

**Decision following the hearing of a Private Plan
Change to the Auckland Unitary Plan under the
Resource Management Act 1991**

**Private Plan Change 94 - Wairaka Precinct on
Carrington Road, Mt Albert**

Ministry of Housing and Urban Development

18 March 2025

TABLE OF CONTENTS

TIRO WHĀNUI OVERVIEW	4
KUPU WHAKATAKI INTRODUCTION.....	8
TIRO WHĀNUI O TE PANONI HOAHOA TŪMATAITI ME TŌNA TAKE OVERVIEW OF THE PRIVATE PLAN CHANGE AND ITS PURPOSE	8
NGĀ KUPU TURE ME NGĀ HERENGA STATUTORY PROVISIONS AND REQUIREMENTS	10
NGĀ MEA HĀTEPE PROCEDURAL MATTERS	11
Expert conferencing	11
Expert witnesses excused.....	11
Panel directions.....	12
The Local Board	13
NGĀ KAUPAPA TOPICS	13
HŌKAITANGA SCOPE	14
Overview and legal principles.....	14
Protection of additional trees, heritage buildings and ecological features.....	15
Financial contribution	18
Discussion and findings.....	19
NGĀ WHAIWHAKAARO MĀORI CULTURAL CONSIDERATIONS	20
Overview	20
Relevance of Treaty settlement context and cultural economic aspirations to statutory framework.....	21
Precinct name	26
Other provisions referencing Mana Whenua	30
TUKANGA NGĀ AHOAHO OPEN SPACE	32
Overview	32
Open space context	32
Methodology.....	34
NPS-UD and RPS	40
Provision of open space	42
HORANUKU ME TE TĀONE ORA LANDSCAPE AND URBAN DESIGN	49
Vision and character.....	49
Building Height	53
Height Area 1	53
Height Area 2	57
Height Area 4 – Building Height on Carrington Road.....	58
Pumphouse	62
Sanctuary garden	63
MOMO WAKA TRANSPORT	64
Expert Evidence	64

HANGANGA MŌ TE WAI ME TE WAI PARA WATER AND WASTEWATER INFRASTRUCTURE	73
Evidence and submissions	73
Discussion and findings.....	75
TE WHATU ORA HEALTH NZ.....	76
NGĀ MEA TOHE-KORE MATTERS NOT IN CONTENTION	77
Discussion and findings.....	77
NGĀ MEA MAHERE PLANNING MATTERS	77
Evidence, discussion and findings	78
NGĀ WHAKATAUNGA MŌ NGĀ TĀPAETANGA DECISIONS ON SUBMISSIONS.....	82
WHAKATAUNGA DECISION	83

TIRO WHĀNUI | OVERVIEW

Proposed Private Plan Change 94 (**PC94**) relates to the Wairaka Precinct (**Precinct**) on Carrington Road, Mount Albert. Parts of the current Special Purpose - Tertiary Education Zone, Special Purpose – Healthcare Facility and Hospital Zone and Terrace Housing and Apartment Buildings Zone are proposed to be rezoned to the adjoining Business - Mixed Use Zone.

A further strip of land is to be rezoned from Special Purpose - Tertiary Education to Residential - Mixed Housing Urban, adjoining existing land with that zoning in the southern part of the Precinct.

A revised Precinct plan and revised Precinct provisions are also proposed, with the principal change sought being to allow for greater height for residential buildings.

The application also seeks that the Precinct is renamed Te Auaunga Precinct.

This plan change is **Approved**. We have largely adopted the Applicant’s Reply Version Provisions (dated 10 December 2024) but have made the following key changes:

- Precinct description: changes to better align with wording in the Redress Deed;
- Height Area 1: adding a new Policy 14B and amending a related matter of discretion (I334.8.1(1B) (b) (i) and (ii) to better address design matters for the proposed taller buildings;
- Height Area 1: amendments to matter of discretion I334.8.1(1B) (b) (i) and (ii) to better address the relationship of the proposed taller buildings with the Oakley Hospital Main Building;
- Height Area 2: increase height of Area 2 from 27m to 35m and increase Area 2 to also include the residual strip of Height Area 4 to the west of the consented site RC3 (i.e., the area between roads 1 and 2);
- Height Area 4: extend Height Area 2 to include part of Height Area 4 north of Gate 3 adjacent to the Carrington Road frontage, to enable a 35m height in conjunction with a proposed 6m setback for development over 27m in height;
- Special Information Requirement: addition of a requirement for a parking impact assessment in 1334.9;
- Precinct Plan 1: inclusion of an indicative cycleway at the western end of the main Oakley Main Hospital building; and
- Precinct Plan 3: changes to address the increase in height and spatial area covered for Height Area 2 and an increase in height adjacent to the Carrington Road frontage.

The reasons for our decision are set out in the sections that follow.

Private Plan Change:	94 - Wairaka Precinct on Carrington Road, Mt Albert
Applicant:	Ministry of Housing and Urban Development Te Tūāpapa Kura Kāinga (HUD or the Applicant)
Hearing	Monday 18, Tuesday 19, Wednesday 20, Thursday 21 and Friday 22 November 2024

Hearing Panel (Panel):	Greg Hill (Chairperson) Gavin Lister Vicki Morrison-Shaw Councillor Chris Darby (as a commissioner) ¹
Appearances:	<p><u>For the Applicant:</u></p> <p><u>In Person</u></p> <ul style="list-style-type: none"> • Francelle Lupis and Rachel Murdoch, Legal Counsel • John Duthie and Ian Smallburn, Planning – Strategic Overview • Hannah McGregor, Corporate • Rachel de Lambert, Landscape and Visual • Matthew Riley, Urban Design • Geoff Canham, Open Space • Adam Wild, Heritage • Donald McKenzie, Transport – Strategic Overview • Max Robitzch, Transport <p><u>On Call</u></p> <ul style="list-style-type: none"> • Philip Jaggard, Infrastructure (Stormwater, Water, Wastewater) • Paul Farrelly, Greenhouse Gas Emissions • Ross Paterson, Geotechnical • Philip Ware, Contamination • Tim Heath, Economics • Jason Smith, Ecology • Trevor Lee Joe, Transport Modelling <p><u>For the Albert-Eden Local Board:</u></p> <ul style="list-style-type: none"> • Kendyl Smith, Chair • Margi Watson, Deputy Chair • Vanessa Wilkinson, Planning consultant <p><u>For the Submitters:</u></p> <p>Te Ākitai Waiohua Investment Trust, Te Ākitai Waiohua Waka Taua Incorporated and Ashley Rainsford for Waiohua Tāmaki Rōpū (Waiohua)</p> <ul style="list-style-type: none"> • Mat Peters • Billy Brown <p>Health New Zealand Te Whatu Ora – Waitematā (Health NZ)</p> <ul style="list-style-type: none"> • Craig McGarr <p>Ngā Ringa o Te Auaunga - Friends of Oakley Creek</p> <ul style="list-style-type: none"> • Wendy John

¹ This decision does not further reference to “Councillor” Chris Darby.

	<p>Auckland Transport</p> <ul style="list-style-type: none"> • Marguerite Pearson • Terry Church <p>Deborah Yates-Forlong</p> <p>Heritage New Zealand Pouhere Taonga (HNZPT)</p> <ul style="list-style-type: none"> • Robin Byron <p>Gardens4Health</p> <ul style="list-style-type: none"> • Alice Nicholls <p>Trevor Keith Crosby and Sanctuary Community Organic Garden Mahi Whenua Inc.</p> <ul style="list-style-type: none"> • Trevor Crosby <p>Te Tawera Hapū of Ngāti Awa</p> <ul style="list-style-type: none"> • Gael Baldock <p>Springleigh Residents Association</p> <ul style="list-style-type: none"> • Hiltrud Gröger <p>Mt Albert Residents Association (MARA)</p> <ul style="list-style-type: none"> • Chris Judd <p>Open Space for Future Aucklanders Incorporated (OSFFA)</p> <ul style="list-style-type: none"> • Joanna Beresford, Legal Counsel • Jocelyn Noble, Committee Member • Rosalie Forbes, Member • Lisa Truttman, Heritage - Penman House • Ross Sandford, Community Member • Maylene Barrett, Open Space and Planning <p>Kerry Stuart Francis</p> <p>School of Architecture, Unitec Te Pūkenga (Unitec)</p> <ul style="list-style-type: none"> • Susan Wake <p>Gladstone Primary School Board of Trustees</p> <ul style="list-style-type: none"> • Dave Shadbolt, Principal • Joanna Beresford, Board Member <p>The Tree Council</p> <ul style="list-style-type: none"> • Dr Mels Barton
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	<p>NZ Notable Trees Trust and Garden Design Society of New Zealand</p> <ul style="list-style-type: none"> • Penny Cliffin <p>Watercare Services Limited (Watercare)</p> <ul style="list-style-type: none"> • Kirsty Dibley, Legal Counsel • Andrew Deutsche, Corporate • Richard Peterson, Planning <p>Geoffrey Beresford</p> <p>Waiohua</p> <ul style="list-style-type: none"> • Te Warena Taua (with Te Reo interpreter Tāne Karamaina) <p>Marutūāhu Rōpū and Ockham Group Limited</p> <ul style="list-style-type: none"> • Paul Majurey, Legal Counsel • Peter Kensington, Landscape • Richard Knott, Urban Design • Jethro Joffe, Planning <p><u>For Auckland Council:</u></p> <p><u>In Person</u></p> <ul style="list-style-type: none"> • Diana Hartley and Anne Buchanan, Legal Counsel • Peter Reaburn, Reporting Planner • Celia Davison, Manager Central South Planning and Resource Consents Department • Clare Wall Shaw, Team Lead Central South Planning and Resource Consents Department • Stephen Brown, Landscape • Alistair Ray, Urban Design • Dr Roja Tafaraji, Open Space • Andrew Temperley, Transport • Robert Greenaway, Open Space <p><u>On Call</u></p> <ul style="list-style-type: none"> • Carolyn O’Neil, Heritage • Treffery Barnett, Freshwater Ecology • Chris Wedding, Terrestrial Ecology • Christy Reynolds, Arborist • Susan Fairgray, Economics <p>Chayla Walker, Kaitohutohu Whakawātanga, Hearings Advisor</p>
Tabled evidence	Fire and Emergency New Zealand Ministry of Education Te Tāhuhu o Mātauranga
Hearing adjourned	Friday 22 November 2024
Commissioners’ site visit	Thursday 31 October 2024

KUPU WHAKATAKI | INTRODUCTION

1. This decision is made on behalf of the Auckland Council (**Council**) by Independent Hearing Commissioners Greg Hill (Chairperson), Gavin Lister, and Vicki Morrison-Shaw, and Commissioner Chris Darby, appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (**RMA**).
2. We have been given delegated authority by the Council to make a decision on PC94 to the Auckland Unitary Plan Operative in Part (**AUP**).
3. PC94 was publicly notified on 16 November 2023 following a feedback process involving Iwi Authorities, as required by Clause 4A of Schedule 1 of the RMA. Notification involved a public notice as well as letters to directly affected landowners and occupiers alerting them to the plan change.
4. The submission closing date was 2 February 2024. A summary of submissions was notified for further submissions on 18 April 2024. A total of 231 submissions and 15 further submissions were made on PC94.

TIRO WHĀNUI O TE PANONI HOAHOA TŪMATAITI ME TŌNA TAKE | OVERVIEW OF THE PRIVATE PLAN CHANGE AND ITS PURPOSE

5. PC94 was described in detail in the Application and section 42A hearing report (**s.42A Report**). A summary of key components of the plan change is set out below.
6. The existing Wairaka Precinct covers a 64.5 hectare (**ha**) block of land contained by Carrington Road, the North Western Motorway, Te Auaunga /Oakley Creek and a series of side roads and properties in the Woodward Road corridor in the south.
7. The application is by HUD, and is supported by three Rōpū, representing 13 iwi/hapū:
 - Marutūāhu Rōpū: comprising Ngāti Maru, Ngāti Paoa, Ngāti Tamaterā, Ngāti Whanaunga and Te Patukirikiri;
 - Ngāti Whātua Rōpū: comprising Ngāti Whātua o Kaipara, Ngāti Whātua Ōrākei, and Te Rūnanga o Ngāti Whātua; and
 - Waiohua-Tāmaki Rōpū: comprising Ngāi Tai ki Tāmaki, Ngāti Tamaoho, Ngāti Te Ata, Te Ākitai Waiohua and Te Kawerau ā Maki;

who together, are leading the development of the Precinct.

8. As set out in HUD's Opening Legal Submissions:²

² HUD Opening Legal Submissions, 13 November 2024 (**HUD Opening Legal Submissions**), at [1.2].

Broadly, HUD's Plan Change request seeks to enable the anticipated development of the land within the Precinct under its Treaty redress obligations to Ngā Mana Whenua o Tāmaki Makaurau. As HUD is facilitating the delivery of this land for housing, it has taken the role of the Applicant in this process in order to coordinate planning outcomes across the land held for housing.

9. PC94 takes account of, but excludes, the Mason Clinic site. The Mason Clinic site was the subject of Private Plan Change 75: Mason Clinic (**PC75**) which is now operative.
10. The current Precinct is characterised by five separate land uses and / or ownership interests:
 - the 13.39ha Mount Albert Unitec campus, used as a tertiary education institute;
 - the 6ha Mason Clinic forensic mental health hospital operated by Te Whatu Ora (subject to PC75);
 - the 2.5ha Taylors Laundry site, being a specialist industrial unit currently under leaseback to HUD, but which in the medium term will be included in the Rōpū housing development;
 - the 4.4ha of land largely vacant but zoned for residential development and owned by the Ngāti Whātua Ōrākei commercial subsidiary, Whai Rawa; and
 - land purchased by the Crown/HUD from Unitec under the “*Land for Housing*” programme, to be sold to the three Rōpū as commercial redress as part of their Treaty Settlements for them to undertake intensive housing development within the Precinct, which includes the Taylor’s Laundry site above and in total is 39.6752ha.
11. As set out in the Application, there are six key elements of PC94:
 - rezoning of land acquired by HUD from Unitec from ‘Special Purpose: Tertiary Education’ zone to Business Mixed-Use Zone (**BMU**) with the land primarily intended for residential development, but enabling a mix of ancillary activities to create an integrated community;
 - proposed amendments to the Precinct provisions to promote Māori economic development as a key objective for the Precinct;
 - identification of areas within the Precinct where additional height can be accommodated. This will enable the Precinct to deliver a higher yield than might otherwise occur in the underlying zone, therefore contributing to the Council’s growth strategy, as well as more variety in urban form;

- in areas where higher buildings are allowed, additional development controls around wind, separation of buildings, and the maximum dimension of floor plates are introduced;
- detailed design criteria to ensure all buildings, and particularly the higher buildings, achieve a high quality of design and functionality; and
- proposed amendments to the Precinct provisions to equitably redistribute retail provision within the Precinct (excluding Sub-Precinct A – the Mason Clinic) due to the redistribution of land from Special Purpose: Tertiary Education to zoning that enables housing development. The same overall retail cap is maintained.

12. In terms of density and population, HUD noted that:³

- There is already a considerable level of development enabled within the Precinct. In particular, the Precinct provides for an anticipated yield of approximately 2,500 dwellings and 1,000 specialist accommodation units, providing a population of approximately 8,200 people.
- The development enabled by PC94 was assessed at enabling between 4,000 to 4,500 dwellings (an increase of between 500 to 1,000) and a population of approximately 11,200 to 12,600 people (an increase of 3,000 to 4,400).

NGĀ KUPU TURE ME NGĀ HERENGA | STATUTORY PROVISIONS AND REQUIREMENTS

13. The RMA sets out a range of matters that must be addressed when considering a plan change, as identified in the s.32 report accompanying the notified plan change, and as summarised in Appendix A to HUD's Opening Legal Submissions.
14. We also note that s.32 clarifies that analysis of efficiency and effectiveness 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.
15. Having considered the application documents and evidence, we are satisfied, overall, that PC94 has been developed in accordance with the relevant statutory and policy matters required by the RMA. Accordingly, the rest of this decision addresses the substantive resource management issues and whether PC94 meets the RMA's purpose as set out in section 5 of that Act.
16. Clause 10 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting the submissions (primary and further) made to PC94. We have grouped all of the submissions in terms of topics set out in this decision report, and while all individual submissions and points may not be expressly

³ PC94 Application, Volume 1, Attachment 1A, at p.140.

referred to, all points have nevertheless been taken into account when making our decision.

17. The decision must also include a further evaluation of any proposed changes to the plan change arising from submissions; with that evaluation to be undertaken in accordance with s.32AA.
18. With regard to s.32AA, we note that the evidence presented by the Applicant, Submitters and Council effectively represents this assessment, and that the amended Precinct provisions should be read alongside this decision where we have determined that a change to PC94 was required.

NGĀ MEA HĀTEPE | PROCEDURAL MATTERS

Expert conferencing

19. We directed expert conferencing. It was undertaken for the following topics:
 - heritage;
 - open space;
 - urban design and landscape; and
 - transport.
20. The expert conferencing resulted in four Joint Witness Statements (**JWS**) which we have taken into account in making our decision. These statements were also addressed in the evidence of a number of the experts who appeared before us. We address the JWS further in the relevant hearing topic sections below.
21. We wish to thank those experts who participated in the expert conferencing sessions.

Expert witnesses excused

22. On 5 November 2024, following our review of the evidence, we issued Direction#4 excusing the following expert witnesses from appearing:

Applicant

- Paul Farrelly – Greenhouse gas emissions
- Ross Paterson – Geotechnical
- Phillip Ware – Contamination
- Tim Heath – Economics
- Philip Jaggard – Stormwater
- Jason Smith – Ecology

- Trevor Lee-Joe - Transport modelling

Equivalent Experts for the Council

- Treffery Barnett, Freshwater Ecology
- Chris Wedding, Terrestrial Ecology
- Susan Fairgray, Economics

Equivalent Experts for Submitters

- None – all attended.

23. While we had no questions for these witnesses and they were excused from attending, we carefully considered their evidence and have placed reliance on it for those matters which were not in contention, which we discuss in a separate section later below.

Panel directions

24. During the course of the PC94 hearing process, we issued seven Directions. These related to:

- hearing and evidence exchange dates (Direction#1);
- HUD filing an update to PC94 and the Council's s.42A Report (Direction#2);
- expert conferencing (Direction#3);
- excusing expert witnesses (Direction#4);
- expert transport conferencing (Direction#5);
- accepting a statement from Ngāti Whātua Ōrākei Whai Rawa Ltd after the hearing was adjourned (Direction#6); and
- reply evidence (Direction#7).

25. We wish to record our appreciation to the Applicant, Council, submitters and their respective experts and counsel for the constructive and timely manner in which they responded to the Directions.

The Local Board

26. The Albert/Eden Local Board (**Local Board**) presented to us.
27. The Local Board's concerns were set out in the s.42A Report⁴ and in the material on its presentation. In summary, the matters raised by the Local Board included:
- concerns about the inadequacy of provision for open space;
 - opposition to increased height, including due to amenity effects and additional height not being necessary to meet strategic objectives;
 - concerns about the need to ensure there are sufficient community, recreational and social facilities;
 - concerns about pressure on schools;
 - a concern that additional re-zoning to BMU as proposed has the potential to result in adverse effects on the economic viability of the Point Chevalier and Mt Albert Business Town Centres;
 - seeking better amenity outcomes including through the introduction of the daylight, private open space and landscape standards of the Residential – Terrace Housing and Apartment Buildings Zone;
 - seeking a masterplan;
 - seeking all developments be assessed by the Auckland Council Urban Design Panel;
 - seeking no additional potential to connect the southern streets outside the Precinct to development within the Precinct; and
 - seeking further protection of historic heritage buildings and structures.

NGĀ KAUPAPA | TOPICS

28. A number of issues arose during the course of the hearing process that we needed to determine. We have grouped these into the following nine topic areas, and address them in turn below:
- scope;
 - cultural considerations;
 - open space;
 - landscape and urban design;

⁴ Section 42A Report, at [21] and [222].

- transport;
- water and wastewater infrastructure;
- Health NZ;
- matters not in contention; and
- planning matters.

HŌKAITANGA | SCOPE

29. In terms of scope, a number of issues were raised both in the evidence and in submissions made during the hearing. While we elected to hear submissions on these matters at the same time as the substantive issues, as the resolution of scope matters affects whether a merits consideration is required, we set out our discussion on the issues here. Due to the overlap in scope issues we have consolidated our findings into one section at the end of this part.

Overview and legal principles

30. The four scope issues raised related to requests by the Council and/or submitters for:⁵
- additional trees to be subject to specific protections under the AUP;
 - additional heritage buildings to be subject to heritage protections under the AUP;
 - protection of the Sanctuary Mahi Whenua gardens and/or additional protections for other ecological features of the site; and
 - the inclusion of a financial contribution rule for open space.
31. The legal principles relevant to determining whether a submission is “on” a plan change are well settled, and were not contested by any party. These principles were described by the High Court in both the *Clearwater* and *Motor Machinist* cases as comprising the following two tests or limbs:⁶
- whether the submission addresses the change to the status quo advanced by the plan change; and
 - whether there is a real risk that persons potentially affected by such a change have been denied an effective opportunity to participate in the plan change process.

⁵ As summarised in the HUD Opening Legal Submissions, at [3.6]; and HUD Reply Submissions, at [2.6].

⁶ *Clearwater Resorts Limited v Christchurch City Council*, HC Christchurch AP34/02, 14 March 2003; and *Palmerston North City Council v Motor Machinists* [2013] NZHC 1290.

32. Where the contest arose was in relation to the breadth of the plan change, (which we have addressed in part above), and the application of the tests to the particular circumstances of PC94.

Protection of additional trees, heritage buildings and ecological features

33. HUD, in its Opening Legal Submissions, submitted that there was no scope to change the protections applying to existing trees, heritage buildings and ecological features within PC94, or to include additional trees, buildings or features as that relief fails both limbs of the *Motor Machinists* tests and is not “on” the plan change. In summary, this was because:⁷

- (a) The operative management regime for these resources is not addressed or otherwise altered by the Plan Change. In particular PC94:

- i. was explicit that it did not propose to alter the AUP protections currently afforded to the existing heritage building or identified trees on the Site;
- ii. did not identify any new buildings or trees to be subject to those protections; and
- iii. did not propose any changes to the way in which the AUP addresses ecological features.

- (b) Neither the operative Precinct or AUP generally reference the Sanctuary Mahi Whenua Gardens or provide for their protection in any way, and that status quo remains unaltered by PC94.

- (c) PC94 is not a full plan review, and nor does it bring about a “*sweeping change*” to the planning framework which applies to the site, or the AUP generally:

- i. the proposed rezoning is an extension of operative zones over approximately 16% of the site;
- ii. outside of Height Areas 1 and 2, and along the Carrington Road frontage, the permitted building heights remain largely unchanged;
- iii. while amendments are proposed to Precinct objectives and policies, the core directions remain intact; and
- iv. the Precinct continues to provide for other key activities within the Site, being the Mason Clinic, Unitec and Taylor’s Laundry.

- (d) There is a real risk that persons affected by a change in the extent or nature of protections afforded to trees, buildings or gardens, would be denied an effective opportunity to participate as:

⁷ HUD Opening Legal Submissions, at [3.10]-[3.27].

- i. Unitec, the owner of the land on which a number of the proposed additional buildings and trees are located, is not a submitter; and
 - ii. the Plan Change as notified was explicit that those features were not being addressed, and therefore amendments to the management of those features is not an outcome that Unitec, or any other person, should be expected to reasonably contemplate as being a potential outcome of the submission and hearing process.
 - (e) The Environment Court decisions in *Patterson Pitts* and *East Harbour* are relevant authorities that support the conclusion that a person reading the plan change would not have apprehended that those features could be affected, and to allow the changes, would disenfranchise such persons.⁸
34. HUD concluded that if the Council considered changes were required to the management regime of these features, or that new features should be included, the appropriate process was for Council to promulgate a separate Schedule 1 plan change.⁹
35. In response, the Council submitted that such changes were “on” the plan change as:¹⁰
- (a) PC94 proposed “*sweeping changes*” within the Precinct, including much greater intensification and development areas that have implications for effects;
 - (b) submissions have “*fairly and reasonably raised*” resource management concerns regarding the need for further protection of heritage buildings and trees in light of the greater intensification that PC94 would enable; and
 - (c) the matters of national importance in s.6 of the RMA that decision makers must recognise and provide for include the protection of significant indigenous vegetation and significant habitats of indigenous fauna as well as the protection of historic heritage from inappropriate subdivision, use and development.
36. OSFFA made similar submissions in support of these matters being within scope. In particular, OSFFA submitted that:¹¹
- (a) In terms of the legal framework:
 - i. a submission point that was not included in the s.32 analysis but should have been, is not out of scope (as per the Environment Court decision in *Bluehaven*);¹²

⁸ *Paterson Pitts Limited Partnership v Dunedin City Council* [2022] NZEnvC 234, at [102] and [105]; and *East Harbour Environmental Association v Upper Hutt City Council* [2016] NZEnvC 224, at [16].

⁹ HUD Legal Submissions, at [3.26].

¹⁰ Council Legal Submissions, at [33]-[35].

¹¹ OSFFA Legal Submissions, at [14]-[40].

¹² *Bluehaven Management Limited v Rotorua District Council & Bay of Plenty District Council* [2016] NZEnvC 191, at [36]-[39].

- ii. the s.32 report does not purport to “*fix the final frame*” of the plan change (as per the High Court decision in *Albany North*);¹³
 - iii. the purpose of a plan change must be apprehended from its provisions;¹⁴ and
 - iv. the actual status quo of the plan change must be determined by reference to the nature and context of the notified change.¹⁵
 - (b) The changes PC94 proposes to the Precinct are not minor amendments or tweaks to isolated provisions in the Precinct but instead are a “*rewrite*” of the district planning rulebook or management regime for the Precinct and as such, PC94 is more akin to a plan review for the Precinct.
 - (c) Tree, ecological and heritage protections are part of the management regime that PC94 seeks to rewrite, and strengthening these protections:
 - i. to mitigate the adverse effects of more intense development would reduce (not extend) the development enabled by PC94; and
 - ii. is required to address the changes to the status quo (including zoning) sought by HUD.
 - (d) All landowners had the right to file submissions or further submissions.
 - (e) PC94 proposes a fundamental change in zoning (from tertiary education to BMU) which squarely places the question of the appropriate zone on the table – with the choice of zone potentially including residential or open space.
37. OSFFA also submitted that if we found there was no scope for the inclusion of the changes that they sought, the only option available to us would be to decline PC94 given its deficiencies.¹⁶
38. In its Reply Submissions, HUD maintained its position on scope and further submitted that:¹⁷
- (a) *Albany North* is not relevant as PC94 is not a full plan review, applies only to the Precinct, and is limited in that it largely retains the roading network and access points, and does not:
 - i. introduce any new zones;
 - ii. change the location or functions of any of the sub-Precincts;
 - iii. affect the height of the majority of the Precinct; or

¹³ *Albany North Landowners v Auckland Council* [2017] NZHC 138, at [132].

¹⁴ Auckland Plan Change 78 Independent Hearing Panel Interim Guidance, 12 June 2023.

¹⁵ Auckland Plan Change 82 Decision, 16 February 2024, at [21].

¹⁶ OSFFA Legal Submissions, at [41].

¹⁷ HUD Reply Legal Submissions, at [2.2]-[2.3].

- iv. change the vast majority of activities provided for within the Precinct.
 - (b) The absence of a s.32 analysis while not fixing the final frame of the plan change, will be highly relevant to determining scope.
 - (c) There is no suggestion that the s.32 analysis is deficient, submissions seeking additional protections are a “*major alteration*” to the objectives of PC94 and not a reasonably foreseeable outcome.
 - (d) Natural justice issues are not cured by the opportunity to make a further submission.
39. HUD also submitted that irrespective of scope, there was insufficient information for us to make a decision on the appropriateness (or otherwise) of protecting those features, in the absence of: ¹⁸
- (a) clear analysis of how that protection is able to mitigate an adverse effect (such as an increase in height opportunity);
 - (b) a full s.32 cost benefit analysis; and
 - (c) the input of one of the affected landowners, Unitec.

Financial contribution

40. Ms Barrett, the open space expert for OSFFA, recommended the inclusion of a rule within the Precinct that would enable a financial contribution to be taken for open space.¹⁹ This issue was not addressed in OSFFA’s legal submissions but was addressed orally at the hearing by both Ms Barrett and counsel for OSFFA, Ms Beresford.
41. While Ms Barrett acknowledged that the OSFFA submission did not mention the inclusion of a financial contribution rule, she noted that the AUP includes provisions which allow for such contributions to be taken in certain precincts, although this Precinct was not currently listed as one of those. Ms Beresford added that, as the purpose of such a contribution was to mitigate the adverse effects of development enabled by PC94, it could be considered within scope on that basis.
42. In oral comments at the hearing, counsel for the Council (Ms Hartley) explained why the Council disagreed that a financial contribution rule could be introduced into the Precinct via this Plan Change. In summary:²⁰
- (a) the question of additional open space is different from the issue of available funding mechanisms;

¹⁸ HUD Reply Submissions, at [2.4].

¹⁹ Summary Evidence of Maylene Barrett, 20 November 2024, at [54]-[55].

²⁰ Council Oral Submissions, 22 November 2024.

- (b) there are requirements under the Local Government Act 2002 (**LGA**) regarding the adoption of funding and financial policies, which include both development and financial contribution policies;
 - (c) any change to introduce a financial contribution would also necessitate a change to the development contributions policy; and
 - (d) there are also likely to be scope issues in terms of the *Motor Machinist* and *Clearwater* tests.
43. Ms Lupis addressed this issue in the HUD Reply Submissions. She agreed with the Council's view and noted that neither OSFFA nor any other submitter had sought such relief in their submissions. Ms Lupis also noted that the existing financial contribution provisions in the AUP are rollover 'legacy' provisions with development contributions having superseded them as the preferred method for levying for open space funding.

Discussion and findings

44. We agree that the approach to scope is well settled and is set out in the *Clearwater* and *Motor Machinist* cases. We are also cognisant that in determining the scope of a particular plan change, the nature and context of the plan change is relevant.
45. We consider that the Council and OSFFA's categorisations of PC94 as making "sweeping" changes and amounting to an effective "rewrite" of the rule book respectively, are not borne out by a close analysis of the nature of the changes. While we accept that the changes to some aspects of the Precinct could be categorised as extensive, there are, as HUD submits, large parts of the Precinct provisions that are retained or only subject to consequential tweaks. We accept HUD's submission that PC94 is not equivalent to a full plan review of the Precinct, and consider HUD's categorisation of the plan change (which we have summarised earlier) is a more accurate reflection of the nature and extent of the changes that PC94 proposes.
46. In terms of the specific changes sought, we consider that all four requests fail both limbs of the *Clearwater/Motor Machinist* tests. The first three issues (trees, heritage buildings and ecological features) for the reasons given by HUD (and summarised by us above at paragraphs 33, 34, 38 and 39), and the fourth (financial contribution) issue for the reasons given by the Council and HUD (as summarised by us at paragraphs 42 and 43). We find accordingly.
47. We also accept HUD's submission that notwithstanding matters of scope, there is insufficient information to determine the appropriateness of the additional tree, heritage and ecological features and provisions, given the lack of a s.32 assessment and the lack of input from all affected landowners. We consider this criticism is well made, particularly given the potential flow on effects that the additional protections could have on achieving the objectives of PC94 and the ability to appropriately address other important Part 2 matters (such as cultural considerations). We consider this criticism (regarding a lack of information and

views) also holds true for the financial contribution rule request, as no wording was provided for the rule and no s.32 assessment undertaken.

48. In summary, we find that there is neither scope nor sufficient information to consider the four requests (for additional tree, heritage building, ecological feature protection and financial contribution provisions) and accordingly, these submissions are rejected.
49. As we have found that there is no scope for these matters, we do not address them further in the remainder of this decision. This includes:
- the evidence from the Dr Barton and Ms Clifflin, who criticised, as they saw it, the Applicant’s minimal effort in identifying and protecting trees and other heritage assets; and
 - evidence in relation to heritage issues and values, other than where we address these matters under the heading “*Horanuku Me Te Tāone Ora | Landscape and Urban Design*”.

NGĀ WHAIWHAKAARO MĀORI | CULTURAL CONSIDERATIONS

Overview

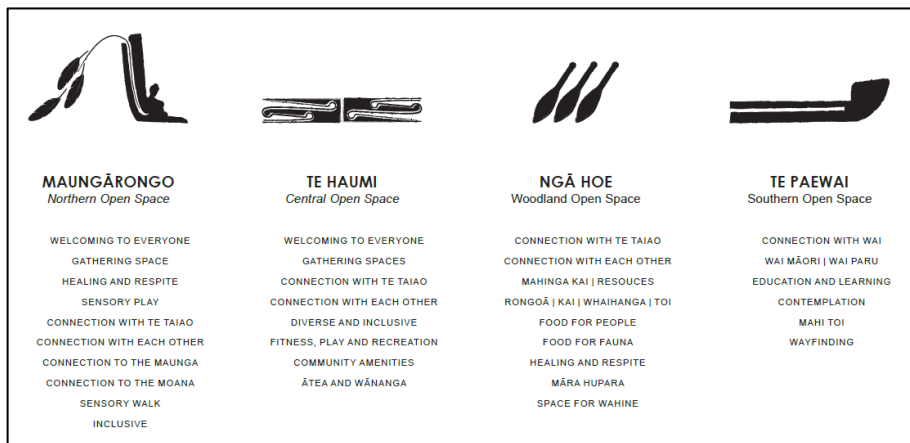
50. Cultural considerations feature prominently in this plan change. This is because the Crown-owned land within the Precinct is being transferred to the three Rōpū as commercial redress in accordance with the Crown’s Treaty redress obligations to Mana Whenua under Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Deed 2012 (**Redress Deed**) and Ngā Mana Whenua o Tāmaki Makaurau Act 2014 (**Redress Act**). Accordingly, while HUD is nominally the Applicant for this Plan Change, it has brought this application to enable the development anticipated by the Crown’s redress obligations.²¹
51. A unique feature of this plan change is that it is supported by the three Rōpū, which as noted, comprise 13 different Mana Whenua groups. Te Warena Taua, the Executive Chair of Te Kawerau Iwi Tribal Authority and Settlement Trust, explained the significance of this unity and of the development opportunity as follows:²²

This development on the Unitec site represents a significant milestone, not only for Te Kawerau ā Maki but also for the wider Waiohua Tāmaki collective, Ngāti Whātua collective and the Marutūāhu Collective. This is the first time in History that multiple related groups have come together to support a commercial development of this magnitude. This is Historic and must progress. The significance of this unity cannot be overstated - this collaboration is both historic and future-focused, setting a precedent for collective economic prosperity that will enhance the wellbeing of our peoples.

²¹ HUD Opening Legal Submissions, at [1.2]-[1.3].

²² Summary Statement of Te Warena Taua, 21 November 2024, at [12].

52. Rewa Brown, the Chair of Ngāi Tai ki Tāmaki, outlined how the approach to development is underpinned by key mātāpono (principles) and uara (values) including manaakitanga, kaitiakitanga, whanaungatanga and kotahitanga. He also described the development as an “*exemplar of Kotahitanga, having agreed shared values and principles within the development area*”.²³
53. Mr Majurey, who appeared for the Marutūāhu Rōpū and Ockham Group, explained how whanaungatanga and mana motuhake were paramount to the Rōpū. He noted that this was a “*taonga project*”, where Rōpū, supported by independent advice, were able to apply a mātauranga Māori design lens to ensure quality homes and appropriate open space outcomes. In support of the latter point, Mr Majurey provided us with a draft of “*Te Kukūnga Waka Cultural Masterplan*”, as it relates to open space. This illustrated how the approach to open space had been conceptualised as a waka, drawing on five key open space themes,²⁴ to provide a site specific cultural response to the nature, layout and proposed uses of the open spaces (refer excerpt below):



54. With that brief introduction we now turn to the specific cultural issues that arose, namely:
- the relevance of the Treaty Settlement context and cultural economic aspirations to the statutory framework;
 - the appropriate name for the Precinct; and
 - references to Mana Whenua relationship with the area in other PC94 provisions.

Relevance of Treaty settlement context and cultural economic aspirations to statutory framework

55. The Treaty Settlement context (which we outlined at the start of this section) was not addressed in HUD’s Opening Legal Submissions, and accordingly those submissions did not address the relevance of that context to the statutory

²³ Summary Statement of Rewa Brown, 19 November 2024, at [5] and [7].

²⁴ The draft Masterplan stated the open spaces themes as comprising: Te Taha Hinengaro (Mental & Emotional), Te Taha Wairua (Spiritual), Te Taha Tinana (Physical) Whenua (Land / Roots), Te Taha Whānau (Family & Social); and showed them intersecting to deliver healthy thriving communities.

framework and our decision-making functions.²⁵ We raised the treaty settlement context at an early stage of the hearing so that any party who wished to address us on that issue could do so.

56. Mr Beresford, a civil/commercial litigator and Partner at Beresford Law, who appeared for himself, submitted that:²⁶
- (a) while the Redress Deed and the Redress Act were “*clearly hugely significant for the governance of Auckland*”, they had limited relevance to our decision under the RMA, and “*it is impossible to see from what’s been presented what the Deed, and, the Redress Deed and Redress Act actually add;*”
 - (b) “*there is a tendency for critical thinking to be suspended when Treaty issues are on the table, and this is why, the Treaty is not a magic wand right, and my point is that if there are adverse effects, the fact that there is going to be redress and that’s commercial redress land doesn’t trump the RMA process and the considerations that the Panel has to take on board;*”
 - (c) it was an “*over-simplification*” and “*not entirely correct*” to describe the land as commercial redress land in the process of being transferred to the Rōpū, because the land could be vested in the Council for reserve;
 - (d) potentially Council may be obliged to acquire all remaining land in the Precinct for open space to address regional needs; and
 - (e) maximising short-term commercial profits did not justify the Rōpū going beyond the level of development provided by the operative AUP when infrastructure is needed to support the wider population.
57. OSFFA, while not addressing the Treaty settlement context, made similar submissions in relation to economic matters. In particular OSFFA submitted:²⁷
- (a) while economic benefits are relevant RMA considerations,²⁸ the references to economic development in PC94 (in the Precinct description and Policies 4(e), 10(f) and 12) are unbalanced, and we infer, more aligned with the Fast Track Approvals Bill approach;
 - (b) PC94 would tip the balance too far towards commercial return over trying to obtain good environmental outcomes and a well-functioning urban environment as required by the National Policy Statement on Urban Development (**NPS-UD**); and
 - (c) the provisions risk an “*anything goes*” approach being justified on the basis of a greater commercial return.

²⁵ HUD did however engage in this topic once Mr Majurey had addressed this for the Marutūāhu Rōpū, and clearly addressed the issue in its Reply Submissions.

²⁶ Written Submission of Mr Beresford, 21 November 2024, at [22]-[23], and [40]-[44]; and Mr Beresford Oral Submissions, 21 November 2024.

²⁷ OSFFA Legal Submissions, at [161]-[164].

²⁸ In terms of the enabling aspect of the sustainable management purpose and the assessment of positive effects of proposals.

58. Mr Majurey, in contrast, submitted that:²⁹

- (a) the Redress Deed and Redress Act are mandatory Part 2 considerations;
- (b) the Fast Track Panel's decision on RC1,³⁰ although arising in a slightly different statutory context, contains useful guidance on the correct approach to Treaty considerations at paragraphs 29 to 41(a)-(b), which in summary state:³¹
 - i. the RMA definition of the Treaty of Waitangi includes Te Tiriti o Waitangi and therefore both versions apply and should be read to discern what mātāpono (principles) should apply;
 - ii. the Treaty/Te Tiriti gives rise to mātāpono of:
 - tino rangatiratanga;
 - kāwanatanga;
 - houruatanga (partnership);
 - whakaaro nui tētahi ki tētahi (mutual recognition and respect);
 - matapopore moroki (active protection);
 - te whai hua kotahi me te matatika mana whakahaere (mutual benefit and the right to development);
 - mana taurite (equity);
 - te whakatika (redress);
 - iii. Treaty settlements are an important aspect of the Māori – Crown relationship necessary to remove outstanding prejudice, prevent similar prejudice from arising, and to provide a practical settlement between peoples that achieves a reconciliation in fact;
 - iv. the Redress Act gives statutory force and recognition to the Redress Deed, which represents a positive step towards reconciliation in fact;
 - v. the Treaty settlement context is important given the requirement (under the Fast Track Act 2020)³² to act consistently with the principles of the Treaty and Treaty Settlements;

²⁹ Marutūāhu Summary Legal Submissions and Oral Legal Submissions, 22 November 2024.

³⁰ Being one of the Mana Whenua consented developments forming part of the PC94 site.

³¹ While Mr Majurey's submissions for Marutūāhu referred to paragraph 49(a)(b), we have assumed this was meant to refer to paragraph 41(a)-(b), given the context to which the submission relates.

³² COVID-19 Recovery (Fast Track Consenting) Act 2020 (**Fast Track Act**).

- vi. as part of the Settlement arrangements there is an agreement between Mana Whenua groups that they will not object to/hinder the development of the Project site;
- vii. the relevant objectives and policies in chapters B6 Mana Whenua, and E21 Treaty Settlement Land of the AUP:
 1. require development to be enabled on Māori and Treaty Settlement land to ensure that these lands and their associated resources contribute to lifting Māori, social, cultural and economic wellbeing significantly (B6.2.1, B6.2.2, B6.4.1 and B6.4.2);
 2. recognise that economic activities are necessary to support the ability for Mana Whenua to use and live on their Treaty Settlement land – including commercial redress land to support social and economic development (E21.2.(2));
 3. provide for the integration of mātauranga Māori into design aspects;

(c) the land is Treaty Settlement/redress land - the fact that the transfer has not yet taken place does not change its status – there are contractual arrangements in place to enable that transfer;

(d) in a Treaty Settlement context, the return of land is most important, the route by which that is achieved (cultural or commercial redress) less so;

(e) the classification as commercial redress land does not diminish the cultural value or significance of the land, it simply indicates that where a tribe has to pay for the land, it needs to achieve a commercial outcome for the tribe as well as to fund development on the land; and

(f) Part 2 covers both economic and cultural matters with cultural considerations also incorporating Māori economic development.

59. The Council did not address these issues in their submissions.

60. HUD, in its Reply Submissions, supported the points made by Mr Majurey and submitted that:³³

(a) the land is specifically provided for as commercial redress land in the Redress Deed and Redress Act;

(b) Part 2 considerations, and how these have been particularised through the NPS-UD and AUP are relevant:

- i. s.6(e) requires the recognition and provision of the relationship of Māori with their ancestral lands. The nature of that obligation is

³³ HUD Reply Submissions, at [2.9]-[2.18].

stronger than the directives in sections 7 and 8, and has commonly been affected by investigating alternative options and methods which may better “*provide for*” the nature of that relationship;

- ii. s.8 requires that Treaty principles be taken into account. These principles include active protection, which imposes a positive duty on the Crown to protect Māori interests and taonga;
 - iii. Objective 5 and Policy 9 of the NPS-UD require local authorities to take account of the principles of Te Tiriti o Waitangi in relation to urban environments;
 - iv. Chapter B6 of the AUP, which is not limited to Treaty Settlement land, includes objectives that:
 1. recognise and provide for the principles of Te Tiriti o Waitangi in the sustainable management of natural and physical resources;
 2. direct that Māori economic, social and cultural well-being is supported; and
 3. provide for Mana Whenua to occupy, develop and use their land within their ancestral rohe;
- (c) s.6(e), the NPS-UD and the AUP therefore require specific consideration of the options before us which would better provide for the relationship of Mana Whenua with their ancestral land;
- (d) similarly (and consistent with a “*broad and generous construction*”), Te Tiriti and its principles invite consideration of outcomes that will support active protection of the Rōpū interests in this Site as a source of economic opportunity;
- (e) in *Beresford, Bunker & Rouse v Queenstown Lakes District Council*³⁴ the Court recognised that s.8 was not just about protection (i.e., for use as a shield) but could be used to positively enable particular outcomes in an RMA context;
- (f) this Treaty settlement context must shape what it means to promote sustainable management toward an outcome which will enable the highest and best use of the site for the Rōpū (noting the relevance of this to considerations of open space and height); and
- (g) achieving the RMA’s purpose of promoting sustainable management therefore invites consideration of an outcome which will best support the social and economic wellbeing of the Rōpū and enable the highest and best use of the Site for the Rōpū.

³⁴ *Beresford, Bunker & Rouse v Queenstown Lakes District Council* [2024] NZEnvC 182, at [66].

Discussion and findings

61. We are not persuaded that the classification of the land as commercial redress is of “*limited relevance*”, or that the pursuit of an economic development on the land by the Rōpū is “*unbalanced*” as submitted to us by Mr Beresford and OSFFA respectively. Instead, we accept, for the reasons given by Marutūāhu and HUD (as addressed above); that the Treaty settlement context and cultural economic aspirations are important relevant statutory considerations, being matters of national importance, which must bear on our decision.
62. We acknowledge that the analysis in the RC1 decision provided to us by Mr Majurey arose in a Fast Track Act context, and that the required level of consideration of Treaty principles is somewhat stronger under that Act (being a requirement to act consistently with Treaty principles and Treaty settlements).³⁵ However, the decision is still useful in our view in identifying the importance of the Treaty settlement context and the recognition and provision for such in the relevant RMA documents.
63. We also agree with HUD that:
- (a) the Treaty settlement context must shape what it means to give effect to the sustainable management purpose of the RMA in this plan change; and
 - (b) the Part 2 Mana Whenua considerations are not just a shield but are also intended to positively enable particular outcomes.
64. However, that is not to say that such Mana Whenua considerations automatically trump all other considerations; nor did the Applicant suggest as much. Indeed, while the Applicant emphasised the importance of these considerations to our decision-making role, it also submitted that these aspects are not required to “*tip*” the balance in its favour, for open space, building heights, parking and other considerations. HUD submitted that these other matters, could, and in their view did, stand on their own in meeting the relevant NPS-UD and AUP objectives.
65. We discuss the detail of these matters in later sections of this decision. However, for current purposes, we simply confirm that we accept the general approach to Part 2 and Mana Whenua considerations outlined above, and have kept these considerations firmly in mind as we have worked through the other issues arising in this case.

Precinct name

66. PC94, as well as proposing changes to the Precinct provisions, also proposed a change to the Precinct name (and associated references within the AUP), from Wairaka to “*Te Auaunga*”.
67. We understand that the Precinct was named Wairaka at the time the Precinct was created through the AUP process. However, since that time, and as part of this

³⁵ Fast Track Act, s.6.

development, all 13 Mana Whenua groups have agreed that the name should be changed to Te Auaunga.

68. Te Warena Taua explained that the practice of changing names was a customary practice mai rānō (since time immemorial). He also explained the whakapapa and rationale for the name Te Auaunga:³⁶

It's a name that's actually was there since time immemorial too, from our ancestors, didn't relate just to that river, came all the way through and is a name that like a canoe you have paddled it right to where it belongs because it embodies principles, not of the Treaty, sort of, but of the canoe, the waka, and the lashings here there and everywhere, so it combines the whole lot of the tribes, bringing it into one. And so, do we accept it, absolutely, it has been referred back to each of the groups...

Its name that we can rekindle, because, not so much rekindle, but appropriate it through our customary rights to the area, because we all agree, because not one of us agree with the name Ōwairaka...

It's about recognising and acknowledging the mana of the children and of the ancestors of mana whenua and that's why this name change is supported, so that it all does not get lost in the future.

69. At the hearing Mr Majurey confirmed that Marutūāhu and all the Rōpū supported the name Te Auaunga. He also confirmed support for the kōrero given by Te Warena Taua about the name and why the name Wairaka was not supported.³⁷

70. Notwithstanding the above, the proposed name change was opposed by some submitters.³⁸

71. Mr Beresford opposed the name change in his original written submission to the hearing. He explained this was on the basis that:

This area is known locally as Unitec. It is easier and more transparent to use the name known by the public. It is also more practical to use English as it is difficult for English speakers to pronounce words that start with 5 vowels. It would most likely lead to the Precinct being referred to locally as the "Te A" Precinct (much like the common usage of "K road") or just as "the Precinct".

72. When questioned about this submission at the hearing, Mr Beresford confirmed he was not opposing a Māori name, but had come to the view that the Wairaka Precinct was supportable as it was its legal name, was supported by some iwi, the Wairaka Stream flowed through the Precinct and was fundamental to the Precinct, whereas his understanding was that Te Auaunga was actually outside the Precinct.

³⁶ Oral Evidence of Te Warena Taua, 21 November 2024.

³⁷ Marutūāhu Oral Submissions, 22 November 2024.

³⁸ We acknowledge there were other submitters that opposed the name change in their submissions, but to avoid repetition have only mentioned those that appeared and expanded on the reasons for their opposition at the hearing.

73. Dr Pouroto Ngaropō of Ngāti Awa, Te Tawera Hapū, also opposed the name change in his written submission on the following basis:

- *Geographical Inaccuracy: Te Auaunga refers to a stream located near Mount Roskill, distinctly different from the area around UNITEC and the Wairaka Precinct.*
- *Historical Significance: The name Te Auaunga, meaning the barking of the dogs of Wairaka, is historically tied to an event involving Wairaka's pet dogs near Mount Roskill, which is separate from the history and identity of the Wairaka Precinct.*
- *Cultural and Ancestral Relevance: The names Te Wai Unuroa ō Wairaka and Te Wai ō Rakataura, acknowledged for over 900 years, are deeply intertwined with the Ngāti Awa iwi's ancestral and spiritual heritage.*
- *Ngā kōrero o Ngāti Awa- Ancestral History and Whakapapa of Area.*

74. Dr Ngaropō was unable to attend the hearing to speak to his submission, but an appearance was entered for him by Ms Baldock. Ms Baldock, who described herself as being of Pākehā descent, explained that she had met Mr Ngaropō in protesting tree removal on Ōwairaka, and that he had adopted her as his “*whāngai sister*” at that time. Ms Baldock, who was not a submitter in her own right, spoke about the stories she had heard about Wairaka and Wairaka’s connection to the land (although not as mana whenua). Ms Baldock also expressed how for her personally, she was concerned that the change of name would result in “*wiping women from history*”.³⁹

75. Te Warena Taua in his written evidence to the hearing responded to the matters raised by Dr Ngaropō as follows:⁴⁰

We challenge the assertions made by Pouroto Ngaropō in his submission, where he claims interests in this area on behalf of Ngāti Awa. Evidence by way of a press release from Te Rūnanga o Ngāti Awa in 2020 makes clear that Ngaropō does not hold the mandate to represent the iwi he references. While Pouroto is a teina of mine with ancestral ties to Ngāti Pūkenga, Te Tāwera, and Ngāti Marukukere of Tapuika, his claims regarding the ancestor Wairaka of Mataatua waka interests in Owairaka are not supported by established historical boundaries. This area has long been recognised as the part of the tribal domain of Te Kawerau ā Maki and our related kin.

³⁹ For completeness we note that as Ms Baldock is not a submitter to PC94, to the extent she raised concerns going beyond those raised in Dr Ngaropō’s submission, we are unable to take those concerns into account.

⁴⁰ Summary Statement of Te Warena, 21 November 2024, at [11].

76. In his oral evidence at the hearing, Mr Taua strongly disagreed with the kōrero of Ms Baldock about Wairaka and indicated that the area had in fact been named for the tūpuna Raka-tāura, as Te Wai o Raka.⁴¹
77. In the original s.42A Report, Mr Reburn noted that there were submissions both supporting and opposing the name change, and that he did not make a recommendation on that issue as he considered we should receive more information or evidence prior to approving a name change.⁴² In his Addendum s.42A Report, Mr Reburn confirmed that he did not oppose a change of name but that he maintained his view that this was a matter that needed to be fully heard and considered by us.⁴³ The Council made no legal submissions on the issue.
78. HUD acknowledged the opposition of some submitters to the name change, but noted that:⁴⁴
- (a) the name change was not opposed by any of the landowners within the Precinct;
 - (b) the Council had not adopted the name in its provisions solely because Mr Reburn considered it was a matter that needed to be determined by us; and
 - (c) the Rōpū have “*an in-depth understanding of the cultural and customary histories of the Site*”, and as they will receive the majority of the Site as Treaty redress, it is appropriate for the collective view of the Rōpū to be reflected.

Discussion and findings

79. In considering the issue of the appropriate name, we are conscious of the importance of names (he mana tō te ingoa). We are also conscious that Objective B6.3.1 of the AUP seeks that “*Mana Whenua values, mātauranga and tikanga are properly reflected and accorded sufficient weight in resource management decision making*”.
80. We accept, as Te Warena Taua pointed out, that the alignment of all 13 Mana Whenua groups on this development as a whole, and on the renaming of the Precinct is significant.⁴⁵ We also accept that Ngāti Awa Te Tawera Hapū are not mana whenua in this area.
81. Given the direction in the AUP to accord weight to Mana Whenua evidence and the direction in Part 2 that it is the relationship of Māori with their “*ancestral land*” that is to be recognised and provided for, we consider those directions would most appropriately be met by accepting the name change to Te Auaunga. Accordingly, we have made this change in our version of the provisions attached to this decision.

⁴¹ Oral Evidence of Te Warena Taua, 21 November 2024.

⁴² s.42A Report, at [350]-[351].

⁴³ Addendum to s.42A Report, at [7(d)].

⁴⁴ HUD Opening Legal Submissions, at [4.113]-[4.115].

⁴⁵ Summary Statement of Te Warena Taua, 21 November 2024, at [12].

Other provisions referencing Mana Whenua

82. In his original submission, Mr Beresford, provided a comprehensive list of concerns he had with the proposed PC94 provisions, including those of relevance to or referencing Mana Whenua. These included opposing:⁴⁶
- (a) changing the name of Oakley Creek to Te Auaunga on the basis that it was not appropriate for the well-known English name to be deleted;
 - (b) including objectives for the restoration and enhancement of Māori capacity building and Māori cultural promotion and economic development as in his view this would discriminate on the basis of race and is contrary to the Bill of Rights Act 1990; and
 - (c) objectives I334.2(10)(f) and I334.2(12) and policy 1334.3(4)(e) regarding cultural promotion, economic development and restoration and enhancement of Māori capacity building, on the basis that this would prioritise the economic development outcomes of the developer over community outcomes.
83. In response to changes proposed in the s.42A Report and Addendum, Mr Beresford provided his updated position on specific submission points. Of relevance to Mana Whenua matters, Mr Beresford sought:⁴⁷
- (a) changes to paragraph 2 of the Precinct description to:
 - i. remove reference to the Precinct having been occupied for over a “*millennium*” as in his view that was no evidence of occupation for that length of time;
 - ii. remove or amend reference to the Precinct forming part of Te Auaunga basin below Ōwairaka / Te Ahi kā a Rakataura, as it:
 - 1. indicated subserviency of the Precinct to the most dominant local geographical feature, and that if such a statement was required, Mt Albert should instead be used;
 - 2. it was unclear what part of Te Auaunga basin means;
 - 3. it was unclear how Te Ahi kā a Rakatāura related to the Precinct;
 - iii. clarify the references to “*significant waka portages*” and “*over successive generations*” as it was unclear what was being referred to and no timeframe was included; and
 - (b) amendment of Policy I334.3(4)(e) to remove reference to “*Māori capacity building, cultural promotion, and economic development*” as it was quite

⁴⁶ Original Submission of Geoffrey Beresford, Schedule 1, Issues 2, 7, and 35.

⁴⁷ Submission of Mr Beresford, 21 November 2024, Schedule 1, at [3]-[5] and [46].

different from a policy promoting economic development and it was unclear what effects the proposed wording would have.

84. In response to a question at the hearing about the nature of the changes sought, Mr Beresford confirmed that while the historic use of the land should be acknowledged, it needed to be directly based on evidence, and the Council's proposed wording had a bunch of propositions that need to be fleshed out/substantiated.⁴⁸

Discussion and findings

85. We accept Mr Beresford's submission that our decision must be based on the evidence, and his earlier submission (discussed in the Precinct name section above) that it needs to be made in an RMA framework.
86. We do not however accept his submission that including provisions regarding enhancing Māori capacity building and promoting cultural economic development are inappropriate. We consider, for the reasons given earlier (in the Treaty settlement context section), that the RMA and the relevant RMA documents (in particular the NPS-UD and AUP) provide strong directives, which mean it is appropriate to include such provisions within PC94.
87. In terms of Mr Beresford's concerns regarding the evidential base for the wording of some of the provisions, we had evidence before us from a number of the Mana Whenua groups indicating their longstanding (mai rānō) relationship to the area. We are also cognisant that the Redress Act and Redress Deed, acknowledge the relationship of Mana Whenua to the whenua and the cultural values and uses made of the land over many generations.
88. We therefore prefer the evidence and submissions of Mana Whenua and the Applicant on these matters.
89. We have however closely considered the clarity of the provisions, and whether they could benefit from some further elucidation. In relation to the portages, we have determined it is more appropriate to leave the reference generic as the names of all the portages and their specific locations were not specifically identified in the material before us.⁴⁹ We have however changed the reference from "*millennium*" to "*a long period over many generations*" which we consider better aligns with the Redress Deed. This change is minor, and does not change the provisions in any substantive way. Accordingly, we do not consider any s.32AA evaluation is required.

⁴⁸ Mr Beresford Oral Submissions, 21 November 2024.

⁴⁹ We note that the Redress Deed specifically included reference to Te Tō Waka portage, but did not expressly refer to or name the other waka portages between the east and west coasts.

TUKANGA NGĀ AHOAHO | OPEN SPACE

Overview

90. The provision of open space was one of the more significant areas of contention between the Applicant, Council experts and some submitters, notably OSFFA. A significant number of submitters (approximately 53) raised the appropriateness of open space within the Precinct – mainly in the context of it not being sufficient. In summary these submissions sought:
- greater provision for open space, with a variety of open space typologies;
 - that Knoll Open Space (known as Knoll Park) be vested or zoned to ensure existing trees and the gardens be protected; and
 - to specify what proportions of open space are private or public.
91. For context we first set out below what open space was proposed as part of the notified PC94. We note that the quantum, location and nature of the open space (public/private) did not change through the hearing, nor in the Reply Submissions.
92. We then summarise the experts' views on 'methodology' – i.e., how to determine the appropriate quantum (and quality)⁵⁰ of open space in relation to the development that would be enabled by PC94, and the qualities of that open space. This includes the various experts' opinions on the appropriate methodology and metric to determine an appropriate (essentially) quantum of open space required to give effect to the NPS-UD and the Regional Policy Statement (**RPS**).
93. In this regard, we note that prior to the hearing it was clear there was no agreement between the parties on what was an appropriate methodology or metric to be applied to determine an appropriate open space network. Following expert conferencing (addressed further below) and the hearing, there was still no agreement on an appropriate methodology or metric. On this basis we determined that directing further expert conferencing, a possibility posed at the hearing, was unlikely to result in agreement between the parties.
94. We then briefly set out the relevant NPS-UD and RPS policies, before turning to address whether the provision of open space proposed by the Applicant, arising from the greater urban intensification of the site from PC94, is sufficient, adequate and/or appropriate.

Open space context

95. HUD's application summarises the existing public open space within the Precinct and the public open space proposed by PC94 as follows:⁵¹

The Te Auaunga Precinct provides for 5.1641ha of public open space land distributed in the northern, central and southern portions of the precinct. It

⁵⁰ The experts agreeing that quantum and quality go hand-in-hand, and it not possible to determine one without the other.

⁵¹ Application Materials, Volume 1, Attachment 5, Open Space Assessment, 8 October 2023, at pp.513-514.

provides an integrated network of open space to serve the new community that will establish over time within the Te Auaunga precinct area as well as the adjacent residential area.

The Te Auaunga Precinct also provides an extensive walkway and cycleway network which provides walking and cycling connections between the open space areas and to / from the wider urban area.

The existing Wairaka precinct provides for a 3,611m² neighbourhood park to service ~ 2,500+ dwellings envisaged within the Wairaka Precinct. The existing provisions also show 7.13ha of "private open space". This includes approximately 1.2 ha of Unitec land This is unchanged through this plan change.

This plan change seeks to establish approximately 4.5ha of public open space (subject to the Council agreeing to accept the vesting of this land in accordance with the process set out in the Councils Development Contribution Policy and Open Space Acquisition Policy) plus an additional ~0.6ha of land contiguous with public open space which is intended to vest as a stormwater asset.

The open space provision proposed represents a ratio of approximately 1ha per 1,000 dwellings.

The provision of public open space for the intended population is appropriate to service the needs of the new community. The range of open space areas is intentionally diverse, i.e. to provide for recreational choice for the differing needs of the community. The proposed open space areas have the potential to provide for formal playgrounds for different age groups, informal play areas, passive and informal active recreation (kick-a-ball), picnicking and the like, as well as amenity planting, and access to an extensive public walkway network.

For completeness, it is recorded that the open space / park / or recreational facilities associated with the Mason Clinic are all internalised and provided for private use within that site. Similarly, Unitec provides for the open space and recreational needs of students within its facility, although obviously the students, staff and visitors are able to use all the public open space areas within the precinct and wider local area.

In terms of yield, the analysis provided when the current provisions of the operative Wairaka Precinct were established identified the potential for 2,500 dwellings plus 1,000 units of student accommodation (with the majority of the student accommodation being single bedroom, but with some family accommodation).

The Precinct is estimated at providing for a total of 4,000-4,500 dwellings with a range of typologies and dwelling configurations anticipated, from 1 to 4 bedroom dwellings. The net uplift therefore varies between 500 and 1,000 dwellings depending on the scenario modelled, although there is a significant change assumed in the percentage of student accommodation units (i.e. when Unitec was promoting the plan change) and hence a likely reduction in 1 bedroom units.

In terms of population, the 2,500 dwellings under the Wairaka Precinct and the 4,000-4,500 in Te Auaunga Precinct have been assessed at 2.8 people per

dwelling. The 1,000 Unitec related accommodation units for students, staff and post graduate members have been assessed at 1.2 people per dwelling.

Consequently, the Te Auaunga Precinct has a modelled population of 11,200-12,600 compared to the Wairaka Precinct with an expectation of 8,200.

Open space

Precinct plan 1 as proposed through the plan change provides for a total of 6.1ha of land (including the Unitec land) being set aside for open space, and stormwater management. This represents 10.5% of the residential land of the precinct (i.e., excluding the Mason Clinic but including Unitec). This calculation excludes land required for the finer grained local road / cycle / pedestrian network, infrastructure, and any communal publicly accessible and / or private open space that will be provided as part of the further residential development of the superlots. The existing Precinct plan identifies both public and intended private open space. This plan change proposal identifies only intended public open space (subject to Council accepting it).

Considering open space alone, this proposal provides 5.1ha of open space across the 33.8 ha of the precinct available for residential development, representing 15% of the land area. This 33.8ha represents all Crown land held for housing (including the Taylor's laundry site) plus the land owned by Whai Rawa as shown in diagram 1. This is all the land available for residential and mixed-use development. It excludes the Mason Clinic and Unitec sites.

The 4.5ha of the public open space anticipated has a primary recreation function and a further ~0.6ha is anticipated to be vested with a primary stormwater function, whilst also affording open space amenity, and as it will be contiguous with vested open space. As this public open space is proposed to be vested in the Council, should that be agreed in accordance with Council's open space and acquisition policies referenced below, it will be secured in perpetuity. As noted above, this provision would represent 15% of the precinct land available for residential development potentially being set aside as public open space.

[Our emphasis]

Methodology

96. As already noted, this topic was the subject of expert conferencing. In the JWS (Open Space) the experts, excluding Ms Barrett (for OSFFA), agreed that open space could include:⁵²
- open space areas accessible to the public excluding roads but including pedestrian or cycle links (regardless of ownership);
 - communal spaces for private use only; and
 - individual household-scale open spaces (yards, outdoor living spaces, landscaped areas).⁵³

⁵² JWS (Open Space), 1 November 2024.

⁵³ Ms Barrett did not consider that outdoor living spaces should be considered as open space.

97. However, all experts acknowledged there is no agreed ‘industry’ methodology or metric to determine the appropriate amount of open space generally; nor within intensified urban environments such as is proposed by PC94. Furthermore, neither the RMA and its higher order policy documents such as the NPS-UD), nor any other local government statute provide explicit direction on the appropriate quantum or quality of open space that should be provided as part of a development or within a certain urban area. It was made clear to us that directions on such matters have generally been left to policy or strategy documents created under the LGA, many of which have been informed by international guidance, including from the World Health Organisation. We address these matters further below.

Evidence

98. We received extensive open space expert evidence from:
- (a) the Applicant, Mr Canham, who considered that what had been proposed provided appropriate and sufficient open space to account for the increased density enabled within the Precinct through PC94;
 - (b) the Council’s experts, Mr Greenaway⁵⁴ and Dr Tafaraji,⁵⁵ who sought a larger quantum – essentially an additional neighbourhood park;⁵⁶ and
 - (c) Ms Barrett for OSFFA, who opined that a much greater amount of public open space was required, including a suburb park in the order of 5 to 10 ha.⁵⁷

Council view and Applicant response

99. For the Council, Mr Greenaway focussed on open space metrics and the range of open space needs of communities. His conclusion was:⁵⁸

A larger open space provision will far better serve the wellbeing of the new Wairaka community, and reduce impacts on existing neighbouring suburbs. I recommend that the figure of 20 m² per household as described in the Local Government Act 2002 (s203 (1)) and the Auckland Council Contribution Policy 2022 Variation A (s63) is the preferred starting point for a provision metric. Provision below this level should be justified by exceptional open space design.

[Our emphasis]

100. Dr Tafaraji focused on the quality of open space areas to be provided, including against Council’s parks policies, namely:
- Council’s Open Space Provision Policy (2016);

⁵⁴ An independent parks and recreation expert.

⁵⁵ Council’s Senior Parks Planner.

⁵⁶ We also note that open space matters were also referred to by Mr Brown (landscape) and Mr Ray (urban design).

⁵⁷ Summary Statement of Maylene Barrett, 20 November 2024, at [39].

⁵⁸ Section 42A Report, Volume 3, Appendix 6, Mr Greenaway Review, p.416, at [72].

- Parks and Open Space Strategic Action Plan (2013);
- Parks and Open Space Acquisition Policy (2013); and
- Albert-Eden Open Space Network Plan (2018).

101. Dr Tafaroji noted that the Open Space Provision Policy sets out provision targets for different types of open space (recreational and social) across the region and is intended to give effect to the Council's Parks and Open Spaces Strategic Action Plan.

102. Mr Reaburn stated in the s.42A Report:⁵⁹

In consultation with Council's Open Space Acquisition team Dr Tafaroji agrees that one more open space as a neighbourhood park is required in order to create green network across the precinct and the wider area. This park, of about 5,000m², would be located between the two proposed Northern Open Space and Central Open Space areas within Lot 6 of the approved mega lot subdivision.

103. Mr Canham, in response to the Council's experts' view, set out the following in his evidence:⁶⁰

3.4 Auckland Council has a range of policies which seek to resolve and/or respond to some of these challenges, each with slightly different area of focus and/or points of emphasis. However, the Strategic Action Plan 2013, Strategic Asset Management Plan 2015-2025, Provision Policy 2016 and Auckland Design Manual are key in informing Auckland Council's decisions on open space acquisition and design.

3.6 Importantly, while these directions are considered 'best practice' and are Council approved reference points in considering whether open space will serve its purposes for the current and future community, the ratios, quantities and provision metrics are not firm thresholds or standards against which proposals are able to be assessed. They are guiding parameters and, as with any policy, the directions included in these documents are often general in nature, meaning that the assessment of open space for a particular proposal will need to be grounded in the particular context/circumstances which relate to that proposal.

3.7 In practice, Auckland Council also waits for plan changes and consent applications to evaluate if and where its open space aspirations can be met. Auckland Council is not unique in this respect, but it brings an additional set of challenges in matching proposals with policy.

[Our emphasis]

104. Ms Lupis in her Reply Submissions addressed the extent to which expectations in terms of the provision of open space are changing, or may need to change, in

⁵⁹ Section 42A report, Volume 1, at [210].

⁶⁰ Evidence of Geoff Canham, 17 October 2024, at [3.4], [3.6] and [3.7].

response to ongoing intensification of (Auckland's) urban environments. She submitted:⁶¹

It is clear from the discussion at the hearing that the Council's open space reviewers, as well as Ms Barrett and other submitters, have approached the question of open space from the point of view that regardless of whether future residents of Auckland live in a highly urban location, or on the suburban or rural fringes of the city, they should have a similar level of access to outdoor public open space. While that may be an appropriate starting point for a greenfield development in a Future Urban or low density zone, an urban area which is highly suitable for intensification in accordance with the NPS-UD is a different proposition, and warrants a more modern, considered response.

While it is clear that planned urban built form that responds to the NPS-UD will result in significant change, for example to building height and scale, and that those changes are not of themselves adverse, there does not appear to be a corresponding acknowledgement by Council's reporting team that our open spaces will also change and adapt as a result. In our submission, Objective 4, Policy 1 and Policy 6 of the NPS-UD are instructive on this point. Read together, they highlight that:

- (a) New Zealand's urban environments are developing and changing in order to meet the diverse and changing needs of future communities.*
- (b) Well-functioning urban environments enable the provision of sufficient and affordable housing, and have good accessibility to open spaces, including by way of public or active transport – confirming that people can travel to meet their recreational needs, but remaining silent on the quality or quantity of open spaces that may meet those needs.*
- (c) Planned urban built form may result in significant changes to an area, not simply in terms of the buildings themselves, but to the environment in which those buildings are located.*
- (d) That may result in changed amenity expectations for some members of the community, but that is to be balanced with the benefits of urban development and the ability to provide increased and varied housing densities.*

OSFFA view and Applicant response

105. Ms Beresford's legal submissions set out the case for OSFFA. She submitted:⁶²

PC 94 should not be approved because of the very significant shortfall in the quantum and quality of open space required to serve the open space and recreational needs of the projected population of the Precinct. This shortfall cannot be met by reliance on open spaces within the wider Auckland open space network or by the Council officers' proposed running total of area per

⁶¹ HUD Reply Submissions, at [2.46]-[2.47].

⁶² OSFFA Legal Submissions, at [5(b)].

unit mechanism. This is a standalone matter, which is separate from and would not be resolved by granting the Society's other relief that seeks amendments to PC 94. The Society says that open space issues alone warrant the decline of PC 94.

106. Ms Barrett provided expert evidence addressing open space (and other matters). It was Ms Barrett's opinion that more open space was required.⁶³ In her summary statement under the heading Open Space Requirements she stated:⁶⁴

Given the increase in population density anticipated by Plan Change 94, the quality and quantity of open space established under the Wairaka Precinct warrants re-evaluation. Mr Greenaway and Mr Reaburn have suggested that a minimum of 20m² of open space per household should be required, translating to at least 8 hectares for 4,000 homes.

My opinion is that this would be insufficient, and at least the World Health Organisation minimum area of 9m² per individual or 9ha for a population of 10,000 should be the starting point. The upper level of open space provision of 2.3ha/1,000 people that is the current level of service for the wider Albert-Eden local board area should also be considered, where for a population of 10,000 people this would be 23ha.

In my view, the existing assessments have not adequately addressed the necessity for new suburb parks, particularly in light of projected growth. Moreover, the walking distance standards for assessing park accessibility should rely on actual routes rather than direct "as the crow flies" distances. This necessitates a larger suburb park of at least 5 hectares to adequately serve the high-density development and ensure sufficient provision for the community, as existing parks like Waterview Reserve and Phyllis Reserve are likely to become overcrowded. In my view 5ha would be a minimum and a suburb park of up to 10 ha would be required given the anticipated population within the Precinct and anticipated population growth surrounding the Precinct.

[Our emphasis]

107. Ms Barrett went on to address sports and recreational facilities as follows:⁶⁵

The Albert-Eden Sport and Active Recreation Facility Plan 2021 (Facility Plan) highlights a deficiency in current sports provisions across Albert-Eden local board area. Current metrics show that the Local Board area averages 4.5 playing fields, 6.5 outdoor courts and 2.3 indoor courts per 10,000 people, but the proposed Plan Change 94 would result in the loss of two playing fields and six indoor courts, with no plans to replace these facilities.

108. In response to questions from us, Ms Barrett considered that PC94 needed to make provision for this scale of playing fields, outdoor and indoor courts. Again, in

⁶³ Noting at paragraph 5 of that statement that she states, "My opinion remains the same as that set out in my primary evidence".

⁶⁴ Summary Statement of Maylene Barrett, 20 November 2024, at [37]-[38].

⁶⁵ Summary Statement of Maylene Barrett, 20 November 2024, at [41].

response to questions, it was her opinion that PC94 (and all developments/plan change proposals) needed to provide for all of their open space and recreational needs, irrespective of whether these facilities may be used or required regionally.

109. We note that Dr Tafaraji did not support (but did not oppose) Ms Barrett's position in relation to a suburb park.

110. In Ms Barrett's conclusion she stated:⁶⁶

Overall, in my opinion, the Plan Change 94 as proposed should not be approved as there is insufficient provision for informal and formal active and recreational open space and facilities for the future population.

The overall area of open space needs to be significantly increased. The projected future population for the Precinct requires a sports park and recreation facilities that can provide 4.5 sports fields, 2.3 indoor courts and 6.5 outdoor courts, a destination playground and sufficient neighbourhood parks to accommodate any further gaps in provision.

[Our emphasis]

111. Throughout her evidence Ms Barrett highlighted what she considered to be deficiencies of the Applicant's s.32 evaluation in relation to open space. These were that the s.32 evaluation report did not adequately address the issue of the availability of sufficient open space to provide for the social well-being and health and safety of the future residents, and was silent on how existing recreation facilities could meet the needs of future generations.

112. While Ms Barrett opined that further sports and recreation facilities were necessary before PC94 could be approved, she did not undertake a s.32 or s.32AA evaluation as to the costs of providing for this "*significantly increased*" open space.

113. Ms Lupis responded to Ms Barrett's evidence in her Reply Submissions as follows:⁶⁷

It remains HUD's position that it is not appropriate to provide for these within the Precinct because:

(a) It is not the responsibility of HUD or the Rōpū to address regional shortages in available recreational facilities or large-scale public open spaces such as Suburb Parks.

(b) The Council and the Local Board have made it clear that the funding to acquire land within the Precinct for that purpose is not available.

(c) It remains unclear why the Council and the Local Board expect the Rōpū to carry the financial burden for providing those facilities, particularly when

⁶⁶ Summary Statement of Maylene Barrett, 20 November 2024, at [300]-[301].

⁶⁷ HUD Reply Submissions, at [2.44].

there are options available for addressing those shortfalls within the Albert-Eden locality – for example, repurposing some of Chamberlain Park.

Discussion and findings

114. In relation to the matters raised by the Council, we agree with Mr Canham (at paragraph 103 above), that the Council policies provide guidance but are not directive, and that *“the assessment of open space for a particular proposal will need to be grounded in the particular context/circumstances which relate to that proposal”*.
115. We note that that the Council documents referenced by Dr Tafaraji pre-date the NPS-UD with its directives regarding urban growth. Accordingly, those documents may be ‘out of date’ or less instructive with respect to the requirements or expectations for open space required or preferred by people who choose to live in more intensified urban environments.
116. We therefore prefer Ms Lupis’ submissions on these matters (paragraph 104 above) which highlight that in light of the NPS-UD a *“more modern considered response”* is required to open space. In particular, the NPS-UD requires good accessibility to open space but does not require each development proposal to cater for every potential recreational need. As Ms Lupis correctly points out, inherent in the term *“good accessibility”* is the ability to travel to meet some of those needs if required.
117. This conclusion is similarly relevant to the matters raised by OSFFA (and summarised by us at paragraphs 105-108 and 110-112 above). In particular, we do not accept Ms Barrett’s opinions on the quantum and the nature of the open space required. To do so would effectively negate most sites from being able to intensify as envisaged by the NPS-UD. This cannot be right for the reasons set out by the Applicant. Accordingly, we prefer HUD’s evidence and submissions as to what the NPS-UD and relevant planning documents require in terms of open space assessment methodology.
118. As a final point in this section, we also find that there is a material difference in terms of open space between the operative Precinct and PC94 – that of public vs private open space, and that that distinction is material. In the operative Precinct, the key open space (private) is not, in planning terms, available to meet the open space needs of the community in accordance with Council’s own policies. The only public open space provided for in the operative Precinct is a 0.3 ha indicative Neighbourhood Park. Compared to that operative scenario, the Plan Change would provide significantly more public open space.

NPS-UD and RPS

119. It is clear from our findings in the previous section, and agreed by the experts, that there is no standard or recognised methodology to determine the appropriate quantum and quantity of open space. Accordingly, we agree (as opined by Mr Canham - paragraph 103 above) that the assessment of open space needs to be considered in the particular context/circumstances of this proposal, and whether

the quantity/qualities of the open space proposed satisfies the policy direction of the NPS-UD and the RPS.

120. We set out the relevant objectives and policies of the NPS-UD and the RPS below, with our emphasis (underlining) of the particularly salient matters to PC94.

NPS – UD

Policy 1 - Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

(c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport

AUP - RPS

Objective B2.7. Open space and recreation facilities

B2.7.1. Objectives

(1) Recreational needs of people and communities are met through the provision of a range of quality open spaces and recreation facilities.

B2.7.2 Policy

(1) Enable the development and use of a wide range of open spaces and recreation facilities to provide a variety of activities, experiences and functions.

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

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

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

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

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

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

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

[Our emphasis]

Provision of open space

Proposed changes (from the operative to the proposed Precinct)

121. The operative Precinct Plan depicts “*key open space (private)*” located in the centre of the Precinct within and associated with the Unitec campus. It encompasses features including the central knoll, the upper section of Wairaka Stream, and the main stormwater pond.
122. The operative Precinct Plan also depicts *the “indicative location of a neighbourhood park”* of approximately 3,000m² (at the intersection of roads 1 and 2). All but the neighbourhood park is indicated as ‘private’ open space.
123. The proposed Precinct Plan depicts a central open space similar in pattern but smaller in area compared to the operative Precinct Plan. The proposed Precinct Plan does not include a neighbourhood park at the intersection of roads 1 and 2, but adds an area referred to as ‘central open space’ near the intersection of the spine road (Te Ara Pūtahi) and road 3 (Te Ara Kōkōwai – currently known as Farm Road).
124. The proposed Precinct Plan also depicts an additional triangular open space in front of the ‘Oakley Hospital Main Building’ in the north-east corner of the Precinct. In contrast to the operative Precinct Plan, PC94 proposes that most of the open space be ‘public’ open space and, subject to Council acceptance of the areas and a separate acquisition process, be vested as Council reserve.
125. Proposed changes to the Precinct provisions include:
 - (a) the addition of Objective 10(ba) that:

An integrated urban environment is created, which; - Ensures a range of high quality, well located and connected, and suitably sized open spaces are able to be developed for a range of passive and active recreational activities commensurate with the intensification and population enabled within the precinct;
 - (b) replacement of policy (15) with a new policy 15B to:

Ensure provision of open space, including identified neighbourhood parks, other areas of open space identified on Precinct plan 1 and communal open space, that together provide a range of high quality, well located and connected, and suitably sized open spaces able to be developed for a range of passive and active recreational activities commensurate with the intensification and population enabled within the precinct;
 - (c) the addition of policy (19A) to: “*Ensure a safe and integrated network of public open spaces*”; and
 - (d) an additional matter of discretion – 1334.8.1 (1A) b (v):

The extent to which communal or private open space in the Business – Mixed Use Zone is provided and whether:

- (a) private open space provides a functional area and shape accessible from the primary living area.*
- (b) communal open space in the form of plaza, podium, balcony or roof top spaces provides functional areas for the outdoor enjoyment and/or meeting of residents and their guests.*
- (c) open space connections linking through the site as part of a multi-unit development join up with the precinct walkway and cycleway network, as shown on Precinct Plan 1.*

Evidence

126. The concept for the main open spaces in the middle of the Precinct was explained in Ms de Lambert’s evidence and illustrated by diagrams (see below). The concept is a network of connected space focused around features such as the Wairaka Stream, the central treed knoll (‘Knoll Park’), the existing stormwater ponds (‘Southern Open Space’), a connection to Te Auaunga Stream (‘Oakley Creek’), and the Oakley Hospital Main Building (‘Northern open space’). The open spaces are to be integrated with, and connected by, the street network. It is also consistent with the conceptualisation of these spaces from a cultural perspective as referred to earlier in the cultural considerations section of our decision.

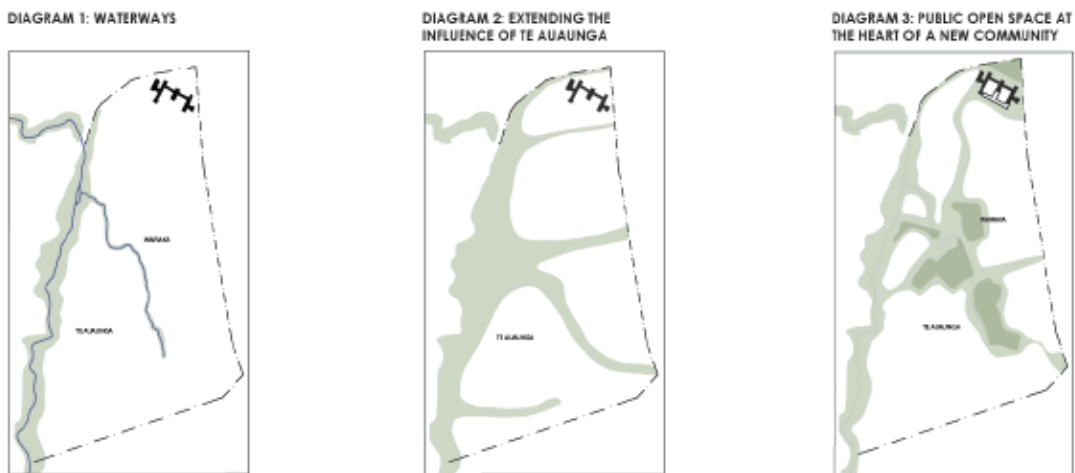


Figure 12: Diagrams expressing the way in which open space provision has been informed within the Precinct, including along future roading network.

127. Other experts did not dispute the open space concept outlined by Ms de Lambert, but criticised the qualities of the open spaces.
128. Ms Barrett criticised the configuration of the central open space and what she described as its disjointed connection with the knoll open space:⁶⁸

⁶⁸ Summary Statement of Maylene Barrett, 20 November 2024, at [58].

...the proposed central park is entirely inadequate in terms of size, shape, orientation to the street, availability of areas that are not subject to shade, significance, legibility and street frontage. It is disjointed from the Knoll Park and provides insufficient land to be of any significance to the future community.

129. Ms Barrett recommended that the central open space be consolidated with the knoll area and expanded to be a “suburb park” which she depicted as also including a flat area able to accommodate sports fields with street frontages on three sides. She clarified in response to a question that a suburb park was characterised by its area and range of activities (attractors) and that sports fields were not an essential characteristic. She pointed to the nearest existing suburb park, Oakley Park (Waterview Reserve) on Herdman Street as an example of a suburb park. That park has an area of 3.4 ha and is approximately 700m walking distance from the Precinct.
130. Mr Brown likewise criticised the configuration of the open spaces because of what he described as their limited scale and elongated shapes, the sloping nature of the terrain, and the configuration of development sites around the spaces.⁶⁹ He considered *“this combination of factors suggests that the public open spaces proposed would be subject to significant over-shadowing on a daily basis, while the buildings in their immediate vicinity – up to 35m high – would be visually dominant to over-dominant relative to them.”*⁷⁰
131. Mr Ray similarly raised concerns with respect to shading and building dominance. He said the proposals *“would allow for 35m tall buildings (up to 10 residential storeys) surrounding the proposed (public) open space including the proposed neighbourhood park. Buildings rising up 35m immediately to the north and east of this neighbourhood park would cause undue shading and building dominance to the point that I would consider the neighbourhood park severely compromised.”*⁷¹
132. Dr Tafaroji considered the proposed open spaces would not, on the whole, have the qualities that would meet Council’s criteria for acquisition of public open space.⁷² She considered the central open space would meet most of the criteria but recommended a street frontage along the eastern side of the park.
133. However, while she considered the knoll reserve would not meet Council’s criteria as above, Dr Tafaroji, acknowledged its value in connecting spaces, but considered it was not a functional recreation space *“...due to the steep contour of the site (very limited flat area of approximately 0.2ha with a gradient of at least 6%), being heavily vegetated by established and notable trees on the site, and the poor shape of the site which does not provide for 30mx30m kickable area.”*⁷³
134. Dr Tafaroji also considered that the southern open space adjacent to the stormwater ponds would not meet Council criteria because of its limited size and

⁶⁹ Report of Stephen Brown, 23 September 2024, at p.16.

⁷⁰ Report of Stephen Brown, 23 September 2024, at p.17.

⁷¹ Report of Alistair Ray, 11 September 2024, at [74].

⁷² Report of Dr Roja Tafaroji, 1 October 2024, at [3.46]-[3.55].

⁷³ Report of Dr Roja Tafaroji, 1 October 2024, at [3.51].

flooding. Rather than fulfilling a dual function, she considered it “*could only function as a drainage reserve and must be totally considered for vesting to the Council’s Healthy Waters department.*”⁷⁴ She also raised concerns relating to management, public access, and safety with the adjoining open space that is to remain under Unitec ownership.

135. Dr Tafaroji did however consider the access to Te Auaunga / Oakley Creek would be acceptable from an open space connectivity perspective.
136. Dr Tafaroji also considered that a third neighbourhood reserve (in addition to the northern open space and central open space neighbourhood parks) should be included on Lot 6 to provide a “*connected open space network that is accessible to the public*”,⁷⁵ and to meet Council guidelines for neighbourhood reserves within 400m walking catchments.
137. The northern open space in front of the Oakley Hospital Main Building was however acknowledged as appropriate by the design, recreation, and heritage experts. It is flat, north facing, and has established trees. It would retain the open setting in front of the heritage building and coincides with that building’s extent of place. The only criticisms raised by some experts was poor connectivity between this neighbourhood park and the rest of the Precinct and its frontage to Carrington Road.
138. In terms of both quantum and amenity, the experts for the Applicant pointed out that communal and private open spaces contribute to the overall open space of an area. Messrs Duthie and Smallburn pointed to the recent developments:⁷⁶

Communal open space is an integral part of good design for large apartment complexes. Of the four resource consents for apartment buildings already granted for this Precinct, each of them provide a significant element of communal open space. Two of them provide an element of privately owned but publicly accessible open space. Part of this is the plaza and entranceways into the retail centre elements embodied within RC1. Others, as in RC2, are publicly accessible courtyards and plazas.

Discussion and findings

139. We accept the concept of a network of connected open space focused on the site’s natural and historic features as a basis for configuration of public open space. Such an approach will contribute to attractiveness and usefulness of the open space, and to the identity of the Precinct.
140. We also accept that communal open spaces incorporated into developments, such as those described by Messrs Duthie and Smallburn, will be important to the overall quality and amenity of the Precinct. Such spaces will complement, but not

⁷⁴ Report of Dr Roja Tafaroji, 1 October 2024, at [3.53].

⁷⁵ Report of Dr Roja Tafaroji, 1 October 2024, at [3.57].

⁷⁶ Supplementary Evidence of John Duthie and Ian Smallburn, 13 November 2024, at [3.49].

substitute for, the network of public open spaces that will in effect be mostly green open space.

141. We agree that a legible walking and cycling connection at the western end of the main Oakley Main Hospital building, as provided for in the 'Addendum version' of the provisions, would ensure the northern open space is linked to the spine road (Te Ara Pūtahi) and the rest of the Precinct. It would be consistent with Ms de Lambert's diagrams. Without such a connection, future residents in most of the Precinct would rely on Carrington Road to access the northern neighbourhood park.
142. The Applicant had proposed that the connection be limited to a walking path because of cost and the need to provide for emergency and maintenance vehicle access. In our view the extension of the cycle path from the spine road (Te Ara Pūtahi) would contribute to legibility of the link, and would also provide a direct connection between the spine road and the North-Western Cycleway. We also do not consider walking and cycling is incompatible with occasional emergency or maintenance access.
143. We have included the cycle path in the Precinct provisions. To the extent concerns were raised regarding cost, we consider that the cost of a cycle path (in the order of 100m long) would be outweighed by the benefits to connectivity of the open space network.
144. We do not accept all of the criticisms of the open space areas from the Council experts and Submitters for the following reasons:
 - (a) We find the southern open space adjacent to the stormwater ponds is appropriate as part of the open space network. The ponds contribute to amenity values as well as fulfilling stormwater functions (it is an example of integrated design). We agree with Ms de Lambert and Mr Canham that the open area and rolling topography west of the main pond is suitable for informal recreation. We accept Mr Canham's evidence that the area of proposed public open space is 1.66 ha of which approximately one third comprises the ponds, and that most of the balance open space (i.e., approximately 1 ha) is unaffected by stormwater even with a 1% AEP flooding event.⁷⁷ That is relatively large as a neighbourhood reserve. We consider its public nature would be clear given frontages to both road 3 (Te Ara Kōkōwai) and road 4, in conjunction with normal cues in the park design such as paths, park furniture, and signs. While the adjoining Unitec open space would merge with the public open space, there is enough separation (the Unitec buildings are separated from the open space around the pond by Wairaka Stream and a low ridge) to avoid the area being perceived as private.
 - (b) We agree with Ms de Lambert and Mr Canham, and confirmed by our site visit, that the central knoll would contribute to the attractiveness and use of the open space network for informal recreation. The knoll's qualities are

⁷⁷ Evidence of Geoff Canham, 17 October 2024, at [6.7].

accentuated by the mature trees on top of the knoll, its visibility from the spine road (Te Ara Pūtahi) and road 3 (Te Ara Kōkōwai) and its proximity as the backdrop to the recently daylighted and rehabilitated section of the Wairaka Stream and to the Pumphouse. Mr Canham also provided evidence that the criterion of a 30m x 30m flat 'kick a ball' area⁷⁸ would be met within the park, although we did not place much weight on that criterion given the proximity of the flat central open space.⁷⁹

- (c) The connection with Te Auaunga Stream (Oakley Creek) would contribute to the Precinct's open space network by connecting to the different qualities of the stream corridor and the wider network. While it is a transitional space, the indicative shape opens out at both ends, and it will contribute to the open space qualities enjoyed by the residents.
- (d) While the central open space, knoll park, and southern open space do not form a single open space, they are in proximity and there are short connections between them. Collectively they comprise a reasonably sizeable 3.5 ha (excluding the stormwater ponds and the Unitec open space), larger than necessary for a neighbourhood park, and similar in size to Oakley Park. They encompass the Precinct's key features of Wairaka Stream, the treed knoll, and the stormwater pond. They also adjoin the Pumphouse which has the potential to be a central feature.
- (e) We do not find that a third neighbourhood park at Lot 6 is necessary to provide a connected or accessible open space network. Subject to a walking and cycling connection at the western end of Oakley Hospital Main Building (discussed above) there would be a connection between the northern and central open spaces along the spine road axis, and the relevant part of the Precinct would be within walking distance of either of these neighbourhood parks as indicated by the 300m radius proxy diagram in Dr Tafaroji's report.⁸⁰

145. We have already addressed the reasons why we do not agree with Ms Barrett's opinion regarding the suburb park earlier in this section of the decision.

146. Notwithstanding the above, we do agree with some of the criticisms made with respect to the qualities of PC94's proposed open space network.

- (a) We accept the evidence that there would be some dominance effects from buildings enclosing the central open space given the combination of the open space's proportions and shape, the configuration and potential height of buildings around it, the narrow street frontages, and the lack of through sightlines. We accept that the addition of Standard I3334.6.9D Central Open Space – Shading to the provisions would provide for reasonable sun access in response to criticism that the surrounding buildings would shade the central open space. That standard ensures a 30m² circle in the middle of

⁷⁸ A quality Dr Tafaroji claimed was lacking in the area as a potential neighbourhood park, as discussed above.

⁷⁹ Supplementary Evidence of Geoff Canham, 13 November 2024, at [4.10].

⁸⁰ Report of Dr Roja Tafaroji, 1 October 2024, Figure 6.

the central open space is not shaded between 10am and 3:30pm at the winter solstice which we were told is consistent with Council policies.

(b) We accept that the prominence of Knoll Park will be reduced to a degree by the sandwiching of the narrow middle part of that park between two building development sites, and the location of one of the building sites forward of the knoll on the spine road.

(c) We accept that the public open spaces in the centre of the Precinct (central open space, Knoll Park, southern open space) are disjointed to the extent that they are three separate parks, although as noted above, they are close to each other and are connected by short links. We also consider the Pumphouse has the potential to be a central connecting feature (discussed below).

147. We also note that there is an inconsistency between the proposed Precinct Plan which depicts an indicative path around the eastern margin of the stormwater pond and preliminary designs introduced by Mr Majurey that illustrate the eastern margin of the pond is not within the open space network. Such a design, if adopted, would preclude the opportunity for people to walk around the pond and reduce the usefulness and attractiveness of this open space. Given the preliminary nature of that design, and that HUD's final reply provisions retained the indicative path, it may be that this inconsistency has been resolved. However, in any event, we have retained that path in our version of the Precinct Plan to encourage and enable the associated open space benefits it would provide.

148. We have considered all of the evidence related to open space, and accept there are strongly held and contrary views between the parties (experts and non-experts) about whether the open space proposed is appropriate both in terms of quantity and quality. It is necessary for us to determine whether the proposed open space will meet the needs of future residents (the Te Auaunga community), residents in the surrounding area, and the general public when considered against the provisions of the NPS-UD and the RPS.

149. For the reasons we have set out above, and those which follow, we agree with the Applicant's position that the provision of open space (notwithstanding some of the criticisms expressed above) will give effect to the relevant objectives and policies of the NPS-UD and the RPS, and is appropriate to the context and development enabled by PC94.

150. We agree with the HUD Reply Submissions that "*Open space on Precinct Plan 1 is the minimum*" and that:⁸¹

As set out in our opening submissions, the Panel is not tasked with ensuring the delivery of all open space that will be ultimately available within the Precinct. The open space shown on Precinct Plan 1 will be supplemented by additional communal and private open spaces. It will also be supported by active connections throughout the Site – dedicated walking and cycle paths

⁸¹ HUD Reply Submissions, at [2.39].

that also have a recreational function, and provide links through to the existing open spaces which adjoin the Site.

151. We also note that additional Precinct provisions have been included by the Applicant. These are set out in paragraph 125 above. We support those provisions and agree they will, in addition to the areas shown as 'open space' in the Precinct, support the provision of further open space at the time of development (resource consents). In particular, these provisions, combined with the open space shown on Precinct Plan, will enable decision-makers to assess and determine both the quality and quantum of open space proposed as part of developments within the Precinct. This will, in our view, ensure that the open space outcomes can be achieved, and that the AUP objectives relating to open space, will be met.
152. With respect to the relevant higher order planning provisions (as we have set out earlier), we are satisfied there will be good accessibility, as well as a range of open spaces and recreation facilities (providing a variety of activities, experiences and functions) accessible to people and communities. Also, any significant adverse effects of land use or development on open spaces and recreation facilities will be avoided, remedied or mitigated by the design, layout, and precinct provisions of PC94.

Overall finding on open space

153. Overall, we find the approach taken by the Applicant to open space, as outlined in Ms de Lambert's and Mr Canham's evidence, along with the Precinct provisions as proposed by Messrs Duthie and Smallburn, is an appropriate response to the site's features and PC94 context. We are satisfied that the provisions of open space shown on the Precinct Plans and in the Precinct provisions, will give effect to the relevant objectives and policies of the NPS-UD and the RPS, and is appropriate to the context and development enabled by PC94.

HORANUKU ME TE TĀONE ORA | LANDSCAPE AND URBAN DESIGN

154. In this section we address the landscape and urban design issues arising in PC94. These are addressed in the following topic areas:
- (a) vision and character;
 - (b) building height;
 - (c) Pumphouse; and
 - (d) Sanctuary Mahi Whenua Garden.

Vision and character

155. PC94 provides for an increase in residential intensity primarily by increasing building height standards and extending the BMU which also accommodates residential development. The nature and scale of intensification is reflected in the Precinct Description where it states that the Precinct "*provides for a mixed use*

urban community including an ultimate residential community of 4,000 – 4,500 dwellings, supported by a range of retail and other support activities...”.

156. Additions to the Project Description recognise Māori aspirations given the land’s earmarking for Treaty Settlement purposes. The additions also include more information on the land’s history.
157. Otherwise, the intended vision and character is conveyed in the objectives and policies – of which those most relevant to the Precinct’s character are Objectives (3), (10), and (13), and Policies (1), (4), (6), (13), (14), (14A), (14D), (15B) and in proposed increases in the building height standards.

Evidence and submissions

158. Concerns were raised by a number of parties regarding the vision for the Precinct.⁸² Differences between experts engaged by the Applicant (Ms de Lambert and Mr Riley) and those engaged by Council (Mr Brown and Mr Ray) in the envisaged character of the Precinct were captured in the JWS (Urban Design and Landscape) following expert conferencing:⁸³

All experts agree that the intended built character for the precinct is based on a series of high quality intense/tall, predominately residential, buildings supported by a series of both public and private/communal open spaces and avoiding a vehicle-dominated environment. SB and AR additionally consider that descriptors such as “park like setting” together with “generous private/communal open spaces...” should be included in the above.

AR and SB explained a concern and uncertainty with the scale of development envisaged for the precinct and its underlying rationale, purpose, methods and overall fit in the scheme of Auckland’s urban context. The key issue for AR and SB is: what is the intended built character of the precinct and can future proposals for resource consent be adequately assessed for in light of that? AR and SB consider that to address this, the following would be needed:

(a) a clearer precinct description of the intended character outcomes that includes its role relative to the wider Auckland urban context;
and

(b) a design review process; and

(c) methods (to the extent practical) to guide the co-ordination and delivery the elements required to create a successful urban community.

[Our emphasis]

⁸² Concerns were raised by the Council as well as submitters – the latter in particular raised issues regarding the intensity of development, the amount of open space, and character of the area.

⁸³ JWS (Urban Design and Landscape), 1 November 2024, at [3.1]-[3.2].

159. Mr Ray illustrated his evidence by reference to master planning undertaken in such places as Hobsonville Point and Stonefields, the use of design review Panels in those projects, and the more generous open space in such developments compared to that proposed in PC94. There were also references to earlier master planning carried out for the Precinct itself, such as the 'Grimshaw Master Plan'.
160. Mr Brown similarly concluded that: *"As Auckland's largest brownfield development and perhaps the largest of its kind in the country, the Plan Change should be a model for such planning mechanisms in NZ. Unfortunately, it presently falls short of such lofty ambitions and therefore does little to allay many submitters' concerns about PPC94"*.⁸⁴
161. In response to Mr Ray and Mr Brown's evidence, Mr Reaburn for the Council recommended a number of changes to the PC94 provisions to:⁸⁵
- (a) recognise a built form and landscape outcome in the Precinct description;
 - (b) amend Objective 2 to provide more specificity as to how comprehensive planning and integrated development could be achieved;
 - (c) include a new Policy 13A to require residential development to contribute to the overall built form character of the Precinct; and
 - (d) mandate a design assessment from a Design Review Panel and make associated changes to the information requirements and assessment criteria.
162. The Applicant adopted a number of these changes and proposed a number of further changes (some supplementary, some replacements) in its final reply version. However, there were a number of aspects the Applicant did not agree to. These included descriptors such as *"park-like setting"* or *"generous open space"* and a requirement for a masterplan. Further, neither the Applicant, nor the Rōpū, agreed with a mandatory design review (and associated provisions) being included.

Discussion and findings

163. The differences between the experts appear to follow from different visions rather than lack of clarity. While a *"park-like setting"* and *"generous open space"* would make for an attractive urban environment and echo the existing campus character, the Applicant's vision is clearly different: it is of a more intensive urban form that would optimise residential development.
164. The Applicant's vision is consistent the current Precinct description, which does not describe a park-like or landscape setting, and with the higher order policy documents. In relation to those documents, it is our finding that the proposed increase in intensity would give effect to Objective 3 of the NPS-UD to enable more people to live in urban environment areas with appropriate characteristics. It would

⁸⁴ Section 42A Report, Volume 3, p.362.

⁸⁵ Addendum to s.42A Report, p.7, at [11].

also be consistent with the NPS-UD objective of a well-functioning urban environment (Objective 1) as defined by Policy 1.

165. As we have set out earlier, we find:

(a) the changes from the existing campus to an intensive urban character is consistent with Objective 4 and Policy 6 of the NPS-UD; and

(b) optimising the site's development potential is consistent with the identification of the land for Treaty commercial redress purposes.

166. We also find that the Precinct is separate and large enough to accommodate a character and intensity distinct from that of surrounding areas.

167. With respect to design process, we acknowledge the benefits of master planning and design review processes outlined by Mr Ray and Mr Brown. However, we accept the view set out in HUD's Opening Legal Submissions which stated:⁸⁶

However, while HUD's experts do not dispute the role of masterplans as a design method in principle, neither the RMA nor the AUP mandate the development of, or strict adherence to, a masterplan as a prerequisite to inform a large scale urban development proposal. There is simply no requirement to embed a masterplan outcome in the AUP as part of this, or any, plan change process.

Nevertheless, as HUD's experts have explained, significant masterplanning work has already been completed to support the future development of the Site. HUD's experts remain of the opinion that the Addendum Version supported by HUD reflects the key outcomes of the Reference Masterplan, and that more specific references to that Masterplan within those provisions are neither appropriate nor necessary.

168. Furthermore, Mr Majurey alluded to a desire of the Rōpū to continue their exercise of rangatiratanga rather than responding to a pre-determined masterplan that may not fit their aspiration and design outcomes for the site – noting that each Rōpū had undertaken (or was in the process of undertaking) their own 'masterplans'. For Marutūāhu, Mr Majurey stated that the results of this process were clearly shown in the fast-track consents obtained and development that is currently taking place on site. In short, the Rōpū want to keep their design process in-house rather than embedding it in a master plan and a statutorily mandated design panel planning process. We agree that that approach is more appropriate for the reasons provided by the Rōpū and HUD (as outlined in this section).

169. With respect to the design review process, we accept Ms de Lambert's evidence that the proposed provisions (including the Precinct plans, and the objectives and policies) are appropriate, in conjunction with the normal Council review processes, to ensure a high-quality outcome. Ms de Lambert said that landscape and urban design assessments would likely be required for most resource consent applications given the matters of discretion, that it is standard practice for the

⁸⁶ HUD Opening Legal Submissions, at [4.5]-[4.6].

Council to undertake specialist peer reviews, and that proposals could (but are not required to) be reviewed by the Auckland Council Urban Design Panel.

170. We also accept the Applicant's position on a bespoke design panel - as set out in its Opening Legal Submissions:⁸⁷

Finally on this matter [design panel], Messrs Duthie and Smallburn have reviewed Mr Reaburn's proposal to require the provision of a "design assessment report from the Wairaka Design Review Panel" as part of resource consents for new development. They consider that the relevant assessment criteria and matters of discretion for new development are such that any application will, as a matter of practice, be accompanied by a comprehensive urban design review. In their opinion, requiring the provision of that via a Design Review Panel is neither appropriate nor necessary.

171. In summary, we find that adding such terms as "park like setting", "generous open space" or "an identifiable open space / landscape setting" to the Precinct description are not warranted, and nor are requirements for master planning and a dedicated design review Panel process, for the reasons outlined in this section.

Building Height

172. PC94 proposes increasing the building height standards in identified Height Areas covering different parts of the Precinct. The design experts agreed in general terms that the Precinct can accommodate intense, tall, predominantly residential buildings. Differences related to the details for each of three 'Height Areas'. We address each area now in turn.

Height Area 1

Proposed changes

173. Height Area 1 is a discrete area in the north-west corner of the Precinct, elevated above the creek and motorway, and bounded on the inland side by the Oakley Hospital Main Building and Mason Clinic. Within this area, PC94 proposes to increase the 'base' height from 27m to 35m, and to provide for three taller buildings (up to 43.5m, 54m and 72m in height respectively) as restricted discretionary activities. The taller buildings are envisaged as a cluster of 'towers' that would provide a landmark.

Evidence

174. The landscape and urban design experts agreed the towers in Height Area 1 will have high visibility and prominence but disagreed, firstly, on whether it is an appropriate location for a landmark and, secondly, whether the provisions would ensure the buildings have design qualities to contribute as a positive landmark.
175. With respect to location, Ms de Lambert and Mr Riley (for the Applicant) considered that the towers would mark an important gateway to the isthmus, while

⁸⁷ HUD Opening Legal Submissions, at [4.10].

the adjacency to the motorway corridors would provide suitable scale and reduce potential dominance and shading.⁸⁸

176. On the other hand, Mr Brown and Mr Ray (for the Council) considered that landmark towers in this location could detract from urban form legibility because such heights typically indicate a metropolitan centre which this location is not.⁸⁹ They questioned whether it was appropriate to highlight a motorway junction. Mr Brown also considered the towers would detract from the contribution the volcanic cones make to the cityscape and would specifically interrupt views to Maungawhau from a section of the Northwestern Motorway. Mr Brown expressed the view that the towers would be *“incongruous and visually disruptive in relation to the historic Oakley Hospital Building”*.⁹⁰
177. With respect to design qualities, Mr Ray considered the buildings would potentially appear bulky and recommended the maximum floor plan dimension be limited to 40m (rather than the 42.5m and 50m proposed) or that the standard be replaced by the addition of ‘bulk’ as a matter of discretion.
178. The heritage experts likewise disagreed on the effects of the Height Area 1 provisions on the historic heritage values of the Oakley Hospital Main Building. Mr Wild and Ms O’Neil considered the provisions adequately addressed any potential adverse effects. Mr Wild pointed to the proposed configuration of the shortest ‘tower’ (43.5m) nearest the heritage building, the setback of the buildings behind the frontage line and to one side of the heritage building, and the consideration of design response to the heritage building as a matter of discretion.⁹¹
179. Ms Byron (for HNZPT) on the other hand, considered the towers would have adverse effects on historic heritage values. She said:⁹²

The very proximate location proposed for the three towers, outside of the extent of place, but within its setting, by way of their heights and grouping in relation to the heritage building create a sense of dominance and competes for visual attention that diminishes that of the heritage building.

180. Ms Byron considered the potential contrast between the towers and heritage building would detract from the latter – stating:⁹³

The vertical emphasis and dominance of the towers are in stark contrast to the horizontal orientation of the Oakley Hospital Main Building towers (sic), there is little sense of connection with the lower built form, and I cannot see how proposed development can be made congruous or appropriately complementary due to the scale.

⁸⁸ Evidence of Rachel de Lambert, 17 October 2024, at [7.5], [7.7] and [7.14(e)]; and Evidence of Matthew Riley, 17 October 2024, at [6.32].

⁸⁹ Report of Alistair Ray, 11 September 2024, at [79]. Report of Stephen Brown, 23 September 2023, at p.8

⁹⁰ Report of Stephen Brown, 23 September 2024, at p.8.

⁹¹ Evidence of Adam Wild, 17 October 2024, at [5.4], [5.5] and [5.8] respectively.

⁹² Evidence of Robin Byron, 20 November 2024, at [3.4].

⁹³ Evidence of Robin Byron, 20 November 2024, at [3.8].

181. It was Ms Byron's opinion that open space should be retained on all four sides of the building, to preserve the ability to appreciate the building from all sides. In the JWS (Heritage) she added that an acceptable solution might be found if the towers were to be set back beyond the rear building line of the heritage building.⁹⁴

Discussion and findings

182. While the AUP typically provides for tall buildings in the central city and metropolitan centres, there are instances of tall buildings elsewhere. Whether tall buildings are appropriate in locations other than the central city and metropolitan centres depends on context. In this instance, we consider the following contextual factors are relevant:
- (a) The position of Height Area 1 on a promontory (above the motorway and Te Auaunga Stream estuary) at the north-west corner of the site, and as a discrete sub-area bounded on its landward sides by the Mason Clinic and Oakley Hospital Main Building.
 - (b) Proximity (approximately 400m) to Point Chevalier town centre. We accept the proposition that a greater residential population would help remedy the effect that the motorway has had on the town centre's pedestrian catchment.
 - (c) Proximity to frequent bus routes on Carrington Road and Great North Road, and to the Northwestern Cycleway.
183. With respect to legibility, we accept that the towers would mark a node that includes Point Chevalier town centre and an important gateway to the isthmus. They would increasingly be seen in the context of Terrace Housing and Apartment Buildings zoning around the town centre – noting the six storey apartments recently built opposite the site. The towers would also be seen in the context of what will become a high intensity residential precinct with its own identity. These factors together provide context to towers in this location.
184. We agree that the influence of the buildings' design and appearance on cityscape will be amplified by their prominence. The proposed standards would provide for buildings with relatively wide faces and narrow ends – which might be described as having slab like proportions rather the slender proportions of a tower.
185. We accept that the clustering of buildings provides the potential to both accentuate bulk or, conversely, to mitigate it through the composition of buildings of varying height and their individual façade treatments. While design matters are included generally in the Precinct provisions (policies, matters of discretion, and assessment criteria), we consider they could be more direct with respect to the proposed landmark buildings because of Height Area 1's prominence and potential for both positive and negative outcomes. We have therefore made the following changes by adding a new policy, amending a matter of discretion, and amending the assessment criteria references to reflect these changes:

⁹⁴ JWS (Heritage), at [3.4].

- add a new policy 14B:

Require the design and appearance of high rise buildings in Height Area 1 to contribute a positive visual landmark to the city.

- renumber current Policy 14AA to 14AAA; and
- amend the related matter of discretion to read as follows:

I334.8.1. Matters of discretion

(1B)(b) building design and location:

(i)(bullet point 2) contributes to making a positive visual landmark, either in isolation or as part of a composition of taller buildings including through such design matters as building composition, modulation of building forms, and façade treatment (including façade proportion, articulation, roofline and materials).

186. We accept the evidence of Mr Wild and Ms O’Neil that adverse effects on historic heritage values could be appropriately addressed through the Precinct provisions. In this respect we find that the Oakley Hospital Main Building will retain its landmark qualities because of its imposing width (mass) and horizontal proportions. While the adjacent tall buildings would also be a landmark, we accept that the setback behind the frontage line and to one side of the Oakley Hospital Main Building will help retain the primacy of the heritage building, especially in the key views to the front of the building from the northeast. In this instance, we consider contrast (in terms of proportion and design) would help legibility of both the heritage building and towers.
187. In response to questions, Ms Byron agreed that contrast can be an appropriate strategy, pointing to the Hotel Britomart as a successful example.⁹⁵ The use of complementary contrast means there would be benefit in the buildings in Height Area 1 having vertical proportions, avoiding a bulky appearance, and having a contemporary design. In this respect we agree with the addition of policy 14C:⁹⁶

Policy 14C –

Require proposals for new high rise buildings adjacent to the Oakley Hospital Main Building to provide sympathetic contemporary and high quality design which complements the heritage values of the Oakley Hospital Main Building.

188. However we found that the key matter of discretion under I334.8.1(1B)(b) (bullet point 3) was somewhat ambiguous to the extent that it highlights treatment of the building’s lower floors but omits reference to such matters as proportion,

⁹⁵ Oral Evidence of Robin Byron, 20 November 2024.

⁹⁶ Which is now Policy 14AAA.

modulation, façade treatment, and materiality. We have amended that matter of discretion to be:

(1B) (b)(i)(bullet point 3) building design and location:

- responds to and complements the Oakley Hospital Main Building and its extent of place, which may include such design matters as architectural references to the scale and design of the Oakley Hospital Main Building and/or sympathetic contrast in form, proportion and façade treatment; and

189. There is a narrow extent of place (roughly the width of the existing road) around the western side of Oakley Hospital Main Building which maintains some open space and the ability to appreciate the building 'in the round'. Height Area 1 is outside the extent of place. The recommended open space connection (footpath and cycle path) would be consistent with the extent of place at this end of the building.

190. We agree with position expressed in HUD's Opening Legal Submissions that:⁹⁷

...the specific characteristics of Height Area 1 provide an appropriate, unique canvas for which prominent, "high-rise" buildings can, with the right design parameters, contribute positively to – rather than compromise – the urban form of the surrounding area and the way in which it is experienced from multiple viewpoints.

191. We therefore find that the proposed provisions enabling taller buildings in Height Area 1, together with the minor changes we have made to the Precinct policies and matters of discretion discussed above, are acceptable and consistent with the relevant (higher order) policy direction, and set the right design parameters to enable the taller buildings to contribute positively to the area.

Height Area 2

Proposed changes

192. The current height provision in Height Area 2 is 27m, which was proposed to be increased to 35m by PC94.

193. Marutūāhu Rōpū and Ockham Group Limited (**MO**) also sought two parts of Height Area 4 be included as part of Height Area 2. These comprised (i) a narrow strip behind the consented RC3 site, and (ii) the area fronting Carrington Road between the consented RC1 and RC2 sites.

Evidence

194. The design experts agree that the proposed increase from 27m to 35m will not have adverse effects within Height Area 2. This is due to the area being internal to the site, lower than Carrington Road, and behind other development sites. The only

⁹⁷ HUD Opening Legal Submissions, at [4.22].

part of Height Area 2 with external frontage is an area adjacent to Te Auaunga Stream south of the Mason Clinic – an area that already has a consented development that transitions in height from the stream corridor up to slightly over 35m.

195. The design and heritage experts also supported the relief sought by MO with respect to that part of Height Area 4 area behind the RC3 site (i.e., between roads 1 and 2).

Discussion and findings

196. We accept the uncontested expert evidence that 35m can be appropriately accommodated in the centre of the Precinct. The additional height will give effect to the NPS-UD policy direction of enabling greater height and development potential, and is also consistent with optimising development potential given the land's identification for Treaty commercial redress purposes, as we have previously discussed.
197. We also accept the uncontested expert evidence in support of extending Height Area 2 to the narrow strip of residual Height Area 4 between RC3 and Height Area 2. Such an approach is logical given it is internal to the Precinct and would otherwise be sandwiched between an area with a 35m height standard, and developments with consents enabling buildings up to 36m.
198. We therefore find that the increase in the height standard from 27m to 35m for Area 2 and the request to adjust the boundary of Height Area 2 to include the residual strip of Height Area 4 to the west of the consented site RC3 (i.e., between roads 1 and 2), are appropriate. We note here that we address the MO submission with respect to the area fronting Carrington Road separately below.

Height Area 4 – Building Height on Carrington Road

Proposed changes

199. The current provisions enable building height of 18m on the Precinct's Carrington Road frontage, increasing to 27m beyond a 20m setback from Carrington Road. The setback would apply from Carrington Road as at 2015 – there was already an 8m setback in the building line to accommodate the planned widening of Carrington Road. It is proposed under PC94 to increase the height to 27m which would be consistent with the height standard in the balance of Height Area 4.
200. The proposed provisions include Policy (13) (cross referenced above) which is to *“Require new buildings to be designed in a manner that provides for a high standard of amenity, recognises landscape values and, where appropriate, enhances the streetscape and gateway locations of the precinct”*.
201. The proposed provisions also include extensive additional matters of discretion under I334.8.1.(1A) including urban design matters. The matters specific to the Carrington Road frontage under (1A)(i) are:

- (i) *building frontages to Carrington Road are designed to express a scale of development that responds to Policy I334.3.(13)*
- (ii) *the use of architectural treatments and design features, such as façade and roofline design, materials, separation and layout to contribute to the visual character, and articulation of the Carrington Road frontage; and*
- (iii) *building frontages to Carrington Road are designed to address the perception of a solid walled mass through techniques including roofline and overall building silhouette.*

202. The proposed development standards also increase the set back of buildings relative to the opposite side of Carrington Road from 28.2m to 30.2m. This would amount to a 2m setback from Carrington Road which is to be widened by 8m to 28.2m. The standard as proposed stated that the 2m setback would not apply once the widened road is vested in Council. The Applicant subsequently clarified that it is intended the 2m setback would remain once the widened road is vested in Council and has proposed revised text to that effect in its reply provisions.
203. A key additional consideration is that buildings with greater heights than those proposed under PC94 have already been consented on Carrington Road under the Fast Track Act, therefore are part of the 'existing environment'. The consented developments occupy approximately 60% of the 480m Carrington Road frontage between road 1 (Te Ara Taurapa) and road 3 (Te Ara Kōkōwai). They comprise the following apartment buildings (921 apartments in total):⁹⁸
- (a) RC1: two 7 storey buildings (up to 25m) on Carrington Road and two 9 storey buildings (up to 34m) behind.
 - (b) RC2: two 7 storey buildings (up to 26m) – the top floor being set back – one 9 storey building (up to 30.5m) and one 10 storey building (up to 36m) along the Carrington Road frontage.
 - (c) RC3: five buildings – three of 6, 8, 9 storeys respectively and two of 10 storeys – with mixed heights up to 36m. RC3 is behind RC2 with respect to Carrington Road.
204. As noted above, MO sought in their submissions that Height Area 4 north of Gate 3, including land fronting Carrington Road, be included as part of Height Area 2. That change would increase the height standard in that area from 27m to 35m. Through the expert evidence,⁹⁹ MO sought to confine the relief to land allocated to Marutūāhu north of Gate 3 with frontage to Carrington Road, and to refine it such that any development above 27m be set back 6m from Carrington Road where it faces residentially zoned land. In practical effect it would apply to the unconsented land fronting Carrington Road between RC1 and RC2.

⁹⁸ The apartment buildings also incorporate 6 offices, 20 small retail premises, and a metro supermarket.

⁹⁹ Evidence of Jethro Joffe, 29 October 2024, at 38.

Evidence

205. The design experts supported three positions with respect to appropriate height on Carrington Road:
- (a) Mr Brown supported increasing the height standard from 18m to 21m, rising to 27m beyond a 20m setback from Carrington Road.
 - (b) Ms de Lambert, Mr Riley and (following expert conferencing) Mr Ray supported the PC94 application to increase the building height to 27m consistent with the rest of Height Area 4.
 - (c) Mr Kensington and Mr Knott supported the submission by MO that would increase the building height standard to 35m in conjunction with a 6m setback above 27m.
206. Mr Brown considered the proposed 27m building height on Carrington Road would be out of place because it is a height that is expected near a City Centre or Metropolitan Centre rather than adjacent to a town centre such as Point Chevalier.
207. Ms de Lambert considered MO's proposal could lead to "*unacceptable cumulative built dominance of the street*". She said: "*Whilst I accept that some development above 27m in height could be appropriate, I consider that this is better managed through a site specific design and consenting process.*"¹⁰⁰
208. In contrast, Mr Kensington considered the heights proposed by MO would be acceptable for the following reasons:¹⁰¹
- (a) The heights would be consistent with those of the RC1, RC2 and RC3 developments approved by existing consents.
 - (b) The unconsented section of Carrington Road between RC1 and RC2 is at a lower elevation (it is in a dip).
 - (c) The changes in topographic elevation and a subtle curve in the alignment of Carrington Road would help maintain variety in building frontage.
 - (d) A 6m setback was proposed from Carrington Road for building elements higher than 27m.
 - (e) The widening of Carrington Road by 8m to 28.2m would increase separation from properties on the opposite side of the road – as would the signalled works to include additional vehicle lanes (e.g. for public transport and cycle paths).
 - (f) MO have demonstrated through the existing consents the ability of design to avoid potential adverse effects through techniques such as a mix of heights,

¹⁰⁰ Summary Statement of Rachel de Lambert, 18 November 2024, at [2.15].

¹⁰¹ Mr Kensington provided photo simulations to illustrate the proposed building massing in conjunction with the consented developments.

setbacks of upper levels, modulation of building form, articulation of facades, and use of high-quality materials.

- (g) The additional assessment criteria proposed in PC94 would give sufficient ability to consider the design and appearance of applications for proposed buildings as restricted discretionary activities.

209. Mr Knott's supporting evidence added that the current and proposed PC94 provisions already provide for an asymmetrical streetscape, and that asymmetry of streetscape would not be a defensible reason against additional height in the context of the direction of the NPS-UD.

Discussion and findings

210. We accept that buildings of either 21m, 27m or 35m would be a significant change from the current campus character, and could appear imposing compared to the existing scale of suburban areas opposite. The relevant comparison, though, is with the 21m height of the existing provisions and in the context of current policy direction.
211. We were persuaded by Mr Kensington's reasons and illustrations. In reaching that position, we carefully considered the disparity between the proposed 27m or 35m building heights and the 11m height standard of the Mixed Housing Urban zone opposite the unconsented section of Carrington Road.
212. We accept that asymmetry is inherent in both the existing and proposed provisions, the differences being matters of degree. We find that the degree of asymmetry is acceptable in this instance given that the Precinct will have a character distinct from that of the surrounding area.
213. We also accept the evidence that the widened 28.2m road reserve and 2m additional building setback will provide an appropriate boundary and separation between the Precinct and areas opposite. We note that a variety of heights and character is also provided for on the opposite side of Carrington Road, which is a not uncommon characteristic along urban arterial roads.
214. We consider that Ms de Lambert's position that "*some development above 27m in height could be appropriate*" but is "*better managed through a site specific design and consenting process*"¹⁰² is close to Mr Kensington's position which is likewise dependent on site specific design (he pointed to MO track record in that respect), and would similarly be subject to a restricted discretionary resource consent. The differences would be that the discretion would be exercised with respect to the design rather than height per se.
215. We therefore find in support of the 35m height adjacent to the Carrington Road frontage, in conjunction with the proposed 6m setback, as proposed in the submission by MO.

¹⁰² Summary Statement of Rachel de Lambert, 18 November 2024, at [2.15].

Pumphouse

216. The Pumphouse is a character building adjacent to the Wairaka stream at the centre of the open space network. While it is not listed as a historic heritage site in AUP Schedule 14.1, the heritage experts agree it has heritage values. The Applicant has entered into a covenant in favour of Auckland Council which provides for retention, restoration, and adaptive reuse of the Pumphouse.
217. PC94 introduces references to the Pumphouse in the provisions including Objective (6A): “*Identified heritage values are retained by: (a) ensuring the retention and enabling the adaptation of the Oakley Hospital Main Building and the Pumphouse.*”, and Policy (11): “*Ensure the retention of and encourage the adaptation of the Oakley Hospital Main Building and the Pumphouse”.* Other references to the Pumphouse have been added to Policies (12) and (14), and to matters of discretion for restricted discretionary activities under I334.8.1A.(b) building form and character.

Evidence and submissions

218. Messrs Duthie and Smallburn set out in their planning evidence that:¹⁰³
- One of the conditions of the Backbone Consent was the requirement to register a conservation covenant in respect of the former Pumphouse building which stipulates (among other outcomes) that the building must be retained, restored and adaptively reused.*
219. They also confirmed that this covenant has now been registered.
220. Mr Wild also addressed the covenant, noting that the heritage values of the Pumphouse had been acknowledged and protected by way of the existing conservation covenant in favour of Auckland Council.¹⁰⁴
221. It was in this context that HUD had agreed to recognise the values of the Pumphouse by including specific acknowledgment of that building in Precinct provisions (as addressed above). Messrs Duthie and Smallburn explained that it is intended to retain the Pumphouse and adapt it for a public-facing use such as a café.¹⁰⁵
222. Ms Lupis also addressed the Pumphouse in the HUD Reply Submissions. She stated:¹⁰⁶

In response to Commissioner Lister’s question regarding the space around the Pumphouse and why it is not shown on proposed Precinct Plan 1 as open space, HUD confirms that:

- (a) *Open space in the central part of the Site is intended to be supported by publicly accessible active use(s) in the*

¹⁰³ Evidence of John Duthie and Ian Smallburn, 17 October 2024, at [7.64].

¹⁰⁴ Evidence of Adam Wild, 17 October 2024, at [7.5(a)].

¹⁰⁵ Evidence of John Duthie and Ian Smallburn, 17 October 2024, at [7.64].

¹⁰⁶ HUD Reply Submissions, at [3.1].

Pumphouse, which is protected by a heritage covenant that specifically supports its adaptive re-use.

- (b) The adaptive re-use of the Pumphouse will complement the publicly accessible open space connection between the proposed Knoll Park and Central Open Space and increase the public frontage of active, public uses to the Spine Road in this central part of the Site. It will also support the creation of a central social, destination heart for the community in the centre of the Site where informal recreation and social community activities are likely to be a focus.*
- (c) The open space areas shown on Precinct Plan 1 are intended to be used and vested as public open space. The Pumphouse is not however proposed to be vested as public open space as the Pumphouse facility is intended to run as a commercial operation (providing, for example, community facilities or a café) which is separate to, but supportive of, the open space and the amenities of the Site available to the community. (Ms de Lambert has observed to us that the relationship might reflect that of the Williams Eatery adjacent to the Linear Park in proximity to Amey Daldy Park in the Wynyard Quarter or Hobsonville Point Café adjacent to Hobsonville Point Park.)*

Discussion and findings

- 223. We agree that adaptive reuse would contribute to the use and enjoyment of the open space network, and to the qualities of the Precinct in general.
- 224. We therefore agree with the proposed provisions that provide, alongside the heritage covenant, for the adaptive reuse of the Pumphouse and the intention that publicly accessible active use(s) in the Pumphouse would support the public open space in the centre of the Precinct.

Sanctuary garden

- 225. A community garden, the 'Sanctuary Mahi Whenua Garden', has been operating on what was formerly Unitec land. The garden site is not within the open space depicted in either the operative or proposed Precinct Plans. It falls instead within an area earmarked for housing development and for which a resource consent has already been issued for intensive residential development.
- 226. We heard submissions on the history and qualities of the community garden site, and its value to the community. We also heard matters relating to process. We were told that the sale and purchase agreement between Unitec and the Crown provided assurances with respect to the gardens that had not been honoured, and that there had been a lack of consultation between the gardens and development parties. It was requested that PC94 accommodate the gardens on a replacement site.

Discussion and findings

227. While we acknowledge the value of such gardens, and the submitters' concerns with process, these matters fall outside PC94. A community garden would be one of the competing uses for the open space within the Precinct. It is outside the scope of the PC94 process to determine those uses. Remedies with respect to claimed breaches of the sale and purchase agreement, including provision of a replacement site, are subject to a separate process.

MOMO WAKA | TRANSPORT

Overview

228. We received a considerable amount of expert transport and related planning evidence, including the JWS (Transport) from expert conferencing,¹⁰⁷ which we address below. While a number of transport related issues were raised, the main focus was on:
- the wider transport network of the surrounding area and its ability to cater for the increased vehicular traffic resulting from the development enabled by PC94; and
 - the impact of, and provisions for, car parking.
229. We also received non-expert evidence about transportation and traffic effects from a range of submitters. These included: OSFFA,¹⁰⁸ Springleigh Residents' Association, MARA, Gladstone Primary School Board of Trustees, and Mr Beresford. Their concerns related to the same matters (noted above by the experts), but also the impact on the 'southern' roads (Laurel Street, Renton Road, Rhodes Avenue and Mark Road) from the development enabled by PC94. The Local Board also raised concerns about the connections to these southern streets.
230. We summarise the expert evidence first below in relation to the three key topic areas (no wider network constraints, carparking, and intersection upgrades), followed by the non-expert evidence on transport matters. Our findings are then collated at the end of this section.

Expert Evidence

231. The Applicant filed expert evidence from three transport experts: Mr McKenzie - who provided strategic transport evidence, Mr Lee-Joe – who addressed transport modelling (and also co-authored a joint statement agreed with Auckland Transport), and Mr Robitzsch – who addressed the substantive transport matters. Messrs Duthie and Smallburn provided the related planning evidence.

¹⁰⁷ JWS (Transport), 13 November 2024.

¹⁰⁸ Ms Noble raised transport related matters. OSFFA also provided legal submissions on transport matters, noting that Ms Barrett, other than in very general terms, did not raise transport matters in her planning evidence.

232. Mr Church provided expert transport evidence for Auckland Transport. Ms Pearson, a planner by profession, provided corporate evidence for Auckland Transport.
233. Expert evidence was provided for Auckland Council by Mr Temperley – who provided transport evidence, and Mr Reaburn - who provided the related planning evidence.

No wider network constraints

234. Mr McKenzie opined that the location of PC94 was one of the most strategically, well-located brownfields development sites within the wider Auckland Isthmus area from a transportation point of view; and that it would enable future residents of and visitors to “*effectively and efficiently connect to numerous transport facilities and services across all modes of travel*”.¹⁰⁹
235. Furthermore, he stated:¹¹⁰

In my opinion, PC94 and its supporting provisions will enable a well-functioning, well-located urban environment that will be effectively and efficiently supported by a combination of the existing road network and planned upgrades to the surrounding transport network, and that will maintain appropriate levels of safety and transport effectiveness in the surrounding parts of the Auckland isthmus.

236. There was no expert evidence to the contrary, i.e., that there would be wider network traffic constraints from the development enabled by PC94. Moreover, all of the transport specialists and planners (in the JWS (Transport)) unanimously agreed that the Site was extremely well serviced in terms of existing (and planned) public transport. There was also no transport evidence that said this Site was constrained in terms of public transport.

Carparking

237. With respect to carparking, there was disagreement between the experts for Auckland Transport and the Applicant.
238. Mr Church, for Auckland Transport, considered carparking had not been appropriately provided for. In opposing the Applicant’s proposed parking provision, he stated:¹¹¹

HUD’s maximum parking provision set out in the ITA results in an average maximum parking ratio of 0.525 parking spaces per unit (4,000 unit scenario) which I consider will lead to significant adverse efficiency and safety effects. The ITA in my view has overly focussed on the effect of peak hour trip generation when considering parking provision, rather than reflecting that people can own a car but not use it during the peak hour.

¹⁰⁹ Summary Evidence of Donald McKenzie, 18 November 2024, at [4].

¹¹⁰ Summary Evidence of Donald McKenzie, 18 November 2024, at [7].

¹¹¹ Summary Statement of Terry Church, undated, at [16].

239. To ensure adequate parking would be provided to future residents, Mr Church instead proposed a parking maximum of 0.9 parking spaces per unit be adopted.¹¹²
240. Mr Church also supported the provision of a Parking Impact Assessment (as agreed in the JWS (Transport)) which would sit as part of the 1334.9 - Special Information Requirements. However, having had time to review the proposed wording since the JWS, he recommended some (what he referred to as) “*slight changes*” – being:

- (a) Bullet 2, sub-bullet 3 – adding the underlined words: “*Effect on safety and network operation*”; and
- (b) Bullet 3 - adding the following underlined sentence at the end: “*Where mitigation is proposed on vested roads (or roads to be vested), any mitigation is to be agreed with Auckland Transport.*”

241. Mr Robitzsch, for the Applicant, addressed the issue of carparking in his summary evidence.¹¹³ He disagreed with Mr Church’s concerns stating:¹¹⁴

I then turn to concerns that residents not able to park cars within the Precinct may instead park in surrounding suburbs, using car parks that local residents already living there consider as their own resource. This “overspill” risk is a key concern of Auckland Transport. I do not claim that “overspill” will not occur at all. However, my evidence identifies the key reasons why I oppose mandating more car parking (than assumed in the proposed 2023 ITA) via the introduction of a parking requirement in the Precinct provisions

As set out in the JWS, Mr Church still seeks inclusion of a provision which sets a maximum parking rate of 0.9 spaces per dwelling. I consider that in practice, this risks becoming an effective “target number” for parking with the same adverse effects I am concerned about in my evidence.

242. He went on to state:¹¹⁵

.... the proposed Precinct provisions, in my view, provide an ability to “course-correct” should parking overspill effects exceed what I consider the likely levels, or if related circumstances mean that they are not appropriately managed. This could include a later relaxation of the current parking constraints, if absolutely required. Most crucial in this regard is the fact that unlike Precinct provisions that are “cast in stone” and require a new plan change to modify, the 2023 ITA is intentionally more flexible.

While the 2023 ITA proposes (intentionally) stringent parking constraints on development in the Precinct, future authority decisions can modify this ITA if it is found to not be adequate. This includes the ability to re-visit assumptions at the 3,000 dwelling stage. In my view, the assumptions of the 2023 ITA include

¹¹² Evidence of Terry Church, 29 October 2024, at [7.1]-[7.25]; and Summary Statement of Terry Church, undated, at [13]-[19].

¹¹³ Summary Evidence of Max Robitzsch, 18 November 2024, at [2.32]-[2.58].

¹¹⁴ Summary Evidence of Max Robitzsch, 18 November 2024, at [2.41]-[2.42].

¹¹⁵ Summary Evidence of Max Robitzsch, 18 November 2024, at [2.53], [2.54] and [2.58].

parking, both in terms of the constraint and in terms of being manageable for the wider area.

...

Therefore, my evidence opposes any additional car parking, particularly via changes to the proposed ITA or through the introduction of parking rates in the Precinct provisions themselves, and I remain of this opinion subsequent to expert conferencing. I consider the proposed “parking impact assessment” provision as an acceptable way forward, allowing for individual development applications to seek more parking in response to the outcomes of that assessment, if the Panel considers this to be necessary.

243. However, and as quoted above Mr Robitzsch did support provision for a Parking Impact Assessment.

244. Messrs Duthie and Smallburn, also for the Applicant, addressed transport issues (and carparking in particular given the issues raised above) in their primary and supplementary evidence.¹¹⁶ They supported Mr Robitzsch’s evidence, stating:¹¹⁷

As Mr Robitzsch sets out in his evidence, the transportation approach in PC94 is underpinned by a deliberate shift away from car parking ratios that have typically been provided in new developments. This is recognised by Mr Reaburn in his proposed additions to the Precinct description and Objective (2) which identify that planning and development of the Precinct is premised on “avoiding a car dominated environment”. As set out above, we have proposed to replace that drafting that acknowledges how the Precinct “promotes active and public transport modes.” In our opinion, that better reflects that the transport approach for the Precinct is not just about “avoiding cars”; it is about encouraging modal shift.

245. With respect to carparking, Messrs Duthie and Smallburn concluded:¹¹⁸

In our opinion, Mr Church’s commentary and recommendations fail to recognise the broader strategic transport context. This is a Precinct where there are very good public transport and cycleway connections and services, and the Plan Change has sought to take advantage of those through various initiatives that encourage take-up of those modes, and a reduction in reliance on private vehicle travel. If however that does not eventuate, PC94 has specific “checks” in place to enable an adaptive response; namely, the requirement to demonstrate consistency with the 2023 Integrated Transport Assessment (ITA) for all new buildings; the requirement to validate the assumptions of the ITA at 3,000 dwellings in respect of the transport characteristics of the Precinct; and the requirement for a new ITA at 4,000 dwellings.

In our opinion (and on the strength of Mr Robitzsch’s evidence), that remains the most appropriate approach – particularly in light of the clear directives in

¹¹⁶ Evidence of Ian Duthie and John Smallburn, 17 October 2024, at [10.121(a)(ii)], [10,126]; and Supplementary Evidence of John Duthie and Ian Smallburn, 13 November 2024, at [3.55]-[3.64].

¹¹⁷ Supplementary Evidence of John Duthie and Ian Smallburn, 13 November 2024, at [3.57].

¹¹⁸ Supplementary Evidence of John Duthie and Ian Smallburn, 13 November 2024, at [3.59]-[3.60].

the NPS-UD, the FDS, the AUP and other transport policy documents to increase up-take of public transport and encourage other lower emissions travel modes.

246. Messrs Duthie and Smallburn did not consider it necessary to add a Special Information Requirement for a parking management plan/assessment. However, if our preference was to include a Special Information Requirement, they recommended that:

(a) it acknowledges the Precinct is about encouraging alternative forms of transport (walking, cycling and public transport use, communal vehicle pools etc) and reducing reliance on private vehicle travel; and

(b) any reference to illegal parking activity be removed.

247. Messrs Temperley and Reaburn, for the Council, addressed the above issues in the s.42A Reporting Team - Hearing Summary Notes; stating:¹¹⁹

The 0.9 / dwelling parking maximum proposed by Auckland Transport is not supported. The proposed Parking Impact Assessment is however considered to be very important to gauge success in achieving sufficient parking without significant adverse effects. It will also, in turn, go some way to addressing Mr Temperley's concerns about how well public and active transport modes are working in practice.

I generally support the Parking Impact Statement amendments sought by Mr Church.

Intersection upgrades

248. Auckland Transport (Ms Pearson and Mr Church) sought the inclusion of a standard requiring the delivery of two Carrington Road intersection upgrades at the point that 600 dwellings are delivered within the Precinct.

249. Ms Pearson, explained the rationale for the request in her summary evidence as follows:¹²⁰

The proposed Plan Change is premised on the idea that Carrington Road will be upgraded in a timely manner by AT because of the IAF Funding. I am seeking a clear provision to manage the potential impact IF the IAF funding is lost for some unknown reason. In the tight funding situation, we find itself in, there is no other funding for the upgrade of this road in the Regional Land Transport Plan. The ITA assessment concludes one intersection upgrade at 600 units at code of compliance, but to fully manage the effects of the proposal, the upgrade of two intersections is required.

The current intersections are not fully upgraded and there is nothing on Carrington Road itself at these gates. This is inadequate for the number of dwellings proposed for Precinct. The Applicant argues that this is unnecessary

¹¹⁹ Council s.42A Reporting Team – Hearing Summary Notes, 22 November 2022, at [17]-[18].

¹²⁰ Heading - 1 Upgrade of two intersections.

because of the IAF funding, however they cannot guarantee every future situation.

250. Messrs Duthie and Smallburn responded to this concern in their supplementary evidence. They did not support Auckland Transport's request as in their opinion the upgrade triggers were not required nor necessary. It was their view that there were specific proposed Precinct provisions which require applicants to demonstrate consistency with the Integrated Transport Assessment (ITA). The ITA specifically contemplates that at least one intersection upgrade will be required once 600 dwellings are completed on the Site. They stated:¹²¹

...In our opinion, that provides the appropriate comfort that the necessary upgrades will be delivered at that juncture. The ITA does not suggest a second intersection upgrade is required at 600 dwellings. We also note that in terms of consenting, far more than 600 units are already approved (over approximately 1,500 dwellings).

251. With respect to funding, Messrs Duthie and Smallburn stated:¹²²

Issues of funding for those upgrades are not relevant for this process. Nevertheless, as Ms McGregor explains in her evidence, the Crown has provided \$113m in funding to Auckland Transport to support and accelerate the delivery of the Carrington Road Upgrade. In addition, developer funding will be provided for two intersection upgrades. The intersections can then be integrated with the future corridor widths to deliver a holistic upgraded street.

We suggest that it would be more appropriate to allow Auckland Transport to manage the Carrington Road Upgrade works holistically, rather than by including a plan provision. In this way, Auckland Transport has the funding source from the Crown, plus the developer funding for the two intersection upgrades. Auckland Transport can then co-ordinate timing to suit its programme. That also enables the principle of "dig once" in terms of road upgrades. That is a better solution in this circumstance, than setting certain standards within the Precinct.

252. The Council's s.42A team (Messrs Temperley and Reaburn) also did not support the provisions recommended by Ms Pearson in respect of intersection upgrading.¹²³

Non-expert evidence and submissions on transport matters

253. Ms Beresford for OSFFA provided legal submissions addressing traffic and parking matters under the following headings:¹²⁴

- local road network;

¹²¹ Supplementary Evidence of John Duthie and Ian Smallburn, 13 November 2024, at [3.68].

¹²² Supplementary Evidence of John Duthie and Ian Smallburn, 13 November 2024, at [3.69]-[3.70].

¹²³ Auckland Council s.42A Reporting Team - Hearing Summary Notes, 22 November 2024, at [19].

¹²⁴ OSFFA Legal Submissions, at [139]-[149].

- construction traffic and parking;
- traffic generation and parking; and
- transportation.

254. OSFFA did not provide expert evidence in relation to traffic and transportation; noting Ms Barrett's expert planning evidence made only very general passing references to transport issues. Ms Noble, for OSFFA, set out, as did other submitters, that it was important that planned new neighbourhoods integrate with the existing residential and commercial areas particularly in terms of open space, visual effects, and traffic.

255. The traffic issues raised in the expert evidence section above, and the potential effects on the 'southern roads' from the development that would be enabled by PC94, were major concerns for these submitters. This was in terms of significant additional traffic using the southern roads to enter and/or exit the PC94 Precinct (or use them for 'rat running') impacting on access as well as amenity values for residents as a result of the additional traffic.

256. Mr Robitzsch responded to the concerns regarding the use of the southern roads and additional traffic in his primary and summary evidence. In his summary he set out:¹²⁵

Access via the Southern Roads and control of traffic levels on these roads south of the Precinct has been raised by a number of submitters. My evidence, particularly my response to the S42A Report, discusses this.

In summary, I consider that the modified provisions safeguard the original intent of ensuring that these roads do not become "rat runs" around, or dominant routes for vehicular traffic into, the Precinct.

Before and after the modifications proposed by PC94 there would be very high assessment hurdles for any connection which could risk encouraging "through" traffic via the Southern Roads. The assessment criteria also specifically prohibit consideration of wider network benefits (avoidance/reduction of Carrington Road congestion) that could theoretically be gained from enabling such movements.

257. Messrs Duthie and Smallburn also addressed this matter stating:¹²⁶

In respect of key changes to the activities within the Precinct:

- (h) *PC94 makes it clear that extension of the southern cul-de-sacs (Laurel Street, Renton Road, Rhodes Avenue or Mark Road) into the Precinct and providing vehicle connections to the western road within the Precinct is a restricted discretionary activity.*

¹²⁵ Summary Evidence of Max Robitzsch, 18 November 2024, at [2.28]-[2.30].

¹²⁶ Evidence of John Duthie and Ian Smallburn, 17 October 2024, at [7.22(h)-(i)].

- (i) *PC94 clarifies that direct vehicle connection between Mark Road (along with the other southern cul-de-sacs) and the TEZ (i.e. the Unitec campus) is a non-complying activity.*

[Footnotes omitted]

258. They also set out, that in addition to the rule framework for these roads, the Precinct policies include:¹²⁷

Policy 22

Manage the expected traffic generated by activities in the precinct to avoid, remedy and mitigate adverse effects on the safety and efficiency of the surrounding transport network, particularly at peak times. For the purpose of this precinct, the surrounding transport network comprises Carrington Road, the Precinct's existing and proposed access points to Carrington Road, the Carrington Road/Woodward Road intersection, the Woodward Road/New North Road intersection, the Carrington Road/New North Road and Carrington Road/Great North Road intersections, Laurel Street, Renton Road, Rhodes Avenue, Mark Road and the other local roads bounded by Carrington Road, New North Road, and Te Auaunga / Oakley Creek.

Policy 25

Avoid parking buildings within the Special Purpose - Tertiary Education Zone having direct access from Laurel Street, Renton Road, Rhodes Avenue (or any extension of those roads) or the western road shown on the Precinct Plan 1.

Policy 26

Avoid direct vehicle access between the Special Purpose - Tertiary Education Zone and Laurel Street, Renton Road, Rhodes Avenue (or any extension of those roads).

Discussion and findings

No wider network constraints

259. We accept the expert evidence that there would be no wider network traffic constraints from the development enabled by PC94; that the Site is extremely well serviced in terms of existing (and planned) public transport, has excellent access to a variety of transport modes, and that the Site is not constrained in terms of public transport.
260. We also accept the experts' unanimous view that the Precinct's transport approach of avoiding a car dominated environment and encouraging walking, cycling and Public Transport is appropriate, and their support of the wording in the Precinct provisions - "*promotes active and public transport modes*".

¹²⁷ Evidence of John Duthie and Ian Smallburn, 17 October 2024, Appendix A, at pp.16-17.

Carparking

261. With respect to carparking, its potential effects, and the appropriate Precinct provisions, we largely agree with the experts for the Applicant and the Council. The reasons for this are those addressed in their evidence (as summarised above).
262. To assist in addressing any potential adverse effects arising from the amount of parking proposed to be provided, we agree with the transport experts that a Parking Impact Assessment should be included as part of 1334.9 – Special Information Requirements. The agreed wording for this was set out in the JWS (Transport). While we note that Mr Church subsequently recommended changes to the wording of these requirements (which were supported by the Council experts), we do not support these changes. This is because “safety” is already included in Bullet 2, sub-bullet 2; and having to agree any mitigation on vested roads (or roads to be vested) with Auckland Transport would be tantamount to a ‘third party’ approval.
263. Further, while the Applicant’s planners did not consider such a requirement was necessary, they confirmed that if a special information requirement were to be imposed, the wording in the JWS (Transport) was appropriate. We have adopted that wording accordingly.

Intersection upgrades

264. We accept the Applicant and the Council’s.42A expert evidence that the intersection upgrade provisions sought by Auckland Transport are unnecessary. The reasons for this are those set out in the evidence of Messrs Duthie and Smallburn (as summarised by us above).
265. We are satisfied the Precinct provisions, as set out in the Applicant’s reply version, and which include Objective 8, Policies 20-23A, and Special Information Requirements relating to Integrated Transport Assessments, are sufficient and appropriate to ensure a safe and efficient roading network, including intersection upgrades.

All other submissions/issues including the southern roads

266. With respect to all of the submissions that raised transport related issues; including the wider network capacity, access to and from the ‘southern’ roads, the effect on amenity values to people living on those roads, access to and from the Gladstone Primary School, and parking; we agree with the expert evidence as set out above.
267. We are satisfied with the Precinct provisions that we have imposed, will appropriately address the transportation issues, including the amenity of the residents on the adjoining local roads. The provisions will also assist in creating a well-functioning urban (transport) environment as required by the NPS-UD (which we discuss further under Planning Matters later in this decision).

HANGANGA MŌ TE WAI ME TE WAI PARA | WATER AND WASTEWATER INFRASTRUCTURE

268. The key water and wastewater infrastructure issues raised related to the co-ordination of infrastructure and development.

Evidence and submissions

269. Watercare provided legal submissions (Ms Dibley) as well as corporate (Mr Deutschle) and expert planning evidence (Mr Peterson). Ms Dibley set out Watercare's case stating:¹²⁸

At the time Watercare's submission was prepared, Watercare considered the Precinct provisions needed to both:

- (a) ensure that development was coordinated with the delivery of infrastructure with sufficient capacity; and*
- (b) require an assessment of the bulk water and wastewater network capacity for development above 4,000 dwelling unit equivalents ("DUE").*

Following further detailed assessment, Watercare now considers that given there are a range of infrastructure upgrades which need to come online before development within the Precinct can be serviced, all new development requiring resource consent (not just applications for development over 4,000 DUE) needs to be accompanied by an infrastructure capacity assessment. This assessment needs to demonstrate there is sufficient capacity in the respective local and bulk water supply and wastewater networks to service the development subject to the relevant consent application.

In addition, removing the 4,000 DUE trigger for the infrastructure capacity assessment will be more efficient and effective. This is because it removes the need for applicants to maintain a schedule of DUE or dwellings within the Precinct.

[Footnotes omitted]

270. Mr Peterson recommended the following amendments to the PC94 provisions:¹²⁹
- the addition of a short issue description relating to water supply and wastewater servicing into the Precinct description 1334.1;
 - deletion of the term "occupation" in Objective 9A, Policy 26A, Matter of Discretion 1334.8.1(1A)(d)(iv) and Assessment Criterion (7)(d);
 - amendments to Policy 26B to make clear all resource consent applicants are required to assess the capacity of the water supply and wastewater networks servicing the proposed subdivision and development;

¹²⁸ Watercare Legal Submissions, 13 November 2024, at [3.1]-[3.3].

¹²⁹ Evidence of Richard Peterson, 30 October 2024, at [1.8].

- the addition of a new policy to provide policy direction that subdivision and development should be avoided where it exceeds the capacity of the local and bulk water supply and wastewater network;
- amendments to matters of control, matters of discretion and assessment criteria to ensure the Precinct provisions are clear that all relevant resource consent applications need to assess the adequacy of the water supply and wastewater networks to service the proposal; and
- amendments to the Special Information Requirements 1334.9 under Water supply and wastewater Infrastructure Capacity Assessment to require all resource consent applicants to assess the capacity of the local and bulk water supply and wastewater networks to service the proposed subdivision and development.

271. Messrs' Duthie and Smallburn (for the Applicant) responded to Watercare's concerns in their evidence-in-chief and supplementary evidence. They addressed the concerns by topic as follows:¹³⁰

- Avoid policy: They considered any uncertainty or challenges concerning the servicing of the development are well short of warranting inclusion of the avoid policy sought by Watercare. The planned upgrades were known; the central interceptor and its associated connections were well advanced, the enabling works (which provide the key trunk network within the Precinct for the three waters) were also well advanced, and the Precinct's objectives and policies already connect the provision of infrastructure to the pace of development.
- Occupation: They disagreed with Watercare that the trigger should be at construction rather than occupation of the dwelling. They noted that providing it earlier than required imposed holding costs which add to the cost of housing; Council's Future Development Strategy (which was adopted in December 2023) sets occupation as the trigger, and the risk of a disconnect between the delivery of infrastructure and the completion of homes was minimal here given the consents in place, the planned upgrades and the stage of works already underway.
- Infrastructure capacity assessment: They opposed Watercare's request for an infrastructure capacity assessment for each resource consent for new buildings. They considered such a requirement was unnecessary as a detailed infrastructure capacity had already been undertaken as part of PC94, and the matters of discretion for new buildings already required an applicant to demonstrate the building could be adequately serviced.

272. HUD also addressed these issues in their Reply Submissions as follows:¹³¹

¹³⁰ Supplementary Evidence of John Duthie and Ian Smallburn, 13 November 2024, at [3.76]-[3.90].

¹³¹ HUD Reply Submissions, at [2.49]-[2.50].

While HUD recognises that the relief sought by Watercare through its evidence may well be appropriate in a greenfield location, it is not appropriate for development within the Precinct because:

- (a) Compared to a greenfield location, the timing and delivery for necessary trunk infrastructure upgrades to support development on the Site are well-known and, in many cases, well-advanced, designed or under construction. As Messrs Duthie and Smallburn point out, there are opportunities for Watercare to accelerate planned works to align with the Carrington Road Upgrade, which would achieve significant efficiencies.¹³²*
- (b) As Mr Majurey explained in his presentation, the Rōpū have already had extensive engagement with Watercare in relation to development of the Precinct, and the Rōpū have acted in reliance on that engagement. The revised relief sought by Watercare, only very recently introduced via evidence, appears to undermine that agreed approach.*
- (c) That relief seeks to address a very worst-case scenario, the primary effects of which appear to be public-perception related (i.e. housing being constructed that is not yet connected to infrastructure, with consequent pressure placed on Watercare to deliver that infrastructure out of sequence). For the reasons set out in the supplementary evidence of Messrs Duthie and Smallburn, the risks of that scenario eventuating in this context are very low¹³³. Comparatively, the effects of delaying the construction of housing pending the completion of infrastructure upgrades would be significant and are highly likely to eventuate.¹³⁴ We submit that that outcome would be inconsistent with the strong direction of the NPS-UD relating to housing affordability, the provision of housing generally and the position of the FDS on this matter.*

HUD therefore continues to support “occupation” as the relevant trigger point for infrastructure delivery, and does not agree that an “avoid” policy as proposed by Watercare is necessary or appropriate

Discussion and findings

- 273. Having reviewed Watercare’s evidence and that of the Applicant, and having questioned the witnesses at the hearing, we prefer the evidence and legal submissions of the Applicant (as summarised above). In particular, we accept the opinions of Messrs’ Duthie and Smallburn that the changes sought by Watercare are unnecessary and we adopt their reasoning, together with the further reasons set out in the HUD Reply Submissions.
- 274. Accordingly, we accept the infrastructure provisions as proposed by the Applicant, and as attached to this decision.

¹³² Supplementary Evidence of John Duthie and Ian Smallburn, 13 November 2024, at [3.76(b)].

¹³³ Supplementary Evidence of John Duthie and Ian Smallburn, 13 November 2024, at [3.86].

¹³⁴ Supplementary Evidence of John Duthie and Ian Smallburn, 13 November 2024, at [3.83].

275. Health NZ lodged a submission to PC 94. Expert evidence was filed and presented by Mr McGarr, a planning consultant for Health NZ. Health NZ's key concern was to ensure that PC94 did not derogate from the provisions put in place as part of PC75.

Evidence

276. Mr McGarr set out in his primary evidence that Health NZ supported PC94, subject to the relief set out in their submission, together with ensuring that there were no inadvertent consequential amendments to the provisions of the Precinct which amended or undermined the provisions of the recently operative Plan Change 75 (PC75).

277. In that regard, Mr McGarr's primary evidence raised several Precinct provisions that he considered needed to be addressed to ensure 'alignment' with PC75. These included: Interface Standard, Landscape Standard, Policy 15 A (related to open space) and Heritage Extent. As set out in Mr McGarr's Supplementary Statement, the general approach (to align with PC75) was not disputed between the parties:¹³⁵

Both Mr Raeburn for the Council, and Mr Duthie for the Applicant for PC94 have confirmed that the PC75 provisions are settled, and the PC94 application does not propose (or intend) to affect the activities or form of development enabled, or introduce new provisions which introduce new consent processes or information or assessment requirements.

Subject to the matters identified in my Primary and Supplementary evidence being addressed as sought, such an outcome will be achieved.

278. Expert Conferencing, as well as direct discussions with the Council's and Applicant's planners, was held to resolve the outstanding matters relating to the wording.

279. The Precinct provisions of concern to Mr McGarr in his evidence (and Health NZ's submission) have been amended to give effect to Health NZ's submission). This was confirmed by Mr Duthie at the conclusion of the hearing.

Discussion and findings

280. We accept that it important to ensure that the provisions of PC75 and PC94 align. We are satisfied that the provisions proposed in the Applicant's Reply version, and which we understand no party has objected to, appropriately address those matters. We have therefore adopted those into our decision version.

¹³⁵ Supplementary Statement of Craig Mc Garr, 19 November 2024, at [3.2]-[3.3].

NGĀ MEA TOHE-KORE | MATTERS NOT IN CONTENTION

281. There were also a number of matters that had been agreed or were not in contention as between the Applicant, the Council experts and most submitters.¹³⁶ In this respect, and as noted earlier, following our review of the evidence we issued Direction#4 excusing a number of expert witnesses from appearing in relation to the following topics:

- greenhouse gas emissions;
- geotechnical;
- contamination;
- economics;
- stormwater;
- ecology; and
- transport modelling.

Discussion and findings

282. In the absence of any expert evidence to the contrary, we have accepted the expert evidence and proposed provisions of the Applicant and the Council on the matters not in contention as set out above.

283. Further, and to the extent that any issues are not specifically mentioned in the above list or addressed in other sections of this decision, we confirm that we accept the position taken by the Applicant and the Council on those matters for the reasons set out in the Applicant's evidence, the s.42A Report and the Council evidence.

284. The Precinct provisions attached to this decision address, where relevant, the matters set out above.

NGĀ MEA MAHERE | PLANNING MATTERS

285. The key planning issue that arose was whether PC94 gave effect to the higher order planning documents, and in particular, the NPS-UD and the RPS. We received a range of submissions and evidence on these issues – with some parties agreeing that PC94 gave effect to these documents, and others not.

286. In this section, in order to avoid repetition and for ease of understanding, we have summarised our findings and the evidence and submissions on which those findings within the same section. Accordingly, the remainder of the paragraphs that follow set out our discussion and findings on these matters.

¹³⁶ Noting that there were some lay submitters, such as the Springfield Residents Association, who contested these issues.

Evidence, discussion and findings

287. We record at the outset our finding, subject to the changes we have made to the Precinct provisions, that PC94 gives effect to these ‘higher order’ planning documents – and will contribute to Auckland being a “*well-functioning urban environment*”.¹³⁷ In this respect we prefer the evidence (and legal submissions) of the Applicant to those of the Council’s¹³⁸ and Submitter’s experts (where they take a different or contrary view to those of the Applicant – we address this below).

NPS-UD

288. In this context, we find there are two key aspects of the NPS-UD which have particular bearing on PC94 – being Objective 3 and Policy 3.

289. Objective 3 refers to enabling more people, businesses and community services to live/locate in areas that:

(a) are “*well-serviced by existing or planned public transport*” - which we note is broader than the “*existing and planned rapid transit stops*” referenced in Policy 3; or

(b) have “*high demand for housing or business land in the area, relative to other areas within the urban environment.*”

290. Furthermore, Objective 3 also clearly contemplates and supports intensification, and therefore greater height, in areas beyond those described in Policy 3.

291. Policy 3 is clear that enabling six storeys within a walkable catchment of those target locations is a minimum requirement – both in terms of the building height but also in terms of the extent of the areas in which that height is to be enabled.

292. Messrs Duthie and Smallburn, addressed the criteria identified in Objective 3 for enabling more people, businesses and community services to live/locate in certain areas in their primary evidence, and opined that they are all fulfilled by the site. They also addressed the “*Strategic Context*” of the site in relation to the NPS-UD, the RPS, the Future Development Strategy, the Strategic Transport Policy Context, and PC94’s response to those strategic documents.¹³⁹

293. In summary, it is their evidence, with which we agree, that the site is proximate to the Mount Albert and Point Chevalier town centres; it is very well-serviced by both existing and planned public transport; and it is located in an area with high demand for housing. As they note in their Strategic Overview: Summary:¹⁴⁰

It has long been our opinion that if urban consolidation and the kind of urban outcomes envisaged by these documents are to be realised in Auckland, they must be capable of successful implementation on the Site. Put another way,

¹³⁷ NPS-UD, Objective 1.

¹³⁸ We note that the Council’s experts largely agreed with the Applicant’s experts in relation to giving effect to the NPS-UD and the RPS, other than in terms of open space.

¹³⁹ Evidence of John Duthie and Ian Smallburn, 17 October 2024, at [8.1]-[8.17].

¹⁴⁰ Evidence of John Duthie and Ian Smallburn, 17 October 2024, at [8.18].

the Site, with its critical mass, its proximity to the city centre and its location within the wider transport network, is a 'litmus test' for those outcomes, and a significant opportunity for Auckland to help achieve its strategic growth objectives. In short, if the significant intensification anticipated at a national level is not achievable at the Precinct, it is difficult to conceive of it being achieved anywhere.

294. We agree with the expert evidence that the site is identified as one of the best in suburban Auckland for public transport, walking and cycling. It is also within easy walking distance of two town centres (Point Chevalier in the north and Mount Albert in the south) as well as two train stations.

295. The other provisions of the NPS-UD which have particular relevance for PC94 are Objective 4 and Policy 6, both of which relate to changing amenity values in urban environments. Objective 4 recognises that those environments, including their amenity values, “*develop and change over time in response to the diverse and changing needs of people, communities and future generations.*” Policy 6 directs decision-makers to have particular regard to the fact that:

...planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes...

(i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities and future generation, including by providing increased and varied housing density and types; and

(ii) are not of themselves an adverse effect.

296. We accept that the increases in building height proposed by PC94 do not constitute “*planned urban form in RMA documents*” (until PC94 is approved). However, the operative provisions are important and influential in this context. Firstly, there is already a considerable level of development enabled within the Precinct. Excluding the Mixed Housing Urban area to the south, the balance of the site already enables buildings of between 16m – 27m in height. That is “*planned urban form*” and, as already noted, that level of development would enable an anticipated yield of approximately 2,500 dwellings and 1,000 specialist accommodation units (a population of approximately 8,500).

297. As set out in the Applicant’s legal submissions, “*If realised, that “planned urban form” would result in significant changes to the Precinct and its surrounding environment – changes which would give rise to various “effects” of the same nature as many of those raised in the submissions opposing PC94*”.¹⁴¹

298. We agree. In particular, we note that Policy 6 acknowledges that while the planned level of development may detract from amenity values experienced by some people, it will also improve amenity values appreciated by others, including by providing increased and varied housing densities and types. Further, the

¹⁴¹ HUD Opening Legal Submissions, at [3.57].

'directions' in the NPS-UD provisions clarify that, whatever peoples' individual perspectives on amenity values may be, that an area may experience significant change as a result of a planning decision enabling intensification is not of itself an adverse outcome. We also refer here to our discussion of (and findings on) Objective 4 and Policy 6 in the open space and urban design and landscape sections of this decision report.

299. All of the technical experts, other than Ms Barrett for OSFFA, agreed that PC94, overall, would contribute towards giving effect to the NPS-UD and the RPS – albeit as we have acknowledged elsewhere in this decision there were differing opinions from some of the experts over the degree to which associated infrastructure (including open space) is to be provided, and the degree to which the proposed heights of the three taller buildings in Height Area 1 were appropriate.
300. Ms Barrett did not agree that overall PC94 would contribute to giving effect to these documents.
301. In terms of the NPS-UD, during the hearing, Ms Barrett expressed her opinion that the NPS-UD is a “*constraint*” on development and “*the Site is not within an area identified for intensification in the NPS-UD*”. We tested those matters with Ms Barrett during the hearing, who maintained her view that the NPS-UD was a constraint and PC94 was not consistent with it.
302. Further, it was Ms Barrett’s opinion that reference to growth around public transport corridors in the NPS-UD was limited to intensification areas located adjacent to train stations and dedicated busway stations.¹⁴²
303. Ms Lupis addressed these matters in her Reply Submissions by setting out the statement made by Ms Barrett and the Applicant’s response. We quote this as follows:¹⁴³

(a) The NPS-UD is a “constraint” on development”. Clearly the NPS 50704653 UD includes a number of strong directives for local authorities and decision-makers to enable development in our urban environments – not to constrain it. In our submission, it would be difficult to interpret any of the objectives or policies of the NPS-UD as constraining or restricting development. To the contrary, the NPS UD imposes strict obligations on local authorities to:

- i. provide sufficient housing and business land capacity to meet demand over a 30 year timeframe;*
- ii. make planning decisions which improve housing affordability by supporting competitive land and development markets;*
- iii. increase building heights to enable more intensified development;*
and

¹⁴² Re the definition of “*Rapid Transit Stop*” in the NPS-UD using the term “*largely separated from other traffic*”. It was Ms Barrett’s opinion that this only applied to the Northern Busway and the soon to be upgraded Eastern Busway, and not to dedicated bus lanes on roads.

¹⁴³ HUD Reply Submissions, at [2.24].

iv. *monitor issues of housing affordability and supply and demand, and respond “as soon as practicable” where there is insufficient capacity.*

(b) *The Site is not within an area identified for intensification in the NPS-UD.” Again, as noted above, Policy 3(c) identifies specific locations which are minimum targets for intensification. Specifically, it requires district plans to enable building heights of at least 6 storeys within at least a walkable catchment of those locations. That plainly contemplates that there are areas beyond just a walkable catchment of those locations where increased building heights will be appropriate. As our opening legal submissions set out, Objective 3 provides clear direction on other locations where intensification will be suitable. It is the evidence of Messrs Duthie and Smallburn that all the criteria in that objective are met by the Site. Ms Barrett’s suggestion that the NPS-UD does not support increased height within the Precinct is therefore incorrect.*

304. We disagree with Ms Barrett’s interpretation and instead accept HUD’s submissions on these matters. In addition, we find that the definition of “*rapid transit service*” in the NPS-UD would also encompass dedicated bus lanes (i.e., “*a permanent route that is largely separated from other traffic*”), such as what is proposed as part of the Carrington Road Upgrade. In this regard Policy 3 is clearly ‘engaged’ in evaluating PC94. Furthermore, and as we have already noted, the NPS-UD enables intensification in those locations as a minimum to be achieved – i.e., “*at least*” within walkable catchments of those locations.

RPS

305. With respect to the RPS, its provisions and relevance to PC94 were well canvassed in the application documentation, the s.42A Report and the planning experts’ evidence, notably that of Messrs Duthie and Smallburn. We provide a brief overview of the relevant provisions below.

306. The RPS (and the NPS-UD) require Auckland to provide for growth (in the case of the NPS-UD, 30 years’ worth of growth). The RPS seeks to achieve this through both brownfields and greenfield expansion; but with a strong emphasis on urban consolidation as set out in Objective (B2.2.1(1)) and Policy (B2.2.2(4)) of the RPS. Objective (B2.2.1(1)) states:

A quality compact urban form that enables all of the following:

- a) a higher-quality urban environment;*
- b) greater productivity and economic growth;*
- c) better use of existing infrastructure and efficient provision of new infrastructure;*
- d) improved and more effective public transport;*
- e) greater social and cultural vitality;*
- f) better maintenance of rural character and rural productivity; and*
- g) reduced adverse environmental effects.*

307. The RPS (and NPS-UD) identifies the benefit of providing for high intensity growth adjacent to town centres and public transport corridors, being:¹⁴⁴

Enable higher residential intensification:

(a) in and around centres;

(b) along identified corridors; and

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

Overall findings

308. While we find that the NPS-UD and RPS are aligned, and both support greater urban intensification, the RPS (other than PC 80)¹⁴⁵ predates the NPS-UD. Accordingly, we have placed considerable weight on the NPS-UD's provisions.

309. As we have set out (and as was strongly expressed in legal submissions and evidence), the relevant RMA policy and plan provisions are very directive in enabling for more people to live in, and more businesses and community services to be located in, areas of an urban environment where any one of more of the following apply:

- the area is in or near a centre zone, or other area with many employment opportunities;
- the area is well-serviced by existing or planned public transport; or
- there is high demand for housing, or for business land in the area, relative to other areas within the urban environment.¹⁴⁶

310. It is our finding, and adopting the Applicant's evidence and legal submissions, that the site is clearly appropriate and 'qualifies' for the intensification envisaged by Objective 3 of the NPS-UD. Overall, and for all of the reasons set out above, we find that PC94 will give effect to the NPS-UD and the RPS.

NGĀ WHAKATAUNGA MŌ NGĀ TĀPAETANGA | DECISIONS ON SUBMISSIONS

311. As addressed earlier in this report, clause 10 of Schedule 1¹⁴⁷ requires that this decision include reasons for accepting or rejecting the submissions (primary and further) made to PC94. It permits submissions to be addressed by grouping them according to the proposed plan provisions to which they relate, or by the matters (i.e., topics) to which they relate.¹⁴⁸ Clause 10(3) of Schedule 1 also states – "To

¹⁴⁴ RPS, Policy 2.2.2(5).

¹⁴⁵ Plan change 80 was a relatively confined change, seeking to, in part, give effect to the NPS-UD by integrating the concepts and terms "well-functioning urban environment, urban resilience to the effects of climate change and qualifying matters".

¹⁴⁶ NPS-UD, Objective 3.

¹⁴⁷ Decisions on provisions and matters raised in submissions.

¹⁴⁸ Clause 10(2)(a)(i) of Schedule 1 of the RMA.

avoid doubt, the local authority is not required to give a decision that addresses each submission individually.”

312. Given the nature of PC94, (a change to an existing precinct within the AUP), we have grouped all of the submissions in terms of the provisions of PC94, and the topics set out in this decision report. We reiterate (as set out earlier in this report) that while all individual submissions and submissions points are not expressly referred to, all submissions and submissions points have nevertheless been taken into account when making our decision.
313. Appendices 9 and 10 of the s.42A Report provide a very detailed table setting out the s.42A Report author’s recommended decisions and reasons on the submissions and further submissions. We adopt those Appendices and reasons as our decisions to the extent they reflect the decisions we have made in this report. However, where we have made a different decision than that recommended in the s.42A Report, the decision on the submissions is set out in the following paragraphs.
314. Our decisions on the submissions are as follows:
- (a) We **accept** or **accept-in-part** those submissions that supported PC94, or supported it in part subject to the modifications sought, and where we have accepted the modifications to PC94 as set out in the submission;
 - (b) We **accept-in-part** those submissions that supported or supported in part the plan change where we have made modification to it in relation to other submissions, or have only partially agreed to modifications to PC94 as set out in the submission; and
 - (c) We **reject** those submissions that fully opposed the plan change (i.e., reject the entire plan change), or sought modifications to it which we have not made, again for the reasons set out in this report.
315. With respect to further submissions, as these can only support or oppose an initial submission, our decision on those submissions reflects our decisions on the initial submissions.

WHAKATAUNGA | DECISION

316. Pursuant to Schedule 1, clause 10 of the Resource Management Act 1991, Proposed Private Plan Change 94 to the Auckland Unitary Plan (Operative in Part) is approved, subject to the modifications as set out in this decision.
317. Submissions on the plan change are accepted and rejected in accordance with this decision. In general, these decisions follow the recommendations set out in the Applicant’s Evidence and Reply Provisions and the Council’s s.42A Report, Addendum to the s.42A Report, and evidence, except as identified above in relation to matters in contention.
318. The reasons for the decision are that Plan Change 94:

- (a) will assist the Council in achieving the purpose of the RMA;
- (b) is consistent with the provisions of Part 2 of the RMA;
- (c) gives effect to the national policy statements, in particular the NPS-UD;
- (d) gives effect to the Auckland Regional Policy Statement;
- (e) is supported by necessary evaluation in accordance with s.32; and
- (f) will help with the effective implementation of the AUP.



Greg Hill

Chairperson

Date: 18 March 2025