabant confirmed that an existing land use resource consent authorising earthworks across the subject site does not form part of the existing environment as it is unlikely to be implemented (while noting that the consent holder would also not be surrendering that consent).

#### Civil Engineering

42. Mr Mike Williams provided civil engineering evidence. He noted that the proposed plan change is expected to increase impervious areas from the current situation, however the maximum impervious areas (at 60%) are no different to those allowed under the current zoning.
43. He advised that the Auckland Council Geomaps indicates there is currently an overland flow path traversing the site, which after exiting the property continues in a northward direction through several properties on Cresta Avenue before discharging into the Waitematā Harbour. He also acknowledged that the site has some constraints with respect to flooding of downstream properties due to an existing deficiency in the minimum floor levels of some properties downstream. He considered that development of this site can be designed to minimise effects on the neighbouring properties through such methods as attenuation of the 1% storm flows and additional onsite detention and that this can be adequately addressed at the resource consent application stage.
44. Mr Williams acknowledged that the wider catchment has constraints with water and wastewater supply. He observed that Watercare considered there were no capacity constraints for an 81-unit development in June 2021 but that Watercare's submission on this plan change raises some concerns. He advised that the Applicant has an agreement in place for the necessary water supply upgrades and Mr Williams considered that any wastewater capacity can be worked through with Watercare as part of the future resource consent application, noting that these discussions are underway. Further, it was his understanding that there is some (limited) capacity in the network which is potentially available for the site and project specific basis, which he advised will be subject to detailed assessment at the time of applying for a resource consent.
45. Further to the above, Mr Williams advised there are engineering design options available that can be considered to minimise the potable water consumption and reduce the wastewater discharge for the development. It was Mr Williams' opinion that the necessary infrastructure and civil engineering requirements can be provided to appropriately service the proposed plan change area.



## Traffic/Transport

46. Mr Mike Nixon provided traffic engineering evidence. He advised the Hearing Panel that the proposed likely development scenario of approximately 80 dwellings is expected to generate 44 vehicle movements during the morning and evening peak hours and this can be accommodated with negligible effects on the nearby intersections. Furthermore, Mr Nixon advised that the latest traffic volume survey data (July 2024) at the Beach Haven Road/ Rangatira Road roundabout and Beach Haven Road/ Cresta Avenue priority-controlled intersection has overall lower volumes than the 2021 volumes used in the PC 99 traffic report.
47. The proposed likely development scenario has no minimum or maximum parking requirements. Despite that, Mr Nixon advised that 62 parking spaces will be provided on-site with an estimated parking demand of 102 spaces at peak times. As such, 40 on-street parking spaces may be required to satisfy this demand. In his view, this can be accommodated along Cresta Avenue and Beach Haven Road near the site. It was also his opinion that there is ample width to accommodate rubbish trucks, buses and emergency vehicles on both Beach Haven Road and Cresta Avenue should on-street parking be fully utilised.
48. Mr Nixon considers the site is well connected to public transport options, including existing bus and ferry services (within a 10 minute walk), which reduces reliance on private vehicle travel. He observed that these services operate 7-days a week with regular frequencies (including buses every fifteen minutes during the period between 7.00am – 7.00pm). He also considered the on-site walking and cycling provisions to be appropriate and safe and they would connect to existing facilities on Cresta Avenue and Beach Haven Road. He noted the direct pedestrian/ cyclist link between the site and nearby Beach Haven shops (and bus stops).
49. Mr Nixon accepts the transport findings of the s42 Hearing Report however he considers the key issue is the pedestrian crossing point on Beach Haven Road west. While he agrees with it in principle, he was unsure that a facility could practically be achieved. He therefore recommended dealing with this issue at resource consent stage when appropriate detail can be provided to confirm whether it is achievable or not.

## Urban Design

50. Mr Frank Pierard provided expert evidence in relation to urban design matters. He discussed the suitability of the site for the proposed R-MHU zoning. He considered the proposed rezoning of the site from R-SH to R-MHU would enable a more efficient use of land for higher density living which is appropriate given its proximity to services and amenities, such as the Beach Haven Local Centre, the nearby ferry terminal and Shepherd's Park, without adversely affecting the quality and safety of the surrounding streets.
51. Mr Pierard observed that should this plan change be approved, it will result in a logical and contiguous block of R-MHU zoned land enabling similar building forms and scales within the immediate area. He provided examples to demonstrate that the existing built environment and character of the area, which includes a mixture

of R-MHS and R-MHU zoned land, is evolving due to intensification and comprises a range of low and medium density building forms and scales. It was his opinion that the proposed R-MHU zoning and provisions will result in a built form that will enable change, yet comfortably fit within the future neighbourhood character of the area.

52. It was also Mr Pierard's opinion, the proposed R-MHU zoning and associated provisions will help to ensure that potential adverse effects on neighbours in terms of visual amenity, sunlight access and privacy are appropriately managed and mitigated to ensure quality on-site living environments can be achieved.
53. He specifically acknowledged that the southern boundary of the site could be more sensitive to potential shading effects with taller buildings being located directly north of existing outdoor spaces, rather than being pushed toward a street frontage. To mitigate potential effects along this interface, Mr Pierard supported the amendment to the Height in Relation to Boundary control requiring the second and third storey of development to be set back further from the southern boundary to reduce the extent of building mass along this interface and the extent of potential shading and overlooking effects experienced by the properties to the south.
54. Overall, Mr Pierard concluded the existing R-MHU considerations in relation to new buildings, combined with the PC 99 provisions as they relate to urban design are the most appropriate means of giving effect to higher-order objectives and policies, as well as good urban design practice.

### Planning

55. Ms Rachel Morgan provided planning evidence in relation to PC 99. In response to the submissions received and the analysis undertaken in the s42A Hearing Report, she proposed a number of amendments to the notified Beach Haven Precinct.<sup>6</sup>
56. Overall, in her view, PC 99, as proposed to be amended, gives effect to the relevant higher order policy documents including national policy statements such as the NPS-UD, the NPSFM and NPSIB as well as the RPS of the AUP(OP). Ms Morgan considered that of particular relevance to this Plan Change is Chapter B2 of the RPS which contains provisions directing urban growth and form in Auckland. In addition, Ms Morgan concluded that PC 99 will also be consistent with the outcomes sought in the Auckland Plan 2050 and the Future Development Strategy 2023-2053.
57. In Ms Morgan's assessment of the environmental effects of the proposal, she considers that PC 99 will enable a more efficient use of the site and will achieve quality built environment outcomes. She considers the effects on the environment with respect to residential amenity and neighbourhood character will be appropriately managed between the R-MHU zone provisions and the proposed precinct provisions sought under PC 99.

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<sup>6</sup> Statement of Evidence of Ms Morgan, paragraph 4.4

58. Ms Morgan agrees with Mr Nixon's evidence and considers that a future development within the plan change area under the proposed R-MHU zone and Beach Haven Precinct can be appropriately accommodated within the existing road network. She also considers that subject to the proposed precinct provisions, any future application for resource consent will provide the opportunity to complete the relevant technical assessments to confirm that the development proposal will be appropriately serviced with wastewater and water supply and that potential stormwater and flooding effects can be effectively managed through the resource consent process.
59. Ms Morgan agrees with Ms Hart that the proposed rezoning sought under PC 99 will not have any adverse effects on identified or known cultural features.
60. With regards to the submissions received on PC 99, Ms Morgan provided responses to these submission points by drawing on her earlier findings with respect to effects and consistency with the relevant planning documents. She also drew on her support for the suite of changes the Applicant has subsequently introduced to the PC 99 precinct provisions, in order to address the submitters' concerns.

### **Submitters Expert Evidence**

61. The evidence presented by the submitters is summarised as follows:

#### Auckland Council

62. Expert evidence was received from Ms Karen Bell, on behalf of Auckland Council as submitter ("**ACS**"). Ms Bell advised that the ACS submission opposes the zone change, and it relates to three matters:
- (a) The absence of recognition in the proposed plan change of the wastewater infrastructure constraints applying to the sites. The submission is that higher density zoning as requested and the application of the MDRS is inappropriate in the precinct due to these constraints.
  - (b) An inadequate assessment of the flood impacts on downstream properties.
  - (c) The lack of plan provisions for MDRS enabled subdivision to enable control to be exercised over management of the effects of stormwater at the time of subdivision.
63. Ms Bell advised that the matters raised in the submission, particularly related to the wastewater infrastructure constraints applying to the sites and the need to manage the effects of stormwater and address flood risk appear to be able to be addressed through amendments to the precinct, however the final wording has not been agreed. She noted that the s42A Hearing Report and the evidence of Ms Morgan, both indicated the need for more discussion about these provisions. Ms Bell agreed in her statement that possible amendments to the provisions could be addressed in expert conferencing. After her review of the amendments proposed

by Ms Morgan, Ms Bell confirmed that these proposed changes, with the exception of the new policy 6, would address the matters raised in the Council's submission.

64. Ms Bell considered the rezoning should be declined unless the matters raised in the ACS submission, which she supported, are addressed.

#### Watercare Services Limited

65. Ms Maria Utting prepared corporate evidence on behalf of Watercare. She advised that there are constraints identified in the downstream bulk wastewater network, for which there is no active project to remediate. Furthermore, planning and design work to address constraints in this network are some years away and the solution is expected to be complex due to the location of existing assets and topography of the local area. Ms Utting noted that the existing hydraulic models for the wastewater catchment, along with monitoring data confirm the capacity constraints.
66. It was Ms Utting's opinion that the additional intensity of development as proposed by PC 99, without the amendments requested by Watercare to the proposed precinct, will have a negative impact on the level of service within this catchment resulting in increased wastewater overflows to the environment and associated significant environmental effects.
67. Mr Utting advised that while Watercare is neutral on further intensification in this area subject to each development proposal being appropriately assessed as part of a resource consent process, she considered the planning framework under the RMA should not enable a level of density in areas where there is not the water and wastewater infrastructure in place to service that urban development upon its completion.
68. Ms Katja Huls provided planning evidence on behalf of Watercare. Ms Huls considered that any new development will require assessment in terms of effects on the water and wastewater networks, including any proposed mitigation. In her view:
- (a) the precinct provisions put forward in the section 42A Hearing Report are acceptable; and
  - (b) the precinct provisions should require assessment of the water and wastewater capacity within the network that services the development, which includes the network outside of the precinct, and beyond the local network; in order to effectively manage adverse effects as recommended in the s42A Hearing Report.
69. Ms Huls did not agree with the proposed amendments within the evidence of Ms Morgan which relate to water and wastewater infrastructure because she considered that they seek to reduce the scope of necessary infrastructure capacity assessments which would result either in adverse environmental effects or the effects of the development being transferred to Watercare, or both.

70. Overall, Ms Huls considered that assessment of the effects of the development on the bulk water and wastewater networks within and outside of the precinct is appropriate and should be provided for in the precinct provisions to make it clear to developers as to what is required to enable their development. She considered this would prevent development connections that cause adverse environmental effects.
71. We note that based upon the completion of the expert conferencing, detailed further below, the experts for Watercare did not attend the hearing.

Cherylee Lonsdale

72. Mr John Hudson filed evidence on behalf of Ms Lonsdale which outlined his concerns about the potential development that could occur versus the Applicant's stated intentions, and whether the rezoning sought is the most appropriate given these stated intentions. He considered that the Residential – Mixed Housing Suburban zone (“**R-MHS**”) is a more appropriate zoning for the site, which he noted prevailed to the west of the site, and it would be more suitable to the character of the area if the Applicant was intending to develop the site with low rise housing.
73. Mr Hudson also raised points about the applicability of PC 78 and the MDRS, given the political uncertainty surrounding them. He considered that as the MDRS are in question, the existing environment is also in question. Further, he advised the apartment buildings to the east should not be used to justify intensification or the rezoning of the land due to the low ground and rear site nature of the subject land. Upon further clarification from the Hearing Panel, Mr Hudson acknowledged that the land to the east (which includes Ms Lonsdale's property) is zoned R-MHU.
74. The Panel clarified with Mr Hudson whether he was providing layperson evidence or expert landscape evidence and he confirmed it was the latter. The Chair also noted that the evidence had been received late, being outside of the timeframes for expert evidence directed by the Panel. However, the Panel has now made a determination to accept the late expert evidence under s37 of the RMA on the basis that Mr Hudson had provided us with a draft copy of his evidence within the directed timeframes and advised he was awaiting legal advice as to whether his evidence was within scope of the submission filed by Ms Lonsdale.
75. The Panel also sought confirmation from Mr Hudson that he does not support rezoning the land to R-MHU, and that it was his opinion the land is more appropriately zoned R-MHS, despite Ms Lonsdale's submission stating that she supported the rezoning to R-MHU. He explained that once he began work on his evidence in detail, his position did not align perfectly with his initial thoughts and the submission he prepared on behalf of his client.
76. Mr Hudson confirmed that he sought legal advice from an RMA lawyer in Blenheim as to whether his opinion would be within scope of Ms Lonsdale's submission. It was Mr Hudson's opinion, based upon the legal advice he had received, that the Hearing Panel has the power to approve a less dense zone than the zone applied for, as it has reduced effects.

77. The Hearing Panel acknowledges that Mr Hudson did also seek some guidance from the Panel before the hearing commenced as to whether we considered his draft evidence was within scope. However, this request was followed up less than two hours later by further correspondence from Mr Hudson stating he considered his relief can be within scope (based on the legal advice he had received) and that he would be filing his evidence accordingly. The Hearing Panel interpreted this updated correspondence as no longer requiring an indication from the Panel on scope and the matter was left to be addressed further at the hearing.

## **EXPERT CONFERENCING**

78. On 26 August, the Hearing Panel directed expert conferencing. The purpose of the conferencing was for the parties' planning experts to identify, discuss and potentially resolve (or not) the remaining points of difference between them in relation to the amended PC 99 precinct provisions. This would enable all parties to focus on matters that remained in contention. The Council Reporting Planner, Ms Jo Hart was also directed to attend.
79. The expert conferencing was held on 5 September. The planners recorded in the Joint Witness Statement ("**JWS**") that the experts agreed to the amendments in the updated precinct provisions shown in red strikethrough and underline. The JWS advised that there were no remaining points in contention amongst the experts.
80. We note that the planning experts in attendance at the conferencing included:
- Rachel Morgan – Applicant
  - Karen Bell – Auckland Council, as Submitter
  - Katja Huls – Watercare Services Limited
  - Amber Tsang – Healthy Waters (s42A team)
  - Jo Hart – Reporting Planner (s42A team).

## **TABLED STATEMENTS**

### New Zealand Defence Force (NZDF)

81. The NZDF tabled a statement on 6 September 2024 which advised that NZDF made submissions on PC 99 (Submitter 72) and supports the recommendations in the s42A Hearing Report regarding NZDF's submission points (72.1, 72.2, 72.3). On this basis, NZDF did not intend to attend the hearing. The NZDF further noted that as the provisions may still be subject to change, subject to further information being provided by either the requestor or the submitter, NZDF wishes to review the final set of provisions as relevant to the relief sought by NZDF.

### Auckland Council, as Submitter

82. Ms Karen Bell provided a tabled statement on 12 September. Ms Bell advised she attended the caucusing held on Thursday, 5 September 2024. Further in paragraphs 1.5 – 1.6 Ms Bell stated:

*"The amendments to the Precinct outlined in Appendix A to the Joint Witness Statement in my view, will ensure that the capacity of the infrastructure to*

*accommodate new dwellings is assessed, and if upgrades to wastewater infrastructure or mitigations are not in place prior to or at the same time as the proposed subdivision or development (Policy 6), the Council has the ability to decline a proposal. The amended provisions also in my view ensure that stormwater and flood risk generated from new development and subdivision is able to be assessed and can also be declined.*

*In summary the amendments to Policy 6, the new notes associated with the Activity Table and the changes to the Activity table and assessment matters and criteria and inclusion of the special information requirements and critically, outlined in Appendix A when read in conjunction with the existing zone and subdivision rules provide the ability for the Council to decline an application if the effects are not able to be adequately addressed.”*

## **LOCAL BOARD**

83. Mr John Gillon, the Chair of the Kaipātiki Local Board provided feedback at the hearing. Mr Gillon formally requested on behalf of the Local Board that the Hearing Panel decline this plan change and leave the zoning of the property as R-SH as he considered the site in question cannot adequately support wastewater, potable water or stormwater and is correctly zoned for minimal housing. Mr Gillon urged the Hearing Panel to keep Ms Utting’s evidence at the forefront of our minds.
84. Mr Gillon understands that properties that lacked infrastructure or were environmentally sensitive were intentionally zoned as Residential - Single House in the AUP(OP) process to ensure that future developments were only on land that could safely support them and where Auckland Council could plan for and fund infrastructure upgrades. He advised that the public has an expectation that the zoning in the Unitary Plan is what will be adhered to.
85. The Local Board also raised concerns about the lack of capacity at Beach Haven Primary School and the increase in parked cars on residential roads and at Shepherds Park. Mr Gillon advised that consequently, the Local Board is funding (via Auckland Transport) additional parking spaces and safety improvements on Cresta Avenue, which will result in an additional 25 car parking spaces being provided.
86. Other feedback from the Local Board was that this development will significantly increase pedestrian movement in the area, so they request that a pedestrian crossing on Beach Haven Road is to be in place prior to any future consent being approved.

## **SUBMITTER EVIDENCE RECEIVED AT THE HEARING**

### **Elisabeth Morgan-Reeve**

87. Ms Elisabeth Morgan-Reeve, a resident of Cresta Avenue, raised similar concerns to that of the Local Board regarding the current zoning of the land and the rationale for its Residential - Single House zoning based on infrastructure constraints. She

considered that the Unitary Plan should provide home buyers and residents with certainty and trust that their chosen community will be developed and maintained as presented in the Unitary Plan.

88. She also considered that the infrastructure will need significant work to support the intensive development of this land and that its costs will be carried by the Council and therefore the ratepayer.
89. Traffic congestion and parking was another matter raised by Ms Morgan-Reeve. She considered this plan change would add many more cars to the current congestion in the area. Upon questioning from the Panel, Ms Morgan-Reeve considered the addition of the pedestrian crossing would get used by the community, but while it may be safer, it could lead to future traffic congestion near the Beach Haven roundabout.
90. Ms Morgan-Reeve considers that the resource consent hearing held in 2023 is relevant to this matter as the developer is ignoring the sentiments of the public and trying an alternative method to develop this land. She asked that the plan change be declined.

### **Crispin Robertson**

91. It was Mr Crispin Robertson's opinion that proposed PC 99 allows exactly the same type/scale of development that was proposed and rejected at a resource consent hearing held in 2023. He is concerned the approval of the plan change will allow three storey permitted development. Mr Robertson noted that their own property (a rear site accessed from Cresta Avenue) shares the entire northern boundary with the subject site and their house would sit a few metres below the development. He considered this outcome would have a significant impact on all four boundaries of the subject site from the loss of sunlight. Due to the contours of the surrounding land, he also considered this would lead to visual dominance effects, overlooking and the loss of privacy for the surrounding land.
92. Mr Robertson advised that as residents, they do not oppose the development of this site, but they are concerned that the plan change would place additional pressure on the community and its facilities. He noted that the parking on Cresta Avenue is at capacity when facilities at the nearby Shepherds Park are in use for Saturday morning football. While he acknowledged there are good transport links, he is concerned about the lack of nearby facilities, such as a supermarket, a gym or good hospitality options to support the area. He advised that Beach Haven Primary is at capacity and he is concerned about stormwater drainage and the potential for flooding from the additional impervious area that would be created. He provided some photographs of their property impacted by flooding during a large rainfall event and he clarified he was worried about the increased risk from the stormwater flows.
93. When asked by the Panel about what level of development would be considered appropriate on this land, Mr Robertson advised something more low density, similar to the wider 'Beach Haven Point' and two storeys in height would be more acceptable and more akin to a Residential - Mixed Housing Suburban zone than



the perceived imposing nature of the permitted development. He considered PC 99 would result in increased intensification and a built form that is 10-12m high and close to his boundary.

### **Keith Salmon**

94. Mr Keith Salmon provided a power point presentation to the Hearings Panel which outlined his concerns. He advised he had support from members of the Birkenhead Residents Association Inc for his personal submission; while approval to speak for the Beach Haven and Birkdale Residents Association (“BHBRA”) was confirmed in a subsequent email provided to the Hearing Panel from the President of the BHBRA<sup>7</sup>. We received no communication from the Birkenhead Residents Association regarding any support for Mr Salmon’s presentation. Upon questioning from the Panel, Mr Salmon clarified that he lived in the Birkenhead area.
95. Mr Salmon fully supported Mr Gillon’s presentation. He considered the Unitary Plan outcomes were ‘hard fought’ and should be respected. He supports good quality, planned intensive development. He asked the Hearing Panel to think about the needs of all sectors of society and the need to protect people and the natural environment from urban heat blocks and climate change.
96. He provided examples of what he considered to be the misuse of zoning. Mr Salmon advised that professionals and local political representatives have identified that there is ample land provided by the AUP(OP) to provide for growth expectations and there is enough housing capacity. He considered that planning applications to override the AUP(OP) cause considerable costs and stress to residents and families who are impacted by them. Further, if approved, he considered that PC 99 would also risk creating a precedent for communities across the region. He considered it would also be unfair for the ratepayers and tenants of Auckland because proposals like PC 99 risk forcing costly infrastructure development that the Council can only recover through rates - not through the developer. In closing, he asked that the Hearing Panel reject PC 99 as it overrides the AUP(OP) and the rights that citizens should have to good democratic urban planning.

### **COUNCIL OFFICERS’S COMMENTS IN RESPONSE**

97. The Council’s response was led by Ms Jo Hart who provided initial responses to the Hearing Panel’s questions put to Ms Morgan. She advised it is the Council’s preference not to have a single property with a split zoning and that professionally, she held the same opinion. Further, this precinct was proposed to impose the MDRS, but Ms Hart advised she is open to amendments to make it more suited to the precinct or location itself. She considers some of the provisions can be further enhanced in accordance with the Council’s guidance note on applying the MDRS, as well as the template provided to private plan change requestors. The Panel confirmed they would welcome any further improvements that could result in the

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<sup>7</sup> Email from Mr Stephen Chmiel – President of Beach Haven Birkdale Association dated 12 September 2024.

most workable version of the provisions being put forward by the Applicant for the Panel's consideration.

98. Ms Hart advised that, while it is unusual, it is not uncommon for there to be an "island" of single property zoning, such as that which would result in this case with the R-SH zoned land to the north of the subject site. She advised there is often a reason for this. Ms Hart agreed with Ms Morgan that the site was historically zoned Residential 2B under legacy provisions. Ms Hart also advised the Proposed Auckland Unitary Plan preparation process, while being a thorough process, was also a quick process and that not every single site was looked at thoroughly at that time. She added that for larger sites, it is not unusual for precincts to specify yield triggers, which are normally based on infrastructure requirements, before additional yield can be realised. Ms Hart agreed that consideration for the requirement for a pedestrian crossing on Beach Haven Road could be an assessment criterion in the precinct, as long as it wasn't too restrictive.
99. Mr Andrew Temperley confirmed he generally agreed with the Applicant with regards to the traffic matters assessed. We note that in his specialist's memo, Mr Temperley acknowledged concerns raised by submitters in relation to PC 99, concerning traffic congestion and parking pressures in particular. He concluded that the transportation effects of development enabled by PC 99 can be managed and accommodated within the adjoining transport network without compromise to its function, capacity or safety.
100. Mr Temperley advised that the main outstanding transportation matter is the pedestrian crossing on Beach Haven Road. He recommended the inclusion of the pedestrian crossing (on Beach Haven Road) as a precinct provision and he agreed that it could take the form of an assessment criterion. He acknowledged that while there are some constraints in this locality (such as existing bus stops and vehicle crossings), as to where the crossing should be sited, he was of the view these are not insurmountable matters. Mr Temperley considered the PC 99 outcome will provide for the intensification of the area and provide for walkable neighbourhoods in proximity to the local centre and in doing so it will enhance these connections within the built environment. He considered PC 99 would give effect to the objectives and policies of the R-MHU zone.
101. Ms Amber Tsang, Ms Carmel O'Sullivan and Mr Larry Shui are all specialists who provided inputs on behalf of Healthy Waters in relation to stormwater and flood modelling. Ms Tsang explained how the amended provisions, which she contributed to in the expert conferencing session, would be implemented to address these issues, including the downstream environmental considerations. Ms Tsang was of the opinion that the amended wording will ensure that any development of the land will be subject to the range of assessment criteria to adequately address stormwater and flooding considerations. This included the provision of information through the Special Information Requirement of the precinct.

## APPLICANT'S REPLY

102. Mr Brabant briefly addressed the Panel verbally on the matters arising during the hearing and this was followed by a more detailed reply in writing which the Panel received on 30 September 2024. The reply addressed the following key matters:

- Mr Brabant observed that nothing presented by any of the submitters in opposition undermines the position put forward by experts on behalf the Applicant. He considered a lot of the comments reflect a fundamental misunderstanding about how the plan change process works and what the Proposed Auckland Unitary Plan process involved. He advised that the AUP(OP) is not set in stone and that legislation in NZ allows for a private plan change to be made.
- Mr Brabant noted the unanimous position of experts with regard to potential effects and how these can be addressed i.e. in terms of water capacity, with the exception of the pedestrian crossing matter.
- He stated the Panel can have comfort that the provisions are appropriate for the site and that they provide the Council with scope to undertake a proper and full assessment, subject to some modifications yet to take place to the precinct provisions.
- Mr Brabant observed that there was agreement that a crossing would be desirable. He submitted this is not an intersection without a safe solution, it's just that a safe solution is not on the desire line. He stated that an appropriate way forward is through the use of assessment criteria and that is a component of the proposition being advanced.
- He observed that Mr Nixon has considered all of the pressures on the network, including the elevated demand during the football season, as well as the traffic modelling and surveys and he has confirmed there is capacity in the system. Mr Brabant noted there are a lot of public transport services within walking distance of this site.
- With regards to stormwater he concluded there is agreement between the experts that the provisions are now included within the precinct and that there is agreement from Council that the provisions are appropriate.
- Mr Brabant noted with regards to wastewater that Watercare has reached agreement with the Applicant and did not attend the hearing. He reminded the Panel that it has been confirmed that there is a degree of capacity available, but that it is limited. He submitted that from a reporting basis, what is proposed to address the issue is provided for in an acceptable manner.
- He noted there are two considerations regarding the zoning of the site, being whether there should be a split zone, with a different zoning of the access leg to the remainder of the body of the site, and whether the property would be better zoned R-MHS. He submitted that the Cresta Avenue access is the only realistic access to the site, given the physical width of the access lane,

the applicable yards, the applicable height in relation to boundary controls, and the width which will be required for any JOAL. He submitted that the reality is that any ability to establish built form along the access lane is constrained.

- Mr Brabant noted the selection of adjoining zones surrounding the property. Relying on the expert evidence and given the large rear nature of the site, which has a degree of interface with R-MHU zoning and the local centre and is walkable to a selection of amenities, he submitted that these aspects should be taken advantage of, rather than wasted and not under-developed. From an effects perspective, he stated the built form outcomes can be managed and there is adequate protection for the adjoining properties through the provisions, combined with those being introduced through the precinct provisions and that R-MHU is the zoning answer.
- Mr Brabant advised upon receiving instructions from his client that the earthworks consent currently in existence for the site is unlikely to be given effect to in its current form given that it reflects a particular development proposal. Thus, he submitted, that the outcomes of the previously granted earthworks consent are not part of the environment as defined.

103. An amended set of precinct provisions was provided with the written reply, which the Hearing Panel was advised were agreed between Ms Morgan and Ms Hart. Following a thorough review of the reply and the amended precinct provisions, the Panel sought further clarification on some of the proposed precinct provisions in Direction #4, dated 31 October 2024. The Applicant responded to this final direction the following day in a reply memo with a further updated set of precinct provisions.

## **PRINCIPAL ISSUES IN CONTENTION**

104. Having undertaken a site visit, considered the submissions received, the hearing report, the evidence presented at the hearing and the Council officers' response to questions, the following principal issues in contention have been identified by the Panel:

- What is the most appropriate zoning for this land?
- Are the AUP(OP) and precinct provisions combined adequate to assess the actual and/or potential effects of the development of this land?
- Whether there should be a requirement in the precinct provisions for the installation of a pedestrian crossing on Beach Haven Road.

## **FINDINGS ON THE PRINCIPAL ISSUES IN CONTENTION**

### **What is the most appropriate zoning for this land?**

105. We consider that Ms Hart has correctly set out the s32 tests in considering the appropriateness of the request. Ms Hart states that in order to consider the

appropriateness of the Applicant's request, consideration needs to be given to the objectives and policies of both the operative R-SH zone and the proposed R-MHU zone. The consideration is whether the purpose/objective of the request i.e., *'to enable greater density to make efficient use of highly accessible land close to the Beach Haven Local Centre and public transport,'* is the most appropriate way to achieve the purpose of the RMA. We agree with Ms Hart that the Applicant has appropriately considered the extent to which the objective of the plan change is the most appropriate way to achieve the purpose of the RMA.

106. The question then becomes which zone is the most appropriate way to achieve the purpose of the RMA, either the existing operative R-SH zone or the proposed R-MHU zone. Ms Hart has helpfully prepared a table in the s42A Hearing Report<sup>8</sup> that compares the differences between the objectives and policies of the R-SH zone and the R-MHU zone.
107. As discussed during the hearing, the surrounding residential sites within the adjacent neighbourhood are zoned R-MHS to the west, R-SH to the north, and R-MHU to the south and east of the subject sites. The R-SH zone has an existing or planned suburban built character of predominantly one to two storey buildings. The R-MHS zone provides for up to two storeys and the R-MHU zone up to three storeys. The R-SH zone provides for one dwelling per site. Whereas both the R-MHS and the R-MHU zones provide for residential development up to three dwellings as a Permitted Activity subject to compliance with the relevant standards. While the established residential development of neighbouring sites is predominantly one to two storeys, we note that this does not preclude future development of those neighbouring sites to the level provided for within those two zones.
108. With respect to s32(1)(b), we agree with the Applicant and Ms Hart that the proposed R-MHU zone, subject to amendments to the precinct provisions, is the most appropriate way to achieve the requestor's objective *'to enable greater density to make efficient use of highly accessible land close to the Beach Haven Local Centre and public transport'.*
109. Specifically:
- The Beach Haven Local Centre is approximately 30m away from the Beach Haven Road entrance to the site. It comprises a series of shops, cafes, takeaways and other eateries, as well as services including hairdressers, doctors, a pharmacy, a Plunket clinic and real estate offices.
  - The site is well serviced by amenities, including Beach Haven Primary School, several childcare centres and nearby children's playgrounds.
  - The land is in close proximity to large areas of open space and an array of recreational facilities available at Shepherds Park including several sports

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<sup>8</sup> S42 A Hearing Report, Table 2: Differences between the Residential - Single House Zone and the Residential - Mixed Housing Urban Zone, pages 16-17

fields. Shepherds Park is approximately 120m from the site. It includes the Beach Haven Sports Centre, as well as the local bowling, futsal, tennis and squash clubs. It is also a popular football venue, contains fitness equipment and it is home to the Beach Haven Community House.

- The site is well serviced by public transport, including a number of bus stops on Beach Haven Road and Rangatira Road, which are both arterial roads and serviced by the FTN which provides access to the Auckland CBD and departs every 10 minutes during peak hours on weekdays.
- The Beach Haven ferry terminal is located approximately 650m from the site and offers direct ferry services to the Auckland CBD every 40 minutes during peak hours on weekdays and every two hours during the weekend.

110. We note that the above factors are also consistent with the objectives and policies of the R-MHU zone and in particular Objective H5.2(1) and Policy H5.3(1), which are replicated below:

Objective H5.2(1) states:

*“(1) Land near the Business – Metropolitan Centre Zone and the Business – Town Centre Zone, high-density residential areas and close to the public transport network is efficiently used for higher density residential living and to provide urban living that increases housing capacity and choice and access to public transport.”*

Policy H5.3(1) states:

*“(1) Enable a variety of housing types at higher densities, including low-rise apartments and integrated residential development such as retirement villages.”*

111. We agree with Ms Hart and Ms Morgan that the following AUP(OP) objectives also have particular relevance to this request:

- *B2.2.1 (1) A quality compact urban form that enables all of the following:*
  - (a) *a higher-quality urban environment;*
  - (b) *greater productivity and urban growth;*
  - (c) *better use of existing infrastructure and efficient provision of infrastructure;*
  - (d) *improved and more effective public transport;*
  - (e) *greater social and cultural vitality; and*
  - (g) *reduced adverse environmental effects.*
- *B2.3.1 (1) A quality built environment where subdivision, use and development do all of the following:*
  - (a) *respond to the intrinsic qualities and physical characteristics of the site and area, including its setting;*
  - (b) *reinforce the hierarchy of centres and corridors;*

- (c) *contribute to a diverse mix of choice and opportunity for people and communities;*
  - (d) *maximise resource and infrastructure efficiency;*
  - (e) *are capable of adapting to changing needs; and*
  - (f) *respond and adapt to the effects of climate change.*
- *B2.3.1(2) Innovative design to address environmental effects is encouraged.*
  - *B2.3.1(3) The health and safety of people and communities are promoted.*
  - *B2.4.1 (3) Land within and adjacent to centres and corridors or in close proximity to public transport and social facilities (including open space) or employment opportunities is the primary focus for residential intensification.*
112. The Panel does acknowledge the evidence provided by Mr Hudson, who opined the land is more appropriately zoned R-MHS. However, we find that Mr Hudson provided limited landscape assessment rationale as to the basis for his opinion. We prefer the evidence of Ms Morgan, Mr Pierard and Ms Hart on this matter.
113. We find that PC 99 is consistent with the above objectives and policies because it will more effectively support the efficient use of land close to public transport and amenities and it responds more appropriately to the residential context (RPS B2.3.1(1), B2.3.1(2) and B2.3.1(3)) than the existing R-SH zone.
114. We note that the R-MHU zone enables the greater density sought through the objective of the request, than the density enabled through the operative R-SH zone. The proposed R-MHU zone for the two sites is also in keeping with the similar density and heights that are enabled on the neighbouring sites to the west, south and east.
115. The proposed zoning will also provide for the following:
- a) a quality compact urban form that enables all of the following:
    - a higher-quality urban environment (B2.2.1(1)(a))
    - better use of existing infrastructure (B2.2.1(1)(c))
    - higher residential intensification:
      - in and around centres (B2.2.2(5)(a))
      - close to public transport, social facilities (including open space) (B2.2.2(5)(c))
  - b) a quality built environment where subdivision, use and development which:
    - responds to the intrinsic qualities and physical characteristics of the sites and area, including its setting (B2.3.1(1)(a))
    - contributes to a diverse mix of choice and opportunity for people and communities (B2.3.1(1)(c))
    - is capable of adapting to changing needs (B2.3.1(1)(e))
    - responds and adapts to the effects of climate change (B2.3.1(1)(f))
    - enables a range of built forms to support choice and meets the needs of Auckland's diverse population (B2.3.2(3))

- mitigates the adverse effects of subdivision, use, and development through appropriate design (B2.3.2(5))
- c) supports a quality compact urban form (B2.4.1(1))
- d) increases the housing capacity and range of housing choice (B2.4.1(4))
- e) provides for medium residential intensities in an area within moderate walking distance to a centre, public transport, social facilities, and open space (B2.4.2(3))
- f) ensures development is adequately serviced by existing infrastructure or is provided with infrastructure prior to or at the same time as residential intensification (B2.4.2(6)).

116. We therefore agree with the Applicant team and Ms Hart that the R-MHU zone is the most appropriate option to meet the objectives of the AUP and the purpose of the RMA.

**Are the AUP(OP) and precinct provisions combined adequate to assess the actual and/or potential effects of the development of this land?**

Zoning and Built Form Provisions

117. Despite Ms Hart concluding the R-MHU zone is the most appropriate zoning for the land, it was her view that the development enabled by the proposed rezoning has the potential to generate adverse effects on residential amenity values and create adverse neighbourhood character effects on the adjoining sites. However, she did note that the scale of the adverse effect(s) will depend on the future proposal for development of the two sites.
118. This matter was also at the forefront of a number of the submission points which raised concerns about the effects from the built form of the development on the adjoining sites and the environment beyond from a R-MHU zoning.
119. Emma Elizabeth Poyner sought that PC 99 be approved but with a limit placed on it to two storey buildings and a yield of up to 25 apartments (submission point 1.2). Cherylee Lonsdale also supported PC 99 but sought for resource consents to be made at the same time as the private plan change. The Panel notes that this did not occur (submission point 20.1). Charles Ronald Grinter sought approval of the plan change with amendments to rezone the land to R-MHS; and he sought to decline the introduction of a precinct including the MDRS (submission point 65.1).
120. The Airedale Property Trust (APT), in submission point 73.2, sought the amendment of the precinct provisions to address the following matters:
- i. remove reference to the MDRS or ensure that these are only applied if PC 78 becomes operative.
  - ii. reduce the maximum building height to 8m for a 10m setback adjacent to the APT site north boundary and include a specific height in relation to boundary



standard for this boundary which matches the current standard in the R-MHU zone (3m plus 45 degree recession plane).

- iii. include precinct provisions to restrict the existing driveway to the site from Beach Haven Road to only be used for pedestrian access and that any pedestrian access design should incorporate CPTED principles and ensure lighting and security considerations are part of any application assessment.
  - iv. that Standard IXXX.6.1.2 Building height, Standard IXXX.6.1.5 Building coverage, and Standard IXXX.6.1.6 Landscaped area are removed from the matters which are precluded from notification and the need to obtain written approval from affected persons.
121. The majority of the 90 submitters sought that PC 99 be declined. Amongst the issues raised were concerns about the effects of intensification on the Beach Haven Centre, as well as the community and its infrastructure. The submission points were concerned that PC 99 would enable an inappropriate housing density and level of intensification, with concern about the cumulative effect of intensification within the Beach Haven area, as well as the risk of precedent for future developments within the area.
122. These submitters were also concerned about the change to or loss of character of the neighbouring streets and surrounds, the decrease in amenity values of the surrounding area, as well as the resulting lack of sunlight to adjacent properties.
123. The above matters have all been considered in the assessment request and the s42 Hearing Report. They were also the subject of further examination in the Applicant's evidence and were discussed by the submitters who appeared at the hearing.
124. Firstly, the Hearing Panel wants to acknowledge, as Mr Brabant rightly pointed out, that the Applicant is entitled to lodge a private plan change request to rezone their land.
125. Secondly, the inclusion of the MDRS in PC 99 is a statutory requirement as required by Section 77G(1) and Schedule 3A of the RMA. We further note that the Council cannot consider accepting or adopting a private plan change request, and progress a plan change through the notification and hearing processes, under Schedule 1 Clause 25 (4A) of the RMA if the private plan change request does not incorporate the MDRS as required by Section 77G(1).
126. We note that the final set of precinct provisions has introduced qualifying matters which seek to respond to matters raised in submissions. The first of these is the Airedale Property Trust submission. Both Mr Pierard and Ms Morgan have outlined how this submitter's concerns have been addressed by way of amended precinct provisions.
127. Mr Pierard in his evidence in chief noted that the site has a distinct lack of street frontage which limits potential interaction between future building forms and public spaces. As a result, he considered it is more likely that development would be

orientated toward side and rear boundaries to maximise development potential, and in particular the southern boundary. He concluded that consequently, the southern boundary of the site could be more sensitive to potential shading effects with taller buildings being located directly north of existing outdoor spaces, rather than pushed toward a street frontage.

128. To mitigate the potential effects along this interface, Mr Pierard supported an amendment to the Height in Relation to Boundary ('HiRB') control within the precinct provisions to apply the operative HiRB R-MHU provisions. He considered this would reduce the extent of building mass along this interface and the extent of potential shading and overlooking effects experienced by the southern boundary properties.
129. The Hearing Panel notes that the only adjoining neighbour to attend the hearing was Mr Robertson, who lives on the northern side of the subject site. We note that the existing building on this large R-SH zoned property sits close to its southern boundary which is also well screened. However, being located to the north of the PC 99 land, it will be the least affected adjoining property with regards to the loss of sunlight. We do acknowledge however Mr Robertson's concerns regarding the potential for visual dominance effects from the future development. We return to this matter further below.
130. Mr Pierard noted that the existing properties located either east or west of the site may also experience additional shading effects from future buildings. He advised this is typically an unavoidable outcome resulting from greater levels of intensification in urban areas. Mr Pierard considered that due to their orientation and relative ground levels in relation to the plan change land, it is likely that these neighbouring sites will retain an adequate level of sunlight access during either the morning or afternoon hours.
131. With respect to the enabled height of three storey buildings, Mr Pierard acknowledged there will likely be a visual change as viewed from adjoining sites, which have the potential to result in visual dominance effects.
132. He observed that the provision for two or more dwellings on-site will trigger a restricted discretionary activity status and that the development will be subject to a design review from the Council. In addition, the buildings will still be required to comply with the relevant bulk and location controls. In the event that future buildings infringe the HiRB standard for example, he noted there is specific assessment criteria pertaining to visual dominance effects as viewed from the side or rear boundaries of adjoining residential sites or developments that would be considered. Mr Pierard was therefore of the opinion that the AUP(OP) provisions, combined with the amended precinct provisions, are satisfactory to enable the Council to be able to fully consider the effects of a future development on the site and any adverse effects this may have on adjoining sites. We note that importantly, should the Council consider the effects of the future proposal are unacceptable, the Council is able to refuse the application for resource consent.
133. We note that Ms Morgan agrees with Mr Pierard that the provisions of the R-MHU zone and the proposed precinct provisions will result in a built form that is

appropriate for the area and will ensure any potential effects on amenity values and neighbourhood character arising from a future development will be suitably managed.<sup>9</sup> We also agree with these conclusions, based upon our review of the latest precinct provisions provided to the Hearing Panel.

### Infrastructure Provisions

134. We note that several submitters raised concerns that there is insufficient and inadequate stormwater, water supply and wastewater infrastructure to support development of the two sites, the sequencing of infrastructure, as well as the effects on the environment downstream of the two sites and the potential for flooding and overland flow path construction.
135. Both Watercare and Auckland Council, as submitter, respectively opposed PC 99 but sought alternative relief if PC 99 is approved in order to address the above infrastructure concerns. These matters were discussed further at the time of evidence exchange as summarised earlier in this decision.
136. At the expert conferencing the planning experts in attendance discussed the precinct provisions, as directed by the Hearing Panel. The experts agreed to the amendments (highlighted in red) in the updated precinct provisions, which were attached to the JWS. The experts advised that there were no remaining points in contention amongst themselves. Notably, as a result of the expert conferencing, neither Watercare, nor Auckland Council as Submitter, then appeared at the hearing.
137. We note that the updated provisions incorporate amendments sought by both Watercare and the Council, as submitter, in their evidence. We further note that the planning experts were able to fully agree on a set of precinct provisions, and that there are no remaining points in contention. We find that the precinct provisions will sufficiently provide for the consideration of infrastructure servicing to support future development of the land, as well as the consideration of effects on downstream properties with regards to the potential for flooding; and that PC 99, including the amended precinct provisions, is appropriate to manage the actual and/or potential effects of the future development of this land.

### **Whether there should be a requirement in the precinct provisions for the installation of a pedestrian crossing on Beach Haven Road?**

138. Both Mr Temperley and Mr Nixon agreed that a pedestrian crossing on the arm of the Beach Haven Road / Rangatira Road intersection would be desirable.
139. Mr Temperley considered the provision of safe and efficient crossing facilities for active mode users between the PC 99 site and Beach Haven Local Centre to be necessary, in order to achieve consistency with the objectives and policies of the R-MHU zone, being to promote walkable neighbourhoods and achieve attractive and safe streets. He considered the inclusion of a provision requiring a formalised pedestrian crossing point across Beach Haven Road, between the PC 99 site and

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<sup>9</sup> Rachel Morgan's Statement of evidence, paragraph 9.5

Beach Haven Local Centre, would ensure that PC 99 can be accommodated on the adjoining transport network without adversely compromising its function, capacity or safety. Without it, Mr Temperley concluded PC 99 does not align with the above strategic requirements of the R-MHU zone, and PC 99 should be declined.

140. Mr Nixon noted in his Statement of Evidence that Auckland Transport (“AT”) has reviewed Mr Temperley’s specialist report and agree with his assessment, and have adopted the findings of Mr Temperley’s memo, including the conclusion and recommendations<sup>10</sup>. Mr Nixon further advised that Auckland Council, as part of PC 78, has proposed to similarly rezone the PC 99 site as R-MHU Zone, without (it appears) requiring the provision of a formalised crossing point on Beach Haven Road.
141. Mr Nixon added that the lack of a pedestrian crossing facility on the Beach Haven Road west approach at the Beach Haven Road/ Rangatira Road roundabout is an existing deficiency in the transport network and he was unclear why AT did not provide a pedestrian crossing on this approach when they upgraded the intersection some time between early 2017 and early 2018. Mr Nixon further advised that installing one in the pedestrian desire line would be more complicated than it appears, and he considered this may be the reason AT did not originally provide it. Mr Nixon helpfully provided a concept of how a pedestrian crossing design could work, but added he was unsure whether his concept could practically ‘pass’ the AT Engineering Approval process so that it can actually be constructed. As a result, he did not recommend conditioning, or providing precinct plans requiring transport infrastructure mitigation that cannot practically be achieved. For this reason, Mr Nixon’s preference was therefore to determine the feasibility of this pedestrian crossing at resource consent stage when the requisite detail can be provided.
142. The difference between the two experts is therefore whether the precinct provisions should specifically mandate such a crossing or whether that is best left as a matter required through criteria to be assessed in the context of a specific application.
143. This outstanding matter was further examined under questioning from the Hearing Panel. Mr Nixon clarified that the approach should have a pedestrian crossing on it now and therefore one would be needed with PC 99. He considered it comes down to the mechanism of how that is assessed and then required; being either as a precinct provision or with reliance on the existing R-MHU AUP(OP) provisions. He was of the opinion that there was sufficient scope within the assessment criteria (for four or more residential dwellings on site) which address traffic considerations. Mr Nixon considers any precinct provision would need to be workable, and confidence that it can be achieved. Mr Nixon did confirm that, in his experience, a matter like this would normally be a precinct provision.

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<sup>10</sup> Mike Nixon’s Statement of Evidence, paragraph 27.

144. During the Council's response, Mr Temperley remained of the opinion that the pedestrian crossing matter should be included as a precinct provision and notably he agreed that this could take the form of an assessment criterion within the precinct.
145. The Applicant's position in reply, which the Panel notes was supported by Ms Hart, is that the pedestrian crossing is best dealt with through assessment criteria which enable analysis of the environment at the time of any relevant resource consent application. The proposed assessment criteria wording in the amended reply provisions states:

*"whether safe and convenient pedestrian access is provided to the Beach Haven Local Centre taking into account the location of existing transport infrastructure, including bus stops and on-street parking on Beach Haven Road"*

146. We find that the addition of this proposed assessment criterion within the precinct provisions is the most appropriate way to address and adequately consider this localised pedestrian crossing matter, at the time a future resource consent application is made. We disagree with Mr Temperley that this should be a standard of the precinct, especially given the uncertainty that Mr Nixon has raised that an appropriate pedestrian crossing design can be achieved in the 'desired' location.
147. We also do not agree with Mr Temperley that the provision of the pedestrian crossing is necessary to deliver the strategic walkable neighbourhood outcomes sought in the R-MHU objectives and policies. We agree with Mr Brabant in his reply submissions, which submit that regardless of whether the pedestrian crossing is able to be achieved, the outcome of PC 99 will be a walkable neighbourhood due to the location of the site.

#### **OTHER EDITORIAL/CORRECTIONS WE HAVE MADE TO THE PRECINCT PROVISIONS**

148. In terms of Clause 29 (4) of the RMA we have made a number of modifications to the precinct provisions. These modifications are for editorial and clarity purposes in order to provide consistency with the wording utilised in the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 and for consistency with the wording and phrases already utilised within the AUP(OP).
149. Editorial changes have also been made to the provisions to correct some errors in the drafting of the precinct provisions, including correcting some number cross-references, to insert missing references to activities and to delete repeated policy references.

#### **SUBMISSIONS AND FURTHER SUBMISSIONS**

150. The following section specifically addresses the submissions received and sets out our decision on those submissions. For efficiency reasons we have adopted the submission tables set out in the Council Officer's s42A Hearing Report.

151. There were 90 submissions received on PC 99 (with ninety-nine individual submission points).
152. Submissions that address the same issues and seek the same relief have generally been grouped together under the following topic headings:
- a) Submissions supporting PC 99 in its entirety
  - b) Submissions supporting PC 99 subject to amendments
  - c) Submissions opposing PC 99 in its entirety
  - d) Submissions opposing PC 99 and seek alternative relief if it is approved
153. There were no further submissions received.

**Submissions supporting PC 99 in its entirety**

**Table 1: Submissions supporting PC 99 in its entirety**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
3.1	Pero Garlick	Approve the plan change within any amendments	-	Accept in part
12.1	Tom Greer	Approve the plan change without any amendments	-	Accept in part
18.1	Marais Business Architects Ltd	Approve the plan change without any amendments	-	Accept in part
33.1	Mitchell Houlbrooke	Approve the plan change without any amendments	-	Accept in part

154. There are four submission points which support PC 99 in its entirety. However, given that a number of amendments have been made to the precinct provisions arising from the submissions, we find that the submission points above in Table 1 shall be **accepted in part**.

**Submissions supporting PC 99 subject to amendments**

**Table 2: Submissions supporting PC 99 subject to amendments**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
1.1	Emma Elizabeth Poyner	Approve the plan change with the amendments requested	-	Accept in part

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
1.2	Emma Elizabeth Poyner	Limit to two storey buildings and reduce to 25 apartments	-	Reject
20.1	Cherylee Lonsdale	Apply for resource consents at the same time as the private plan change	-	Reject
65.1	Charles Ronald Grinter	Approve the plan change with the amendments - rezone to Residential Mixed Housing Suburban; decline introduction of precinct with Medium Density Residential Standards	-	Reject
72.1	New Zealand Defence Force	Amend the Precinct chapter to reference Designation 4311 requirements.	-	Accept
72.2	New Zealand Defence Force	Amend IXXX.1 Precinct description to add a sentence referencing Designation 4311 (additions underlined): ... <u>The precinct is subject to Designation 4311 Whenuapai Airfield Approach and Departure Path Protection</u>	-	Accept

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
		<p><u>which imposes restrictions in relation to permanent and temporary structure height. No permanent or temporary obstacle shall penetrate the approach and departure path obstacle limitation surfaces identified in Designation 4311 without prior approval in writing of the New Zealand Defence Force.</u></p>		
72.3	New Zealand Defence Force	<p>Amend IXXX. Activity table to add a sentence referencing Designation 4311 (additions underlined):  <u>Note 3</u>  <u>The precinct is subject to Designation 4311 Whenuapai Airfield Approach and Departure Path Protection which imposes restrictions in relation to permanent and temporary structure height. No permanent or temporary</u></p>	-	Accept



Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
		<u>obstacle shall penetrate the approach and departure path obstacle limitation surfaces identified in Designation 4311 without prior approval in writing of the New Zealand Defence Force.</u>		
73.1	Airedale Property Trust	Approve the plan change with amendments	-	Accept in part
73.2	Airedale Property Trust	<p>a) Amend the precinct provisions to address the matters raised above, in particular:</p> <ul style="list-style-type: none"> <li>• Remove reference to the MDRS or ensure that these are only applied if PC78 becomes operative.</li> <li>• Reduce the maximum building height to 8m for a 10m setback adjacent to the APT site north boundary and include a specific height in relation to boundary standard for this boundary which</li> </ul>	-	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
		<p>matches the current standard in the Residential-Mixed Housing Urban Zone (3m plus 45 degree recession plane).</p> <ul style="list-style-type: none"> <li>• Include precinct provisions to restrict the existing driveway to the site from Beach Haven Road to only be used for pedestrian access and that any pedestrian access design should incorporate CPTED principles and ensure lighting and security considerations are part of any application assessment.</li> <li>• That Standard IXXX.6.1.2 Building height, Standard IXXX.6.1.5 Building coverage, Standard and IXXX.6.1.6 Landscaped area are removed from the matters which are precluded from notification and the need to</li> </ul>		

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
		obtain written approval from affected persons.		

155. There are nine submission points that supported PC 99 subject to amendments.
156. We have reviewed the Applicant's s32 and s32AA reporting as well as proposed PC 99 in regard to the Applicant seeking a change in zone from R-SH to R-MHU. We agree with the Applicant that Option 2, subject to our amendments to the proposed precinct provisions (as outlined in this report), appropriately address the matters raised in Emma Poyner's submission. We conclude that the R-MHU zone is the better way to meet the objectives of the AUP as well as the purpose of the RMA.
157. We do not consider that it is appropriate to stipulate the number of dwellings allowed within this precinct in the PC 99 provisions. We agree with the responses to our questions at the hearing on this matter, in that yield caps can be appropriate where there are roading upgrades required for example, and there are several instances of these types of requirements in other precincts within the AUP(OP). However, this is not the case for PC 99. The experts have all confirmed that the precinct provisions as well as the AUP(OP) provisions adequately address the infrastructure servicing of the site. Further, none of the traffic experts had concerns about the effects from the rezoning of this land on the surrounding road network. We note that PC 99 will enable development in accordance with the R-MHU zone but that resource consents are still required before development of the two sites can occur. The resource consents for any future development will need to undertake an assessment of the development against the provisions of the AUP(OP), including the precinct provisions which are considered to be appropriate for managing the effects of the rezoning of this land to R-MHU.
158. We further note that the amendments made to the precinct provisions address matters raised regarding stormwater, water supply, and wastewater infrastructure. These provisions now require a resource consent application to show that there is sufficient infrastructure to support the development proposal specific to a proposed resource consent application.
159. The Hearing Panel finds that submission point 1.1 can be accepted in part in that PC 99 is approved subject to the recommended amendments in this report arising from the submissions from NZDF, ACS, and Watercare. Submission point 1.2 is rejected for the reasons provided above in paragraphs 156 and 157. We have not made any amendments to PC 99 arising from these two submission points.
160. Submission 20.1 from Cherylee Lonsdale requests that resource consents are applied for at the same time as PC 99.

161. We note that Schedule 1 Part 2 Clauses 21-29 of the RMA provides the statutory mechanism for any person to request a change to a district plan or a regional plan. Therefore, the Applicant has the statutory right, as any other person does, to request a change to the operative AUP zone for their two sites at 13 Cresta Avenue and 96 Beach Haven Road, Beach Haven. We further note there is no requirement for a resource consent application for the respective development of the land to be lodged in conjunction with any private plan change application.
162. Submission point 65.1 from Charles Ronald Grinter seeks that PC 99 is approved with the following amendments:
- a) rezone to R-MHS; and
  - b) decline introduction of a precinct with MDRS.
163. As stated above in paragraph 156 above, the appropriateness of the request has been considered in the analysis of the Applicant's s32 reporting. We agree with the Applicant that PC 99 for the reasons already outlined above, subject to our amendments to the proposed precinct provisions, is the most appropriate way to meet the objectives of the AUP(OP) and the RMA.
164. In regard to b) above, the Applicant is statutorily required to incorporate the MDRS into PC 99 in accordance with Schedule 3A and section 77G(1) of the RMA. Council cannot consider accepting or adopting a private plan change request, nor progress a plan change through the notification and hearing processes, under Schedule 1 Clause 25 (4A) of the RMA if the private plan change request does not incorporate the MDRS.
165. We acknowledge that the Government has indicated new directions in their 'Housing for Growth' policy. It appears that this will include the ability for councils to be able to decide that MDRS is optional if other land areas within a council's responsibility provides for 30-years of growth. However, changes to the RMA have yet to be advised or to be presented to Parliament. Until such time as the amendments to the RMA are enacted, the current statutory requirements remain in force.
166. Submission point 72.1 from New Zealand Defence Force (NZDF) seeks that the PC 99 precinct provisions be amended to reference the requirements of NZDF's Designation 4311.
167. Subsequent discussions have occurred between the Applicant and the NZDF which have resulted in an agreed set of precinct provisions that we understand would satisfy the relief sought by NZDF. We support the outcomes of these agreed provisions.
168. Submissions points 73.1 and 73.2 from Airedale Property Trust are seeking the following relief:
- a) Submission point 73.1: Approve PC 99 with amendments; and

- b) Submission point 73.2: Amend the precinct provisions to address the matters raised, in particular:
- i. remove reference to the MDRS or ensure that these are only applied if PC 78 becomes operative.
  - ii. reduce the maximum building height to 8m for a 10m setback adjacent to the APT site north boundary and include a specific height in relation to boundary standard for this boundary which matches the current standard in the R-MHU (3m plus 45 degree recession plane).
  - iii. include precinct provisions to restrict the existing driveway to the site from Beach Haven Road to only be used for pedestrian access and that any pedestrian access design should incorporate CPTED principles and ensure lighting and security considerations are part of any application assessment.
  - iv. that Standard IXXX.6.1.2 Building height, Standard IXXX.6.1.5 Building coverage, and Standard IXXX.6.1.6 Landscaped area are removed from the matters which are precluded from notification and the need to obtain written approval from affected persons.

169. In regard to a) above, our decision is that PC 99 is accepted with amendments, and we make no further comment on this submitter's point.

170. In regard to b) removal of MDRS, we have already discussed this in paragraphs 164 -165 above.

171. With regards to the remaining points in this submission we note that the Applicant has had discussions with Airedale Property Trust which has resulted in the introduction of a specific height in relation to boundary standard being introduced into the precinct provisions for this boundary which matches the current standard in the R-MHU zone (3m plus 45 degree recession plane). A further precinct rule now also limits the existing access from Beach Haven Road so that it is 'pedestrian only.' Lastly, we note that for any application for resource consent for the construction and use of one dwelling listed in Activity Table IXXX.4.1(A1) that does not comply with one or more of the standards listed in IXXX.5(1)(a)-(h), this will be considered without public notification or the need to obtain written approval from affected parties unless the Council decides that special circumstances exist under section 95A(9) of the Resource Management Act 1991. However, any other application for a resource consent which is listed in IXXX.5(1) which also requires resource consent under other rules in the Plan will be subject to the normal tests for notification under the relevant sections of the RMA.

172. We therefore find for the reasons listed above that:

- a. the following submission is **accepted**:
  - i. 73.1 (Airedale Property Trust)
- b. the following submissions are **accepted in part**:

- i. 1.1 (Emma Elizabeth Poyner)
  - ii. 73.2 (Airedale Property Trust)
  - iii. 72.1, 72.2, and 72.3 (NZDF)
- c. the following submissions are **rejected**:
- i. 1.2 (Emma Elizabeth Poyner)
  - ii. 20.1 (Cherylee Lonsdale)
  - iii. 65.1 (Charles Ronald Grinter)
- d. the following submission is **rejected in part**:
- i. 73.2 (Airedale Property Trust)

**Submissions opposing PC 99 in its entirety**

**Table 3: Submissions opposing PC 99 in its entirety**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
2.1	Blair Baldock	Decline the plan change	-	Reject
4.1	Tim Merkens	Decline the plan change	-	Reject
5.1	Anne-Marie Brill	Decline the plan change	-	Reject
6.1	Timothy James Orr	Decline the plan change	-	Reject
7.1	Keegan Goodall	Decline the plan change	-	Reject
8.1	Jose Dooley	Decline the plan change	-	Reject
9.1	Francois du Plessis	Decline the plan change	-	Reject
10.1	Sharon Frances	Decline the plan change	-	Reject
11.1	Shane Dooley	Decline the plan change	-	Reject
13.1	Martin Coleman	Decline the plan change	-	Reject
14.1	Angela D Lewis	Decline the plan change	-	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
15.1	Fran Lowery	Opposed to change of zoning	-	Reject
16.1	Peter Douglas	Decline the plan change	-	Reject
17.1	Jessica Maree Dodd	Decline the plan change	-	Reject
19.1	Royda Ann Kavalinovich	Decline the plan change	-	Reject
21.1	Peter Kerrigan	Decline the plan change	-	Reject
22.1	Brian Williams	Concerned at proposal of zone change	-	Reject
23.1	Louise Riddell	Decline the plan change	-	Reject
24.1	Kate Ann Sandford	Decline the plan change	-	Reject
25.1	Alastair Mackay	Decline the plan change	-	Reject
26.1	Jeb and Rochelle Warren	Decline the plan change	-	Reject
27.1	KC Foong	Decline the plan change	-	Reject
28.1	Kimberley Anne Lind	Decline the plan change	-	Reject
30.1	Paige Louise Mekkelholt	Decline the plan change	-	Reject
31.1	Victoria Mowbray	Decline the plan change	-	Reject
32.1	Elizabeth Bell	Decline the plan change	-	Reject
34.1	Kim Mekkelholt	Decline the plan change	-	Reject
35.1	Lauren O'Neill	Decline the plan change	-	Reject
36.1	Josephine Hawke	Decline the plan change	-	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
37.1	Nin Petterson-Fox	Decline the plan change	-	Reject
38.1	Thomas Flexton	Decline the plan change	-	Reject
39.1	Cheryll Bicar	Decline the plan change	-	Reject
40.1	Alison Lewis	Decline the plan change	-	Reject
41.1	Sarah Blaney	Decline the plan change	-	Reject
42.1	Matt Pulin	Decline the plan change	-	Reject
43.1	Paul [no other detail provided]	Decline the plan change	-	Reject
44.1	Kathy Williams	Decline the plan change	-	Reject
45.1	Abbagail Head and Benjamin Collings	Decline the plan change	-	Reject
46.1	James Markwick	Decline the plan change	-	Reject
47.1	Carol and Bob Hamilton	Decline the plan change	-	Reject
48.1	Barbara Janis Rothwell	Decline the plan change	-	Reject
49.1	Geoffrey Wilding	Decline the plan change	-	Reject
50.1	Anna Lee Smith	Decline the plan change	-	Reject
51.1	Helen Lee Smith	Decline the plan change	-	Reject
52.1	Keitha Turner	Decline the plan change	-	Reject
53.1	Alison Ann McGlashan	Decline the plan change	-	Reject
54.1	Keith Salmon	Decline the plan change	-	Reject



Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
55.1	Mel and Max Chapman Gataua	Decline the plan change	-	Reject
56.1	Craig Stanton	Decline the plan change	-	Reject
57.1	Elisabeth Morgan-Reeve	Decline the plan change	-	Reject
58.1	Stephen Hogg	Decline the plan change	-	Reject
59.1	Catherine Reina Conrad	Decline the plan change	-	Reject
60.1	Sean Crawford	Decline the plan change	-	Reject
61.1	Meinita Crerar Baker	Decline the plan change	-	Reject
63.1	Geoffrey John Dawson	Decline the plan change	-	Reject
66.1	Sarah Menzies	Decline the plan change	-	Reject
67.1	Cameron Mark Thorpe	Decline the plan change	-	Reject
68.1	Bilney Lodge Properties Limited	Decline the plan change	-	Reject
69.1	Eion Martin Bryant	Decline the plan change	-	Reject
70.1	Tarn Drake	Decline the plan change	-	Reject
74.1	Paul Heiplik	Decline the plan change	-	Reject
75.1	Elizabeth Hurley	Decline the plan change	-	Reject
76.1	Frances Hogg	Reject the plan change as notified	-	Reject
78.1	Simon Richard Taylor	Decline the plan change	-	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
80.1	Anne Mutu	Decline the plan change	-	Reject
81.1	Marian Mutu	Decline the plan change	-	Reject
82.1	Inger Bennett	Decline the plan change	-	Reject
83.1	Tania McBeth-Stanton	Decline the plan change	-	Reject
85.1	Kirk David Vette	Decline the plan change	-	Reject
86.1	Rian Drake	Decline the plan change	-	Reject
87.1	Alex Hurley	Decline the plan change	-	Reject
88.1	Andrew McManus	Decline the plan change	-	Reject
89.1	Robyn Plummer	Decline the plan change	-	Reject
90.1	Gallo Boyle and James Boyle	Decline the plan change	-	Reject

173. There are 75 submission points which oppose PC 99 in its entirety. The submission points above in Table 3 have been grouped rather than individually addressed because the submissions in Table 3 above all oppose PC 99 in its entirety and raise similar matters of concern. These submissions have not requested amendments or alternative relief which requires an individual response.

174. The issues raised in the submissions listed above in Table 3 are shown below in Table 4.

**Table 4: Matters raised in submissions**

Traffic
<ul style="list-style-type: none"> <li>• Traffic congestion and lack of parking onsite</li> <li>• Will result in increased pressure on street parking</li> <li>• Decreased traffic flow</li> <li>• Issues with access to properties and into Cresta Avenue and Beach Haven Road</li> <li>• Safety for road users, pedestrians and cyclists</li> </ul>

<ul style="list-style-type: none"> <li>• Inadequate public transport and alternative active transport infrastructure (bus routes and cycle lanes)</li> </ul>
<b>Natural hazards and flooding</b>
<ul style="list-style-type: none"> <li>• Flooding and overland flow path obstruction</li> <li>• Stormwater and associated inadequacy of the existing infrastructure to support development of the two sites</li> <li>• Effects on the environment downstream of the two sites</li> <li>• Coastal protection and geotechnical issues</li> </ul>
<b>Amenity/Character</b>
<ul style="list-style-type: none"> <li>• Change to/loss of character of the neighbouring streets and surrounds</li> <li>• Decrease in amenity values of the surrounding area</li> <li>• Lack of sunlight to adjacent properties</li> </ul>
<b>Social effects</b>
<ul style="list-style-type: none"> <li>• Increase in crime</li> <li>• Noise</li> <li>• Privacy</li> <li>• Rubbish</li> </ul>
<b>Intensification</b>
<ul style="list-style-type: none"> <li>• Effect of intensification on the Beach Haven Centre</li> <li>• Inappropriate housing density and level of intensification</li> <li>• Effect of intensification on community and its infrastructure</li> <li>• Cumulative effect of intensification with the Beach Haven area</li> <li>• Risk of precedent for future developments within the Beach Haven area</li> </ul>
<b>Infrastructure</b>
<ul style="list-style-type: none"> <li>• Insufficient and inadequate stormwater, water supply and wastewater infrastructure to support development of the two sites</li> <li>• Lack of capacity in local community facilities and services (parks, local schools and daycares, and businesses including entertainment, gym, supermarket)</li> <li>• Sequencing of infrastructure</li> </ul>
<b>Other matters raised</b>
<ul style="list-style-type: none"> <li>• Increased expense and stress for existing community having to go through another process</li> <li>• Council processes including the previously refused resource consent</li> <li>• Zoning and planning and legal processes</li> <li>• Not sound resource management or consistent with Auckland Unitary Plan (Regional Policy Statement, District Plan) and Part 2 of the Resource Management Act 1991</li> <li>• General concern over the developer's future plans/intentions for the two sites</li> <li>• Concerns over property values</li> <li>• Insufficient mitigation proposed in plan change</li> </ul>

175. The issues raised in the submissions listed above in Table 4 have been considered in the assessment of the request, including by each of the Council specialists' according to their professional discipline, as well as in the Applicant's expert evidence. Some of the matters raised in these submissions were included in sections 7, 9 and 12 of the s42 Hearing Report in relation to the assessment of effects, the relevant statutory provisions, and recommended amendments to PC 99 to address the relief sought in other submissions that requested amendments and/or alternative relief. We have taken all of the above assessments into consideration, including the evidence provided by submitters during the hearing.
176. In regard to the statutory and planning processes, we acknowledge that the local community has already participated in a statutory process for the earlier resource consent application lodged by the Applicant, Beach Haven Road Apartments Limited. However, Schedule 1 Part 2 Clauses 21-29 of the RMA provides the statutory mechanism for any person to request a change to a district plan or a regional plan. Therefore, as we have stated previously, the Applicant has the statutory right, as any other person does, to request a change to the operative AUP(OP) zone for their two sites at 13 Cresta Avenue and 96 Beach Haven Road, Beach Haven.
177. The Council as the local authority has considered the request having regard to the s32 reporting and assessment of effects prepared by the Applicant, including the further information provided by the Applicant. The Council may then either adopt the request (i.e. it becomes a Council-initiated plan change) or accept the request (i.e. it remains a private plan change request) and proceed to notify the request, or part of that request. We note that the Council accepted the request and that PC 99 has proceeded through the Schedule 1 statutory processes which has provided the opportunity for submissions to be lodged on the request.
178. The Council is required to ensure that the effects of the request (i.e. the change in zone from R-SH to R-MHU and the incorporation of the MDRS) are appropriately addressed in PC 99. This Hearing Panel has found that to be the case.
179. Further discussion on the assessment of effects can be found in Section 9 of the s42 Hearing Report, as well as in the Applicant's evidence. We note that there is a high level of agreement between the Applicant's and the Council's expert teams regarding the assessment of the environment effects arising from subdivision, use and development enabled by PC 99.
180. With respect to water supply and wastewater capacity, the Panel acknowledges that there has been significant effort made to achieve an appropriate response to the outstanding water supply and wastewater capacity constraints. We note that the work undertaken by the planning witnesses has resulted in agreement that the PC 99 provisions are appropriate in order to ensure that coordinated outcomes of development and infrastructure capacity will be achieved. We agree that these amended provisions adequately address the matters raised in submissions.
181. Turning to residential amenity value and neighbourhood character effects, Mr Pierard has concluded that the rezoning of the site from R-SH to R-MHU will enable a more efficient use of land for higher density living which is appropriate

given the site's proximity to the Beach Haven Local Centre and other services. Furthermore, Ms Morgan, relying on the assessment of Mr Pierard, concluded that residential amenity can be appropriately managed by both the existing development controls within the R-MHU and through the proposed precinct provisions.<sup>11</sup> We have earlier noted that Ms Hart concluded in the s42 Hearing Report that the development enabled by PC 99 has the potential to generate adverse residential amenity value and neighbourhood character effects on adjoining sites. Ms Hart did however acknowledge that the scale of those potential adverse effects will depend on the final form of development being proposed. We agree with Ms Morgan that the consent process is the most appropriate time to address the effects of future development against the AUP(OP). We have also found that the amended precinct provisions will adequately enable an assessment of the key considerations for the PC 99 land.

182. The Hearing Panel notes that amendments have been made to the PC 99 precinct provisions in response to submissions to provide for:
- i. A reduced HiRB control along the site's southern boundary; and
  - ii. Pedestrianisation of the existing access to the site from Beach Haven Road, including the imposition of a new standard to ensure that connection can be provided.
183. We find that these changes are appropriate and that they allow for consideration of effects on the urban built character of the precinct and the effects on the amenity of neighbouring sites. Relevant assessment criteria within the precinct provisions will also ensure that visual dominance, character values and visual amenity matters are appropriately addressed at the time that a future resource consent application is made.
184. Amendments to PC 99, specifically the precinct provisions, were also pivotal in resolving the relief sought in several submissions, including NZDF's (refer to section 12.2), ACS (refer to section 12.4.1), and Watercare (refer to section 12.4.4).
185. The Panel notes that while PC 99 enables development in accordance with the R-MHU zone, the effects of future development on the two sites for a specific development proposal will need to be assessed against all relevant AUP(OP) provisions, including the precinct provisions.
186. Further, there is alignment between the experts on transport related matters. We acknowledge that Mr Nixon has undertaken an updated traffic volume survey at key intersections, including the Saturday peak hour in response to submissions received. He advised that the results of the most recent survey (July 2024) demonstrate a lower level of traffic volume compared to the 2021 data which was used in the PC 99 application material.

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<sup>11</sup> Morgan EiC at [9.4].

187. Mr Nixon has concluded that even with the additional movements enabled by PC 99, both key intersections achieved the highest level of modelled performance. Therefore, the key local intersections will continue to operate safely despite the increased density enabled by PC 99. Mr Nixon also confirmed that no traffic issues arise with regard to parking and access to the site. We note that overall, all experts concluded that the transport related effects of PC 99 would be no more than minor.
188. There was however one remaining point of contention between Mr Nixon and Mr Temperley which related to whether there should be a requirement in the precinct provisions for the installation of a pedestrian crossing on Beach Haven Road. This matter has been discussed in detail in paragraphs 138 – 147 of this decision.
189. Agreement has also been reached between the Applicant’s experts and the s42A technical experts in relation to stormwater effects and natural hazards (downstream flooding). All experts confirmed to the Hearing Panel that there is agreement that the amended provisions provide appropriate and feasible solutions to mitigate potential adverse effects of the enabled development on stormwater and flooding. We agree that all relevant provisions (i.e. the precinct and AUP(OP) provisions combined) provide sufficient certainty that stormwater and flooding effects can and will be mitigated appropriately through the resource consent process and we concur with the agreed provisions on these matters.
190. The submissions in Table 3 above (2.1, 4.1, 5.1, 6.1, 7.1, 8.1, 9.1, 10.1, 11.1, 13.1, 14.1, 15.1, 16.1, 17.1, 19.1, 21.1, 22.1, 23.1, 24.1, 25.1, 26.1, 27.1, 28.1, 30.1, 31.1, 32.1, 34.1, 35.1, 36.1, 37.1, 38.1, 39.1, 40.1, 41.1, 42.1, 43.1, 44.1, 45.1, 46.1, 47.1, 48.1, 49.1, 50.1, 51.1, 52.1, 53.1, 54.1, 55.1, 56.1, 57.1, 58.1, 59.1, 60.1, 61.1, 63.1, 66.1, 67.1, 68.1, 69.1, 70.1, 74.1, 75.1, 76.1, 78.1, 80.1, 81.1, 82.1, 83.1, 85.1, 86.1, 87.1, 88.1, 89.1, and 90.1) are therefore rejected for the reasons discussed above.

**Submissions opposing PC 99 and seeking alternative relief if approved**

**Table 5: Submissions opposing PC 99 and seeking alternative relief if approved**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
62.1	Auckland Council	Decline plan change subject to amendments	-	Accept in part
62.2	Auckland Council	a. Amend the planning maps and/or add a plan to the Precinct to identify that the land within the plan change area is subject to a wastewater infrastructure	-	Accept in part

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
		<p>constraint.</p> <p>b. Amend the Precinct description to identify that there are capacity constraints in the bulk wastewater infrastructure network serving the Beach Haven catchment.</p> <p>c. Amend the Precinct to add new objectives and policies to only enable subdivision and development where there is sufficient wastewater infrastructure capacity.</p> <p>d. Amend the MDRS provisions and all associated explanatory text in the Precinct, to recognise the presence of a qualifying matter, namely wastewater infrastructure capacity constraints.</p> <p>e. Amend IXXX.4.1 Activity Table to add a new rule classifying two or more dwellings per site as a restricted</p>		

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
		<p>discretionary activity, due to wastewater infrastructure constraints.</p> <p>f. Amend IXXX.4.1 Activity Table to add a rule classifying subdivision as a restricted discretionary activity, due to wastewater infrastructure constraints.</p> <p>g. Add matters of discretion and assessment criteria for two or more dwellings per site and subdivision within the Precinct relating to wastewater infrastructure and servicing.</p> <p>h. Amend IXXX.9 Special information requirements to require all applications for two or more dwellings and subdivision to provide a Wastewater Infrastructure Capacity Assessment.</p>		
62.3	Auckland Council	i. Amend IXXX.7.1(1)(c) to read 'the effects of	-	Accept



Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
		<p>infrastructure provision and management of effects of stormwater.’</p> <p>ii. Amend IXXX.7.2(c)(iii) to refer to ‘E38.8’ (not E88.8).</p> <p>iii. Amend IXXX.7.2(c)(iii) to list policy E38.8(22).</p>		
64.1	Harriet Bennett Allan	Decline the plan change or rezone to Residential – Mixed Housing Suburban Zone	-	Reject
64.2	Harriet Bennett Allan	Decline the plan change (inclusion of Medium Density Residential Standards)	-	Reject
71.1	Daisy Kay	Reject the plan change as notified	-	Reject
71.2	Daisy Kay	amended to avoid adverse impacts on existing infrastructure and avoid adverse effects that will be generated or exacerbated by the development potentially enabled by the Plan Change, including Future Restricted Discretionary development to be required to address;	-	Accept in part

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
		<p>1. transport and parking effects on transport corridors and in particular on Cresta Avenue and Beach Haven Road (including safety);</p> <p>2. impacts on other infrastructure, particularly stormwater, to avoid any adverse impacts on neighbouring properties and the local environment;</p> <p>comply with a local area/precinct plan developed with Council and the Community that should provide, at a minimum, for:</p> <p>increasing access and facilities for frequent and more reliable public transport services;</p> <p>improving pedestrian and cycle safety within the road corridor; and for adequate parking on MHU zoned land that avoids adverse impacts on the existing capacity</p>		

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
		of the local area's public parking (including recreation).		
79.1	Watercare Services Limited	<p>Decline plan change subject to the following amendments:</p> <p>a. Amend the planning maps and/or add a plan to the Precinct to identify that the land within the plan change area is subject to a wastewater infrastructure constraint.</p> <p>b. Amend the Precinct description to identify that there are capacity constraints in the bulk wastewater infrastructure network serving the Beach Haven catchment.</p> <p>c. Amend the Precinct to add new objectives and policies to only enable subdivision and development where there is sufficient wastewater infrastructure capacity.</p> <p>d. Amend the</p>	-	Accept in part

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
		<p>MDRS provisions and all associated explanatory text in the Precinct, to recognise the presence of a qualifying matter, namely wastewater infrastructure capacity constraints.</p> <p>e. Amend IXXX.4.1 Activity Table to add a new rule classifying two or more dwellings per site as a restricted discretionary activity, due to wastewater infrastructure constraints.</p> <p>f. Amend IXXX.4.1 Activity Table to add a rule classifying subdivision as a restricted discretionary activity, due to wastewater infrastructure constraints.</p> <p>g. Add matters of discretion and assessment criteria for two or more dwellings per site and subdivision within the Precinct relating to</p>		

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planners Recommendations
		wastewater infrastructure and servicing. h. Amend IXXX.9 Special information requirements to require all applications for two or more dwellings and subdivision to provide a Wastewater Infrastructure Capacity Assessment.		
84.1	Judith Rochelle Lardner Rivlin	Decline the plan change, but if approved, make the requested amendments	-	Reject
84.2	Judith Rochelle Lardner Rivlin	If approved, decrease the number of proposed dwellings to 40-50	-	Reject

191. There are 10 submission points which oppose PC 99 but seek alternative relief if PC 99 is approved.
192. We have set out the reasons why we have approved this plan change with modifications earlier in this report. For those reasons we reject those submissions shown above in Table 5 seeking that PC 99 be declined.
193. Auckland Council, as submitter (Submission points 62.1, 62.2, and 62.3) opposed the plan change, unless the matters raised in the submission are addressed. As discussed above, Ms Bell on behalf of Auckland Council, as submitter, tabled a statement and chose not to appear at the hearing. Ms Bell advised she attended the expert conferencing and as a result, the amendments made to the precinct (as outlined in Appendix A to the JWS) were, in her view (when read in conjunction with the existing zone and subdivision rules) sufficient to provide the ability for the Council to decline an application if the effects are not able to be adequately addressed. We support the provisions reached at expert conferencing and have

not made any further amendments to the agreed provisions on infrastructure-related matters.

194. Harriet Bennett Allan made submission points 64.1 and 64.2. Submission point 64.1 seeks that PC 99 is declined or alternatively rezoned to R-MHS. Submission point 64.2 seeks that PC 99 is declined as far as it relates to the inclusion of MDRS. Our findings on both of these matters have been discussed above in paragraphs 105 - 116 and paragraphs 164 – 165, respectively.
195. Daisy Kay made submission points 71.1 and 71.2 on PC 99. Submission point 71.1 seeks that PC 99 as notified is rejected, whereas, submission point 71.2 seeks that PC 99 is amended to avoid adverse impacts on existing infrastructure relating to transport and parking effects (including traffic safety) and in particular on Cresta Avenue and Beach Haven Road, stormwater infrastructure to avoid any adverse effects on neighbouring properties and the local environment. She also sought compliance with a local area plan/precinct plan that responds to increasing access and facilities for frequent and more reliable public transport services, improving pedestrian and cycle safety within the road corridor and that ensured adequate parking is provided on R-MHU zoned land. Our findings on these infrastructure related matters have been discussed above in paragraphs 186 – 189.
196. Watercare’s submission was in opposition to PC 99 in its entirety (Submission point 79.1). The specific parts of PC 99 that Watercare had a particular interest in were the level of development enabled under PC 99 and the actual and/or potential effects on Watercare’s existing and planned water and wastewater network. Specifically, Watercare considered there was an absence of proposed precinct provisions addressing the need to consider bulk water supply and wastewater infrastructure capacity. Watercare therefore opposed PC 99 in its proposed form and sought that the plan change be declined unless it was amended.
197. Despite having filed expert evidence, upon the completion of the expert conferencing, the experts for Watercare (like Auckland Council as submitter) chose to not attend the hearing. We understand this was on the basis that the experts agreed on the amendments in the updated precinct provisions attached to the JWS. We note that the JWS also advised that there were no remaining points in contention amongst the experts.
198. Judith Rochelle Lardner Rivlin (Submission points 84.1 and 84.2) sought that PC 99 be declined but if it was approved, she considered amendments should be made to PC 99. Submission point 84.2 sought that if PC 99 is approved, then the number of proposed dwellings on the site should be decreased from 50 to 40 so that any development is carefully managed and monitored in order to ensure negative impacts on existing residents are minimised and to retain the community focussed character of the neighbourhood.
199. As discussed above in paragraph 157 we agree with Ms Hart that it is not appropriate to stipulate within these precinct provisions the number of dwellings enabled on this land.

200. For the reasons provided above, our decision is:
- a. the following submissions are **accepted in part**:
    - i. 62.1 and 62.2 (ACS)
    - ii. 71.2 (Daisy Kay)
    - iii. 79.1 (Watercare)
  - b. the following submissions are **rejected**:
    - iv. 64.1 and 64.2 (Harriet Bennett Allan)
    - v. 71.1 (Daisy Kay)
    - vi. 84.1 and 84.2 (Judith Rochelle Lardner Rivlin).

### **STATUTORY PROVISIONS**

201. The RMA sets out a range of matters that must be addressed when considering a plan change, as identified in the s32 report accompanying the notified plan change. We find that the plan change:
- a. Gives effect to the relevant statutory documents including the:
    - i. National Policy Statement on Urban Development 2020 (NPS-UD);
    - ii. National Policy Statement for Freshwater Management 2020 (NPS-FM);
    - iii. NZ Coastal Policy Statement 2010;
    - iv. Hauraki Gulf Marine Park Act 2000; and
    - v. National Environmental Standard for assessing and managing contaminants into soil to protect human health (NES-CS).
  - b. Gives effect to the AUP's Regional Policy Statement, in particular B2.2 – Urban Growth and Form, B2.3 Quality Built Environment, B2.4 Residential Growth, B3.2 – Infrastructure, B3.3 Transport, as well as Chapter B6 - Mana Whenua, Chapter B7 – Natural Resources and Chapter B10 - Environmental Risk; and
  - c. Is consistent with the Auckland Plan 2050 and the Auckland Future Development Strategy (FDS).
202. We note that both Ms Hart and Ms Morgan carried out comprehensive assessments against all relevant statutory and non-statutory documents as set out in the s42A Hearing Report and in expert evidence. We also observed that the planning experts were in agreement on the planning analysis undertaken in relation to the above-listed documents.

203. We agree with and rely on the assessments undertaken by these experienced planning experts and in doing so find that PC 99 will give effect to the relevant higher order policy documents, including the above national policy statements and the RPS. In doing so, the plan change will also give effect to the relevant district Plan Chapters of the AUP(OP), including Chapter E27 – Transport and Chapter H5 - Residential – Mixed Housing Urban Zone. PC 99 is also consistent with the outcomes sought in the Auckland Plan 2050 and the Auckland Future Development Strategy 2023-2053.

## **SECTION 32AA EVALUATION**

204. Section 32AA of the RMA requires a further evaluation for any changes that are proposed to the notified plan change after the section 32 evaluation was carried out.<sup>12</sup> This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes.<sup>13</sup>
205. In our view this decision report, which among other things addresses the modifications that have been made to the provisions of PC 99, satisfies our section 32AA obligations and is the most appropriate means of achieving the purpose of the RMA by reference to s32.

## **PART 2 OF THE RMA**

206. Section 32(1)(a) of the RMA requires assessment of whether the objectives of a plan change are the most appropriate way for achieving the purpose of the RMA in Part 2. Section 72 of the Act also states that the purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA. In addition, section 74(1) provides that a territorial authority must prepare and change its district plan in accordance with the provisions of Part 2. While this is a private plan change, these provisions apply as it is the Council who is approving the private plan change, which will change the AUP(OP).
207. For all of the reasons set out in this decision, we are satisfied that the matters set out in sections 6, 7 and 8 of the RMA have been addressed. PC 99 and its provisions, as we have modified them, have respectively recognised and provided for, have had particular regard to and have taken into account those relevant section 6, 7 and 8 matters.
208. Finally, in terms of section 5 of the RMA, it is our finding that the provisions of PC 99 in s32 and s32AA terms, are consistent with, and the most appropriate way, to achieve the purpose of the Act. PC 99 will enable the efficient development of the land for residential development which will enable people and communities to provide for their social, economic, and cultural well-being while avoiding, remedying, or mitigating any adverse effects on the environment.

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<sup>12</sup> RMA, section 32AA(1)(a)

<sup>13</sup> RMA, section 32AA(1)(c)



## DECISION

209. That pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, PC 99 to the Auckland Unitary Plan (Operative in Part) is **approved**, subject to the modifications as discussed in this decision and set out in the amended precinct provisions.
210. For the reasons set out above, PC 99 together with the application of the precinct provisions is the most appropriate means of achieving the objectives of the AUP(OP) and the purpose of the RMA. The precinct provisions (attached as Appendix 1 to this decision) are the most effective and efficient when regard is had to the costs and benefits associated with those provisions relative to the alternatives.
211. Submissions on the plan change are accepted, accepted in part, rejected or rejected in part in accordance with this decision.
212. In addition to the reasons set out above, the overall reasons for the decision are that PC 99:
- a. is supported by necessary evaluation in accordance with section 32 and section 32AA;
  - b. gives effect to the National Policy Statement on Urban Development;
  - c. gives effect to the National Policy Statement for Freshwater Management;
  - d. gives effect to the NZ Coastal Policy Statement 2010;
  - e. gives effect to the Hauraki Gulf Marine Park Act 2000;
  - f. gives effect to the National Environmental Standard for assessing and managing contaminants into soil to protect human health
  - g. gives effect to the Auckland Regional Policy Statement; and
  - h. satisfies Part 2 of the RMA.



**Chairperson**

**Date: 16/12/2024**

## **Attachment A - Beach Haven Precinct Provisions**