

This decision has been amended on 9 October 2024 in response to the Applicant’s Memorandum of Counsel dated 3 October 2024. The amendments have been incorporated into a revised Attachment 1 (there are no changes to this Decision Report).

Proposal

Private Plan Change 90 - 8 Sparky Road, Ōtara proposes to rezone 4.4 hectares on the north-western side of Highbrook Drive at 8 Sparky Road from Business - Light Industry to Residential - Terrace Housing and Apartment Buildings Zone and to apply the Highbrook Precinct to the rezoned land.

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

Private Plan Change:	90 - 8 Sparky Road, Ōtara
Applicant:	Highbrook Living Limited
Hearing commenced:	Monday 25 March and Tuesday 26 March 2024, 9.30 a.m.
Hearing panel:	Peter Reaburn (Chairperson) Dr Lee Beattie James Whetu
Appearances:	<p><u>For the Applicant:</u> Ms Sue Simons, Legal Mr Matt Doughney, Corporate Mr Don McKenzie, Transport Mr Andy Carr, Transport Mr Peter Runcie, Acoustics Mr Jason Evans, Urban design Mr Rob Pryor, Landscape and visual Dr Shaw Mead, Coastal hazards Ms Treffery Barnett, Ecology Dr Michael Anderson, Ecology – Ornithology Ms Sukhi Singh, Planning Mr Timothy Heath, Economics</p> <p><u>For the Local Board:</u> Mr Apulu Reece Autagavaia for Ōtara-Papatoetoe Local Board Mr Damian Light for Howick Local Board</p> <p><u>For the Submitters:</u> STET Limited represented by Mr Shaun Lee Ms Kathryn leGrove</p> <p><u>For Council:</u> Ms Celia Davison, Team Leader</p>

	Mr Marc Dendale, Team Leader Ms Tania Richmond, Planner Dr Kala Sivaguru, Coastal Specialist Mr Alan Moore, Principal Specialist Mr Derek Foy, Economic Specialist Mr Andrew Temperley, Transport Specialist Mr Rhys Hegley, Noise Consultant Mr Nicholas Lau, Senior Policy Planner Ms Chayla Walker, Kaitohutohu Whakawātanga /Hearings Advisor
Hearing adjourned	Tuesday 26 March 2024
Commissioners' site visit	Tuesday 26 March 2024
Hearing Closed:	27 May 2024

INTRODUCTION

1. Highbrook Living Limited (**the Applicant**) has applied for Private Plan Change 90 (**PC90**) to the Auckland Council Unitary Plan Operative in Part (**the AUP**), at 8 Sparky Road, Ōtara. This is the Decision Report on the plan change.
2. PC90 has been prepared following the standard Resource Management Act (**RMA**) Schedule 1 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as enabled under the RMA).
3. PC90 was publicly notified on 23 February 2023 a. Notification involved a public notice as well as letters to directly affected landowners and occupiers alerting them to the plan change. The latter step was aimed at ensuring that landowners and occupiers of properties affected by potentially significant changes were made aware of the changes.
4. The submission period closed on 23 March 2023. A summary of submissions was notified for further submissions on 27 April 2023 with a closing date of 1 May 2023.
5. A total of 20 submissions and 2 further submissions were made on the plan change.
6. This decision is made on behalf of the Auckland Council (**the Council**) by Independent Hearing Panel: Peter Reaburn (Chairperson), Dr Lee Beattie, and James Whetu (**the Panel**), appointed and acting under delegated authority from the Council under sections 34 and 34A of the RMA. The delegated authority is to make a decision on PC90 after considering: all the submissions, the section 32 evaluation, the reports prepared by the officers for the hearing and evidence presented during and after the hearing of submissions.

EXECUTIVE SUMMARY OF DECISION

7. Council prepared a hearing report (**s42A report**), authored by Ms Tania Richmond, a consultant planner reporting on behalf of the Council, with the assistance of a range of

specialists. The s42A report considered the private plan change request and the issues raised by submissions and further submissions. In summary, it recommended that PC90 be declined because¹:

- The requested plan change did not give effect to the Auckland Unitary Plan (Operative in Part) (**AUP**) Regional Policy Statement (**RPS**) to achieve a quality compact urban form and a well-functioning urban environment, including integration of land use and transport.
 - The requested plan change did not give effect to the New Zealand Coastal Policy Statement (**NZCPS**), including restoration of natural character, recognising the important role of esplanade reserves and avoiding a change in land use that would increase the risk of adverse effects from coastal hazards.
8. If PC90 was to be approved, the s42A report recommended that the proposed Highbrook Precinct be amended in response to submissions from Auckland Transport and the matters raised in the report including provision of an esplanade reserve; public pedestrian connections into and along the coast; and re-drafting of the standards and restricted discretionary activity criteria.
9. For the reasons set out in this decision, the Panel have not accepted the Council's recommendation to refuse PC90. We consider, on balance, that the change in zoning sought is more appropriate than retaining the current zoning. We have found that the proposed rezoning is, overall, consistent with the statutory framework, including the RPS and the NZCPS, and that adequate management of effects can be achieved by amendments to the precinct provisions.

THE SITE

10. The site is described in the Applicant's submitted Planning Report / Assessment of Environmental Effects (**AEE**) and the s42A report. The land subject to the plan change (**the Site**) is part of a 35.012ha site at 8 Sparky Road. 8 Sparky Road once formed part of the Ōtāhuhu Power Station. Contact Energy Limited closed operations in 2015, and subsequently sold the entire site in 2016. Highbrook Drive was constructed in 2007 and split the site into two portions.
11. The plan change area is the 43,849m² (approximately 4.4ha) western portion of 8 Sparky Road located between Highbrook Drive the State Highway 1 Southern Motorway and the Mean High-Water Springs (**MHWS**) margin of the Tāmaki River. We were advised that this area would reduce to about 3.3ha if a 20m esplanade reserve was provided.
12. The Site adjoins Highbrook Drive for a length of over 500m. The northernmost, approximately 350m, length is a relatively narrow area of between 55m and 90m next to MHWS. This excludes the 20m width that would be required if an esplanade reserve was established. South of that the Site widens out into a tongue of land adjoining the motorway with width dimensions up to 100m or more. The plan change area is relatively flat and mostly grassed, with semi-mature native vegetation adjoining the MHWS margin

¹ S42A Report, paragraph 6

and mangroves above and below MHWS. A gravel track runs through the site. Other features are:

- An operational signalised intersection midway along the frontage;
 - A dock, ramps and poles extending out from the MHWS from the southern part of the land;
 - A stormwater pond towards the northern end of the land;
 - A box culvert under Highbrook Drive at the northern end of the land;
 - Overhead lines forming part of the Transpower traversing a part of the western edge of the land.
13. The plan change area is approximately 2.3km from the Ōtara town centre and 3.3km from the Ōtāhuhu town centre. To the west, beyond the motorway and north on the opposite side of the Tāmaki River, are established residential areas. To the north-east is the Highbrook Business Park. An esplanade reserve extends along the full extent of the Highbrook Business Park and connects to Highbrook Park Reserve, containing the Pukewairiki (Waiouru) tuff ring zoned open space.

EXISTING PLAN PROVISIONS

14. A comprehensive description of the existing AUP provisions is given in Section 3 of the s42A report. The plan change plan area (and the balance of the site) is currently zoned Business – Light Industry (**LIZ**). That zone provides for a range of manufacturing, production, logistics, storage, transport and distribution activities. activities sensitive to air discharges are generally not provided for. Dwellings are a non-complying activity.

SUMMARY OF THE PLAN CHANGE

15. A comprehensive description of the plan change is given in the s42A report and the Application AEE. In brief, the application as notified seeks to rezone the Site to Terrace Housing and Apartment Buildings (**THAB**) zone and to introduce Highbrook Precinct provisions applying to the rezoned land. The proposed precinct provisions are confined to the two matters – managing road noise and transportation effects. A road noise attenuation standard was proposed, any departure from which would require consent to a restricted discretionary activity (**RDA**) application. The transport related standards related to a maximum number of dwellings; the requirement for a Highbrook Precinct Transportation Plan; upgrading of a shared cycle / pedestrian path and pedestrian barrier; and construction of a bus stop. Any departure from these standards would require consent to a discretionary activity (**DA**) application.

SUBMISSIONS ON THE PLAN CHANGE

16. A total of 20 submissions and two further submissions were received on PC90. Of these, 12 were opposed to the application in its entirety. The others were a mixture of support, opposition or neutral position, all seeking amendments if the plan change was allowed.

17. Two submissions were later withdrawn².
18. There was one late submission (by one day) from Watercare Services. That was accepted under delegation by a council officer on 27 March 2023.

SUMMARY OF MODIFICATIONS SOUGHT TO THE PLAN CHANGE (KEY AMENDMENTS TO THAT NOTIFIED)

19. Following public notification of PC90, and in response to submissions and the Council s42A report, the Applicant proposed a number of amendments to the plan change including to:
 - Introduce requirements (including monitoring) for an Integrated Transport Assessment to confirm total traffic movements of 130 vehicles per hour to be generated by land use within the Highbrook Precinct, with an accompanying policy stating that traffic movements exceeding 130 vehicle movements per hour should be “avoided” and an associated prohibited activity (**PrA**) status;
 - Amend assessment criteria relating to provision for a private shuttle bus;
 - Introduce a new objective and an amended policy on providing safe and convenient pedestrian and cycling connections;
 - Introduce a Coastal Protection Yard Standard of 20m to be shown on the precinct plan as “indicative open space / esplanade reserve area”, with new assessment criteria to require development to integrate with open space along the Tāmaki River margins;
 - Amend the Precinct description to describe the cultural landscape and the Tāmaki River and its relationship to mana whenua.
20. Further amendments were proposed during the hearings process and are discussed later in this decision report.

HEARINGS PROCESS

21. The commissioners visited the site individually and viewed the site from the road prior to the hearing.
22. The process leading up to the hearing was the subject of a number of requests from the Applicant and directions issued by the Panel.
23. The s42A report was released on 25 September 2023. The Applicant’s evidence was provided on 2 October 2023. Submitter evidence was provided on 9 October 2023. The Panel agreed to requests from the Applicant to postpone the hearing date to allow for further time to allow discussions to occur with submitters on the plan change. A s42A Addendum report was provided on 23 February 2024. Rebuttal evidence was provided by the Applicant on 8 March 2024.

² Heritage New Zealand via email (Alice Morris) dated 3 October 2023 and Ngāti Te Ata Waiohua via email (Karl Flavell) dated 4 March 2024.

24. The hearing was held on Monday 24 and Tuesday 25 March 2024. During the hearing, the Panel conducted a further site visit during the lunch break on the second day. At the conclusion of the hearing the Panel requested the Applicant, in consultation with the Council advisors, to consider matters relating to further amendments to the provisions that were raised up to, and at, the hearing. The request was that a fresh set of provisions be provided, and that the information include details of any differences between the applicant and Council. The requested information on provisions was not an indication of the Panel's position on the overall merits of the plan change, which had yet to be determined.
25. A revised set of Precinct provisions was provided to the Council by the Applicant on 16 April 2024. The Applicant advised at that stage that it had requested a meeting with the Council to discuss the incorporation of the Medium Density Residential Standards (**MDRS**), however that meeting had not yet taken place. The Panel issued a Direction that any Council comments on the plan change provisions as attached to the Applicant's reply be provided by Friday 3 May 2024. A Council Post-Hearing Memorandum was provided on that date. The Applicant's final memorandum and response to the Council Post-Hearing Memorandum was provided on 14 May 2024.
26. Being satisfied that no further information was required, the Chair closed the hearing on 27 May 2024.

RELEVANT STATUTORY PROVISIONS CONSIDERED

27. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. These requirements were set out in Applicant's AEE, the Council's s42A report and in the opening submissions for the Applicant. The Applicant provided an evaluation pursuant to s32 of the RMA and further evaluations pursuant to s32AA relating to amendments proposed to the notified version of the plan change. We are satisfied that the relevant statutory framework has been comprehensively addressed and only give a selected summary here, in the general order we address them later in this Decision Report.

National Policy Statement on Urban Development

28. The National Policy Statement on Urban Development (**NPSUD**) was gazetted on 23 July 2020 and came into force on 20 August 2020. It applies to all local authorities that have all or part of an urban environment within their District. Auckland City is listed as a "Tier 1" local authority. The purpose of the NPSUD is to:
 - (a) Have well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future; and
 - (b) Provide sufficient development capacity to meet the different needs of people and communities.

29. The Applicant provided an assessment against the NPSUD³ concluding that, overall, PC90 was consistent with the NPSUD.
30. Ms Richmond's assessment in the s42A report was that the proposal was not consistent with the NPSUD, focussing on the following issues⁴:
- (a) The proposal did not achieve the minimum requirements of a well-functioning urban environment.
 - (b) Additional development capacity is not required to provide for housing capacity to meet Auckland's demand in the northern Ōtara/southern Ōtāhuhu area.
 - (c) Future residents in this development would be reliant on private vehicles potentially adding to greenhouse gas emissions because the area is not well serviced by existing or planned public transport. Auckland Transport had confirmed there are no plans or funding to support additional public transport in this location.
31. Consistency with the NPSUD was accordingly a key matter in contention and we address that matter in detail later in this Decision Report.

Regional Policy Statement

32. The Applicant provided an assessment against the RPS⁵ concluding that, overall, the plan change was consistent with the RPS.
33. Ms Richmond disagreed with aspects of this assessment, including for similar reasons as outlined above in respect of the NPSUD.
34. Consistency with the RPS was accordingly also a key matter in contention and we address that matter in detail later in this Decision Report.

Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021

35. The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Housing Supply Act**) requires that Council enable more building height and density in urban environments to give effect to Policies 3 and 5 of the NPSUD. Ms Richmond expressed the view that, as the plan change area is not within 'Walkable Catchment', it was not within the zones or areas directed for intensification under Policy 3 of the NPSUD⁶.
36. Section 77F(1) of the Housing Supply Act requires the relevant residential zone of a specified territorial authority must have the MDRS incorporated into that zone. Whether and how the MDRS should be incorporated into the PC90 provisions became a matter of contention at the hearing and is addressed in detail later in this Decision Report.

New Zealand Coastal Policy Statement 2010 (NZCPS)

³ Pages 77-78 of the AEE

⁴ S42A Report, paragraph 96

⁵ Pages 83-84 of the AEE

⁶ S42A Report, paragraph 65

37. The Applicant's AEE assessed Objectives 2, 3, 4 and Policies 2, 13, 14, 18, 19, and 23(4) of the NZCPS⁷.
38. Ms Richmond considered that Objective 5, Policies 3, 24 and 25 relating to coastal hazards were also relevant⁸.
39. Some issues raised in the primary s42A report were addressed in the Applicant's evidence and amended provisions. However Dr Sivaguru (Council's coastal expert), maintained her concerns about with the adequacy of the coastal hazards assessment.
40. Dr Sivaguru, supported by Ms Richmond, considered PC90 was not consistent with NZCPS Policy 25(a) (avoid increasing the risk of social, environmental and economic harm from coastal hazards and (b) (avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards) of the NZCPS (and like provisions in the RPS Chapter B10 - Environmental risk). This outstanding matter of contention at is addressed later in this Decision Report.

Other Statutory Documents

41. Other Statutory Documents are relevant to our decision have included:
 - National Policy Statement for Indigenous Biodiversity
 - National Policy Statement for Freshwater Management 2020
 - National Policy Statement on Electricity Transmission 2008
 - Hauraki Gulf Marine Park Act 2000
 - AUP Regional Plans
 - AUP District Plan
42. We have also given consideration to the Auckland Plan, the Ōtara-Papatoetoe Local Board Plan and the Ōtara-Papatoetoe Greenways Plan 2017.

ISSUES IN CONTENTION

43. The Panel indicated prior to the hearing that, after considering the submissions and further submissions received, the s42A report and the evidence prepared for the hearing that it was satisfied there were no outstanding questions in respect of the following matters:
 - Archaeology
 - Contamination
 - Geotechnical Engineering
 - Water Infrastructure
 - Stormwater

⁷ Paragraphs 8.10 – 8.11 of the AEE

⁸ S42A Report, paragraph 70

44. The Panel acknowledges the evidence provided on these matters by the relevant Applicant experts, and Council's specialist reviewers. There were no outstanding issues in contention.

45. The following principal issues in contention have been identified:

1. Cultural Matters
2. Rezoning from Industrial
3. Suitability of the Site for a residential zoning
4. Whether THAB zoning is appropriate
5. Plan Change Provisions

46. The following sections address our overall findings on these issues.

Cultural Matters

47. In respect of cultural matters, the Panel were advised that the Plan Change Area sits within an important cultural landscape. Careful consideration is required of Māori cultural values, including having regard to sections 6(e), 7(a) and 8 of the RMA and the relevant AUP provisions including those in Chapter B6 of the RPS.

48. The Applicant sent letters to 11 Mana Whenua groups and received responses back from:

- Ngāi Tai ki Tāmaki;
- Ngāti Te Ata Waiohua;
- Ngāti Tamaoho Trust; and
- Te Ākitai Waiohua

49. All four Mana Whenua advised the Applicant that Cultural Values Assessments (**CVA**) were necessary, however only one CVA from Ngāti Tamaoho⁹ was provided prior to notification.

50. During notification, a submission was received from Ngāti Te Ata Waiohua, in opposition to the plan change, seeking a CVA be undertaken to ensure their values, history and preferred environmental/cultural recommendations are captured, and included in decision making moving forward. The Ngāti Te Ata Waiohua CVA was provided after notification.

51. The Panel were informed at the commencement of the hearing that the Applicant had worked with Ngāti Te Ata Waiohua to resolve the matters raised in its submission. In light of this, on 4 March 2024 Mr Karl Flavell, on behalf of Ngāti Te Ata Waiohua, advised the Hearing Panel that Ngāti Te Ata Waiohua withdrew its submission and the associated CVA on the basis that its queries and report recommendations had been satisfactorily met¹⁰.

⁹ In accordance with council practice, the CVAs were not included on the plan change website

¹⁰ Opening submissions, paragraph 14.10

52. No CVAs were provided by Ngāi Tai ki Tāmaki or Te Ākitai Waiohū, however the Panel were advised that through its continued consultation with Te Ākitai Waiohū, the Applicant supported Te Ākitai Waiohū's request for additional text to be incorporated into the Highbrook Precinct description, which is:

Highbrook Precinct has frontage to Tāmaki River, an important awa that leads out to the Hauraki Gulf (Tikapa Moana) and Waitemata Harbour. These waterways were crucial for iwi and hapū both as a traditional food source, and a historical means of transport with coastal and island settlements, boundary markers, navigation points and waka portage routes. Mana Whenua have a spiritual connection with Tāmaki River and have on-going guardianship (kaitiakitanga) responsibilities. The remnants of the Pukewairiki Tuff Ring, a regionally important and one of the oldest volcanoes in the Auckland volcanic field, is located to the north-east of the Highbrook Precinct.

53. Ms Richmond expressed the view that there was sufficient information contained in the Te Ākitai Waiohū CVA to support the amendment sought by Te Ākitai Waiohū¹¹. We agree with Ms Richmond that the wording is largely factual and does not favour or exclude any iwi or hapū.

Finding

54. The Panel finds that the Applicant has demonstrated it had sought to meaningful engage with Mana Whenua to understand and recognise cultural values in PC90.
55. While there are no submitter issues now to be addressed, the incorporation of the above wording into the Highbrook Precinct description is appropriate for PC90 when viewed in addition to the application of the other cultural/Mana Whenua related provisions in the AUP through future consenting processes.

Rezoning from Industrial

Industrial Land Supply

56. As we have noted, the Site is currently located in an industrial zone - LIZ. Mr Tim Heath was the Applicant's economic expert. His analysis was that both the Auckland Region and the Auckland South market are projected to have surplus zoned and planned industrial capacities by 2048. In his view the loss of 3.3ha of developable industrial land as a result of PC90 would not have a detrimental impact on the overall industrial provision, performance and growth potential of the assessed markets and would not undermine the Council's NPSUD industrial market land sufficiency obligations¹².
57. Mr Derek Foy was Council's economic expert. In his review Mr Foy expressed some concern about the amount of vacant industrial land that was available, however agreed with Mr Heath's conclusion the Site was not required to accommodate projected industrial demand to 2048¹³.

¹¹ Ms Richmond Summary Statement, paragraph 24

¹² Mr Heath Evidence, paragraph 2.5

¹³ Mr Foy s42A Addendum Report Memorandum, paragraph 4.41

Suitability of the Site for Industrial Development

58. Mr Matt Doughney gave corporate evidence on behalf of the Applicant at the hearing. He referred to the company's current proposed industrial development of the land opposite the Site on Highbrook Drive. A total of 21 lots were proposed. Mr Doughney indicated that intended uses were likely to be logistics and warehousing. He did not expect significant manufacturing activity. Mr Doughney described the subject Site as being cut off from the balance of the land when Highbrook Drive was constructed – he described the Site as having been isolated and an “orphan”.
59. Mr Heath also referred to the Site as being an isolated, small, standalone, long and narrow. He considered the geographical and locational characteristics, along with the limited developable area and restricting shape, and the significant on-site infrastructure and road improvements necessary to support these industrial operations, would substantially diminish the development feasibility for industrial activity and lead to a less efficient utilisation of the land resource. In his view this significantly increased the uncertainties and extra costs associated with land use and development. While some smaller scale light industrial activities could be physically accommodated he considered the isolated nature of the site made it less efficient for these activities to integrate with other existing industrial activities in the surrounding environment. He further considered industrial rents would likely need to be uncompetitively high to trigger feasible industrial development of the site¹⁴.
60. Mr Foy agreed that the Site was too narrow to be able to accommodate large industrial warehouses such as those that dominate large parts of Highbrook. However he considered that smaller buildings were possible, accommodating a wide range of activities, including activities other than industrial activities provided for in the LIZ, and that did not require truck access.¹⁵ He gave examples in nearby East Tāmaki where there were very low or no vacancy rates in East Tāmaki industrial tenancies. For those reasons, it was his opinion that the location and dimensions of the Site should not preclude industrial use.

Economic Efficiency

61. Mr Foy's view was that, if industrial activity could feasibly be supported on the Site, then the ongoing employment supported by that activity would provide enduring economic benefits to the region, even if the built form of industrial uses would be of a lower density than may be possible with residential development¹⁶.
62. Mr Heath acknowledged that some smaller-scale light industrial activities could physically be accommodated on the PC 90 land, and the significance of preserving industrial land uses for sustaining a robust industrial economy and diverse economic structure. However his view was that this did not represent the most economically efficient use of this land in today's market¹⁷.

¹⁴ Mr Heath Evidence, Section 8

¹⁵ Mr Foy s42A Report Memorandum, paragraphs 4.10-4.24

¹⁶ Mr Foy s42A Report Memorandum, paragraphs 4.27-4.29

¹⁷ Mr Heath Rebuttal Evidence, paragraphs 3.2 – 3.6

Finding

63. After considering the information, the Panel finds that the loss of the Site to potential industrial development and alternatively used for residential, will not have a significant adverse effect on the provision of adequate zoned land for industrial development and employment in Auckland.
64. We find that, while the Site is capable of being developed for a range of activities permitted in the LIZ, it is compromised by its shape and position, particularly for larger-scale activities. Much of the Site is of a narrow dimension between Highbrook Drive, Tāmaki River/Estuary, and State Highway 1. It would become narrower still should its future subdivision result in the creation of an esplanade reserve. We are also conscious of what type of interface this would create with the river, opposed to landscaping supporting residential development as proposed.

Suitability of the Site for a residential zoning

65. Mr Jason Evans gave urban design evidence for the Applicant¹⁸. He referred to key factors which he considered should be considered in decision-making on zoning. These were (re-ordered to align with how we have addressed them in this Decision Report)¹⁹:
1. Cultural and historical significance.
 2. Infrastructure availability;
 3. Land suitability to proposed use;
 4. Economic opportunities (proximity to employment);
 5. Environmental considerations and sensitivities;
 6. Resilience and disaster risk management;
 7. Accessibility and connectivity
66. We have addressed cultural matters above. There was no issue raised in respect of infrastructure capacity other than the road network, which we discuss further below.
67. There was similarly no issue raised in respect of the physical suitability of the Site to accommodate residential development, apart from a question about coastal erosion, also discussed below. Mr Evans referred to the Site offering a reasonably large and substantially flat area in a single ownership. In his view this made the process of integrated good quality development far easier to achieve than with a multi ownership situation²⁰. Finally, he was of the view that, subject to the appropriate design controls as suggested PC90 would result in the creation of a suitably designed residential environment with a high degree of amenity adjacent to the river.

Economic Matters

¹⁸ The Panel notes there was no specialist urban design review or reporting from Council

¹⁹ Mr Evans Evidence, paragraph 5.6

²⁰ Mr Evans Evidence, paragraph 6.13(a)

68. Mr Foy noted that the Applicant had not provided any assessment of dwelling demand or supply in Auckland or in the PC90 part of Auckland²¹. He had not undertaken an assessment of residential dwelling demand, or supply, although noted that PC78 will result in a significant increase in plan enabled capacity in Auckland's existing residential areas, and that there are also large new greenfields development areas around the Auckland periphery. At a regional level, he considered there was likely to be sufficient residential dwelling capacity over the long term. His conclusion was that there had been no basis established for changing the industrial zone to residential zoning, in terms of a need for the change.
69. In response to a Clause 23 further information request the Applicant stated that a needs assessment was not considered necessary however did note the need to provide more homes at price points more affordable to the market. It was considered development would do this in an efficient location, however the basis for that statement was not given.
70. Mr Heath considered that changes to district or regional plans had the potential to enhance land use efficiency, noting the feasibility of a development stood out as one of the crucial factors influencing land use "efficiency". Given what he had described as the constraints on the development of the land for industrial activities he considered PC90 represents a practical opportunity to re-evaluate the land's zoning provision, contribute positively to the creation of a well-functioning urban environment in the area with a broader range of residential typologies, greater locational choice and a more competitive market²².

Finding

71. We find that there is not a demonstrated demand for residential dwellings in the area of the Site. However on balance, the Panel finds that PC90 will have a role to play in providing for greater residential capacity within an existing urban location and on a site that is large enough to be comprehensively developed and to provide for a range of residential typologies.

Coastal Hazards

72. Dr Shaw Mead was the Applicant's marine expert. He provided a comprehensive coastal hazard assessment of the Site. He noted that the Site is located in the upper reaches of the Tamaki River and was "very benign" in terms of coastal processes²³. The Coastal Hazards Assessment (**CHA**) he had prepared demonstrated that there will be no coastal inundation hazard for habitable dwellings. The erosion projections to the year 2130 were that, assuming a 20m wide Coastal Protection Yard / esplanade reserve along the coastal boundary, the property is potentially impacted by erosion projections only in the central area and did not threaten any proposed habitable buildings²⁴.

²¹ Mr Foy s42A Report Memorandum, paragraphs 4.2-4.7

²² Mr Heath Rebuttal Evidence, paragraphs 3.2 – 3.6

²³ Dr Mead Evidence, paragraph 3.2

²⁴ Dr Mead Evidence, paragraph 2.4

73. Dr Mead's assessment included calculations that defined the Area Susceptible to Coastal Instability and Erosion (**ASCIE**). Council's specialist Dr Kala Sivaguru considered the erosion rates used in the CHA were unsubstantiated. She also raised concerns about whether accretion trends, geology and mangrove factors had been adequately addressed and whether the proposal relied on the provision of an esplanade reserve²⁵. Dr Sivaguru was of the opinion that there were uncertainties, in particular in the central area of the Site, and that mitigation should be incorporated in PC90 in order to meet the policy intent of Policy 25 of NZCPS and the AUP²⁶.
74. Dr Mead's rebuttal evidence provided a comprehensive response to the concerns raised by Dr Sivaguru and confirmed his view that a conservative approach had been taken to assessing coastal hazards at the Site.
75. Ms Singh's evidence was that it was not appropriate or necessary to identify specific coastal hazard mitigation measures as part of this plan change. She considered coastal hazard mitigation measures (if any are required) will be informed by the details of future development processes. Ms Singh considered that the provisions of Chapter E36 Natural Hazards and Flooding of the AUP appropriately provides the necessary framework to ensure that the matter of coastal hazards will be appropriately addressed at the future land development / subdivision stages of the Site.²⁷
76. In response to a question from the Panel as to whether PC90 should define the ASCIE and require avoidance of buildings being constructed within the ASCIE line, Ms Singh repeated her view that, as development on the site was not yet the subject of detailed planning, it was more appropriate to rely on the provisions of Chapter E36.

Finding

77. The Panel prefers the evidence of Dr Mead in assessing the extent to which there are or will be coastal hazards at the Site. The Panel finds that the potential for coastal hazards does not render the Site inappropriate for residential development. Future development will be subject to examination under the provisions of Chapter E36 Natural Hazards and Flooding of the AUP. Having regard to Policy 25 of the New Zealand Coastal Policy Statement 2010 we are satisfied that PC90 will not result in any increase of harm or increase the risk of adverse effects from coastal hazards.

Ecology

78. Ms Treffery Barnett and Dr Michael Anderson were the Applicants ecology experts. Ms Barnett noted that no specific ecological issues had been raised in the Council review. In that respect we note that council's specialist, Mr Jason Smith had confirmed his support for the plan change, including the amendments that were proposed²⁸.
79. The two main ecological issues raised by submitters were loss of coastal vegetation cover and potential effects on foraging by coastal birds.

²⁵ Dr Sivaguru s42A Report Technical Memorandum Pages 3 - 5

²⁶ Dr Sivaguru s42A Report Technical Memorandum Page 8

²⁷ Ms Singh Evidence, paragraph 14.30

²⁸ Mr Smith Memorandum, s42A Amendment Report

80. In respect of vegetation Ms Barnett noted that the AUP has no Natural Resources overlays and no notable trees recorded on the Site or adjacent marine area²⁹. Dr Anderson advised that no mangrove removal is proposed as part of PC 90, and existing mangroves within the Coastal Marine Area are outside the site in the AUP's General Coastal Marine zone. The area of native plantings near the coast was now well established after previous clearing, however the area is strongly influenced by weed species. She assessed the botanical value of the vegetation as low, with moderate potential³⁰. Ms Barnett's acknowledged that there would be a reduction in the coastal yard from 25m to 20m, however considered this would not result in any material differences to the retention of vegetation. Under both the current LIZ and the proposed THAB zonings vegetation in the centre of the site would need to be removed to allow for future development³¹.
81. Two submitters attended the hearing and jointly gave evidence, focussing on adverse effects on birds. Mr Shaun Lee and Ms Kathryn leGrove raised concerns about increases in people activity cats, dogs, lights, shading and reduction of forest habitat. The potential for adverse effects were seen as being greater with residential development that they felt would have a more active human and built interface with the coastal margin. Concern was also expressed about one of the main roosting spots - the poles along the Ōtara Creek weir.
82. In response to these concerns Dr Anderson's evidence was that his site visits and desktop searches did not give any indication that the shoreline of the Plan Change Area is being used as a roosting site for estuarine bird species³². Similarly, shorebirds (specifically Pied Stilts and South Island Pied Oystercatchers) had not been observed roosting in the intertidal area and he considered the northern part of the Site would not be a suitable roost site, as there is too much tall vegetation in the vicinity. The southern part of the Site was more open but in his view was unlikely to be suitable for roosting birds as it is a very narrow band³³. His evidence was that the foraging location of wading birds tends to be associated with the tideline and the tidal channel here was ~50-150m from the shoreline – a sufficient distance sufficient for foraging behaviour to not generally be affected by disturbance from the shoreline. Further, the intertidal sediment is very soft and muddy, reducing the likelihood of people or pets frequenting areas close to birds foraging. The coastal yard would provide a further buffer between human activity and birds that are foraging³⁴. He considered the existing poles at both the northern and southern ends of the plan change area were already impacted by the existing roads and, as they are surrounded by water at high tides (the times that in his view birds will use them for roosting), they are inaccessible and unlikely to be impacted by pets or people in the vicinity³⁵.

²⁹ Ms Barnett's evidence, paragraph 5.1

³⁰ Ms Barnett's evidence, paragraph 5.7

³¹ Ms Barnett's evidence, paragraph 7.2-7.3

³² Dr Anderson's Evidence, paragraph 4.10

³³ Dr Anderson's Rebuttal Evidence, paragraph 2.4

³⁴ Dr Anderson's Rebuttal Evidence, paragraph 2.6

³⁵ Dr Anderson's Rebuttal Evidence, paragraph 2.2

83. The Applicant provided new assessment criteria in relation to access to the Ōtara weir to address the concerns raised by Mr Lee, Ms leGrove, and other submitters. The criteria are intended to ensure that consideration be given to the extent of access to the Weir, in particular to protect that bird roosting site from pedestrians and dogs.

Finding

84. We find on the evidence that PC90 is unlikely to have significant adverse effects on ecology, including on coastal birds. The additional assessment criteria in relation to the Ōtara Weir provide further certainty in respect of that identified roosting location.

Acoustic Issues

85. Mr Peter Runcie was the Applicant's acoustic expert. He noted that PC90 would enable construction of dwellings in proximity to two highly trafficked roads. He further noted that the proposed provisions included requirements to design new dwellings to achieve specific internal noise levels³⁶. Ms Singh advised that, after receiving the measured levels, both Waka Kotahi and Auckland Transport had confirmed that the matters in their submissions had been addressed³⁷.
86. Mr Rhys Hegley was Council's acoustic expert reviewer. He had a remaining concern related to road traffic noise affecting outdoor amenity areas. He sought a rule and/or assessment criteria to address this matter. We were advised that discussion on this matter occurred during the meeting between the Applicant and the Council on the second day of the hearing. The Applicant indicated that it agreed to an additional assessment criterion for new building development to provide quality on-site amenity, including for outdoor living spaces.
87. At the hearing, Mr Hegley raised an additional matter in relation to Standard I4.6.5 Road Noise Attenuation. Mr Hegley sought that the wording refer to noise levels based on current measures or predicted noise levels plus 3 dB³⁸. He considered that the additional wording will provide a degree of future proofing to future dwellings from increased noise over time. The Applicant opposed additional wording. It advised that Highbrook Drive is an already existing road and that there could be certainty around the road traffic noise relevant to consideration for PC90. It considered Mr Hegley's suggested amendment was an overly conservative and inappropriate recommendation and departed from his previous indication of acceptance of the proposed standard³⁹.

Finding

88. The Panel finds that the effects arising from traffic noise can be appropriately managed by the provisions agreed by the Applicant and the Council, noting also the confirmation from Waka Kotahi and Auckland Transport that the issues raised in their

³⁶ Mr Runcie Evidence, paragraphs 2.1 – 2.3

³⁷ Ms Singh Evidence, paragraphs 8.8-8.9

³⁸ Mr Hegley Summary Statement, paragraph 10.

³⁹ Reply Submissions, paragraph 7.7 – 7.8

submissions have been addressed. We find that Mr Hegley's further suggested amendment to Standard I4.6.5 is unnecessary.

Landscape and Urban Effects

89. We had the benefit of Mr Evan's urban design and Mr Pryor's landscape and visual evidence for us to consider. Council's landscape specialist, Ms Gabrielle Howdie, generally supported the proposal as it was amended prior to the hearing⁴⁰. Her remaining concerns were addressed by the Applicant including further design and site frontage treatment criteria in provisions offered at the hearing, that we have accepted. With these amendments, urban design and landscape matters were not major issues in contention.
90. In respect of urban design matters, the application was supported by an indicative master plan which we explored with Mr Evans during the hearing. He agreed that the plan was not a completely realistic proposition for the site but it was designed to provide us with a degree of comfort that some form of residential development could take place as proposed on the site. We accept this and acknowledge Mr Evans' view that these issues will be explored in detail through the resource consent process applying the existing AUP's THAB zone and the precinct plan provisions. We note that the master plan accommodated provision for an esplanade reserve and also integration of development with that area and the river. In that respect the Panel enquired at the hearing as to whether it was likely, under its current LIZ zoning, an esplanade reserve would be required on future subdivision of the land. The response (from the Applicant's counsel) was that the land could be subdivided but may not be. In any event we accept Mr Evan's view that the precinct plan provisions will address, in conjunction with the existing AUP's THAB zone provisions, the appropriate level of residential amenity and design control (design and appearance and relationship with public space) sought for any future residential development at this scale, with the typological outcomes proposed and enabled.⁴¹
91. We also explored the design implications and their potential relationship in design terms with State Highway 1 in terms of noise impacts, and their design and appearance. Mr Evans assured us a design solution could be developed to address these issues without adversely effecting any future residential amenity issues. A point we agree with.
92. Turning to landscape and visual impacts, we agree with Mr Pryor's view that the landscape effects are acceptable for the level of bulk and massing that would be enabled by PC90. We explored visual impacts of the use of THAB zone with Mr Pryor and he was of the view that it is appropriate in this location. We agree with this view and accept that the landscape and visual effects are appropriate to the site's characteristics in location adjacent to State Highway 1, the river, separation from the light industrial activities (by the road) and no existing adjoining development that would be vulnerable to visual impacts enables a level of density proposed without adversely affecting the landscaping values in the short, medium and long views.

⁴⁰ Ms Howdie Memorandum, s42A Addendum Report

⁴¹ Mr Evan's evidence, point 2.9

Finding

93. The Panel finds that the effects arising from urban design and landscape issues can be appropriately managed by the existing AUP's THAB zone and the precinct plan provisions. We also find that the level of residential density enabled would not be inappropriate in landscape terms to this location. Finally, we acknowledge that some of these issues are also considered within our other findings on the PC90.

Traffic Effects

94. Transport experts Mr Don McKenzie and Mr Andrew Carr gave evidence on behalf of the Applicant. Mr McKenzie prepared the submitted Integrated Transport Assessment (ITA) and provided the primary evidence for the Applicant. Mr Carr provided peer review evidence.
95. Mr McKenzie referred the Highbrook area as being a busy and active part of the transport system that comprises a main arterial route (Highbrook Drive), the regionally significant State Highway 1 Southern Motorway and a range of supporting transport features including roads, walkways and cycle paths. Modelling work had shown that the transport network experiences significant existing congestion and long queues especially at the northern approach to the Highbrook roundabout. Queueing along Highbrook Drive extends back to the location of the signals on Highbrook Drive and beyond⁴².
96. The notified planning provisions proposed a 200-dwelling cap to limit trip generation to the PC 90 land. Non-compliance with the specified maximum number of dwellings was proposed to be a discretionary activity and an ITA was to be prepared to support a resource consent application for development exceeding 200 dwellings (or dwelling unit equivalents).
97. The 200-dwelling threshold was based on what would level of development would generate up to 130 vehicle movements per hour (**vph**). Mr Carr confirmed his view that the modelling (using a rate for medium density development) to generate that figure was robust⁴³. Subject to the imposition of a cap on trip generation the modelling showed that traffic volumes expected from the PC90 development would not have a significant additional impact on the adjoining road network.
98. Mr McKenzie referred to discussions with Auckland Transport (**AT**) and Waka Kotahi that he considered had resolved the primary concern that related to the establishment of the "baseline" Light Industrial Development scenario in the modelling⁴⁴. Mr McKenzie acknowledged that the proposed peak hour traffic generation limit of 130vph was about

⁴² Mr McKenzie evidence, paragraph 6.10

⁴³ Mr Carr's evidence, paragraph 5.5

⁴⁴ Mr McKenzie's evidence, paragraph 7.3

40vph higher than the modelled baseline. However, in the context of the Highbrook Drive route currently operating with peak hourly flows of up to 3,500vph he considered such levels of change would be barely perceptible, well within the range of day-to-day variations and would not alter the efficient operation of the Highbrook Drive route⁴⁵. Mr Carr supported that conclusion⁴⁶.

99. Concerns over the lack of certainty with a cap by way of dwellings was raised in the submission by the Goodman Property Trust. The Applicant agreed with the submitter to amendments to the provisions to:
- a. replace the 200-dwelling cap with a 130vph cap;
 - b. amend Policy 2 to clarify that traffic movements exceeding 130vph should be “avoided” (the notified version used the term “limit”);
 - c. change the activity status from Discretionary to Prohibited for noncompliance;
 - d. include a matter of discretion and assessment criterion for restricted discretionary activities requiring the monitoring of traffic generation to demonstrate compliance with Standard I4.6.1⁴⁷.
100. Goodman Property Trust advised Council by way of a counsel memorandum dated 27 November 2023 that, subsequent to discussions with the Applicant as recorded above, it withdrew its expert evidence - however Goodman's submission (and further submission) remained in place.
101. Ms Richmond did not support the proposed prohibited activity status⁴⁸. Her reasoning included that a prohibited activity status was not supported by traffic evidence stating that even a marginal increase above the 130 vph threshold would result in significant adverse effects on the roading network. In her view that classification was also contrary to the intensive residential development purpose of the THAB zone. In her opinion the Site was a poor candidate to accommodate residential activity, particularly high density residential activity that would yield 200 dwellings – a limit that was much lower than she would expect to be achieved in new developments in Auckland's THAB zone⁴⁹. For the same reasons Ms Richmond considered that the non-complying activity status originally sought by the Goodman Property Trust was contrary to the THAB zone.
102. Ms Richmond suggested the Panel may consider directing notification under if there is a public interest exceeding the threshold. This would enable the Goodman Property Trust and other parties such as Auckland Transport and Waka Kotahi to have direct input into the decision-making process.
103. After considering the issues raised at the hearing the Applicant in its reply made further amendments to the proposed provisions which, apart from the change from a 200 dwelling cap to a 130vph threshold, effectively reintroducing the Precinct provisions that were notified⁵⁰.

⁴⁵ Mr McKenzie's evidence, paragraph 7.11

⁴⁶ Mr Carr's evidence, paragraph 2.3

⁴⁷ Ms Singh Rebuttal Evidence, paragraphs 6-1 – 6.3

⁴⁸ Ms Richmond Summary Statement, paragraphs 28 - 30

⁴⁹ Mr Foy s42A Report Memorandum, paragraph 4.53

⁵⁰ Reply Submissions, paragraphs 6.15 – 6.19

104. In respect of other transport modes, while the modelling showed that traffic volumes expected from the PC90 development (limited to no more than 130vph via the Precinct provisions) would not have a significant additional impact on the adjoining road network Mr McKenzie noted that the heavily trafficked nature of the network placed limitations on the convenience and availability of private vehicle travel to and from the site by the future residents of and visitors to the Plan Change Area. In addition to limiting traffic generation to no more than 130vph via he supported other proposed plan change provisions that included:
- 1) a bus stop either side of Highbrook Drive;
 - 2) a requirement for a Highbrook Precinct Transport Plan
 - 3) a requirement for a shuttle bus;
 - 4) upgrading of the existing Highbrook shared pathway along the site frontage;
 - 5) installation of a pedestrian barrier adjacent to the Highbrook roundabout.
105. Mr Carr supported those conclusions⁵¹.
106. Mr McKenzie's recommendations were incorporated into the Applicant's proposed precinct provisions. The need for further upgrading of walking and cycling facilities was not a point of contention at the hearing. The major issue raised related to the location of the Site, and in particular it's "walkability". We address that issue, along with an assessment of the proposal for a shuttle bus, in the following section of this Decision Report.
107. AT's submission raised concerns about safety. In response to the concerns raised in relation to non-vehicle user safety Mr Carr referred to the off-road walking and cycling routes already in place, and the apparently sufficient road width available for extension / improvement of these if necessary. He also noted that the new signalised intersection provides safe crossing opportunities for bus users⁵². Mr McKenzie referred to discussions with Auckland Transport and considered that an additional provision specific Matter of Discretion that had been introduced into the provisions addressed concerns about safety in the vicinity of the site. An AT planner, Mr Mark Ford, attended the hearing on-line. He stated that he was generally not opposed to what the Applicant had put forward.

Finding

108. We find that, subject to the imposition of appropriate precinct provisions, the Site can be developed in a way that does not create significant adverse effects on the transport network. We consider the precinct provisions as contained within the Applicant's reply to be generally appropriate. We note that, in providing some flexibility for development, including beyond the trip generation threshold, the provisions enable the potential to respond to the higher intensification purpose of the THAB zone. However, the Panel also acknowledges the concerns raised in submissions about development that could further compromise the efficiency of the existing transport infrastructure, noting that no road upgrading works have been identified as part of the PC90 proposal. We have

⁵¹ Mr Carr Evidence, paragraph 2.4

⁵² Mr Carr Evidence, paragraph 8.25

accordingly taken up Ms Richmond's suggested possible option of a deemed public notification provision that will apply for any application to exceed the 130vph threshold.

Accessibility and Connectivity

109. From an urban design perspective Mr Evans considered the Site to be well located to connect with the State Highway and the arterial east west routes (East Tamaki and Bairds Road). In his view a 2-3 km 'catchment' to access a choice of centres, services and recreational choices is acceptable. He referred to⁵³:
- the 351 bus service passing the Site and the Applicant's proposed shuttle bus service for residents to access nearby centres;
 - proximity to existing and proposed pedestrian and cycle connections to the north, east and west;
 - proposed connections to Ngati Ōtara Park and from there Ōtara providing an additional route to connect to Ōtara from the Site;
 - connectivity to Ōtāhuhu via the sign-posted shared cycle pedestrian route alongside the State Highway and residential street network (Mcmanus Place, Trenwith Street, High Street), being substantially along residential streets;
 - the existing sign-posted shared path route to Ōtara via Hellaby's Road;
 - the proposed esplanade reserve which would connect to the routes established in the Highbrook Reserve and the existing cycle route to the north.
110. Mr Evans considered access to amenities such as schools, shopping and recreation is possible via these new and established routes, with the distance of the Site from services was no more unusual than many residential areas⁵⁴.
111. Mr McKenzie also referred to Bus Route 351, a local service connecting Botany, Highbrook, Ōtāhuhu town centre and Ōtāhuhu Station, operating at frequencies of a minimum of one service every 30 minutes between 7:00 am to 7:00 pm, five days a week⁵⁵. He noted the presence of a wide variety of walking and cycling routes (including shared paths) on both sides of Highbrook Drive to both the north and south of the Plan Change Area. He considered the Site, being located around 2km from the Ōtara town centre, Ōtāhuhu town centre, MIT and other education facilities, could be readily accessed on foot⁵⁶. It was also his view that a range of micro-mobility modes, such as e-scooters, e-bikes and mobility scooters (in the case of potential retirement village residents) would further increase the range and extent of services able to be accessed conveniently and readily from the Highbrook Drive land⁵⁷. Mr Carr agreed that micromobility modes of travel, and e-bikes can be expected to increase the range of walking and cycling trips by increasing travel speeds while also diminishing the effort needed to travel⁵⁸.

⁵³ Mr Evans Evidence, paragraphs 6.2 – 6.5

⁵⁴ Mr Evans Evidence, paragraph 6.5(d)

⁵⁵ Mr McKenzie Evidence, paragraph 4.24

⁵⁶ Mr McKenzie Evidence, paragraph 4.18

⁵⁷ Mr McKenzie Rebuttal Evidence, paragraph 5.4

⁵⁸ Mr Carr Rebuttal Evidence, paragraph 5.4

112. Mr Heath's evidence referred to a variety of conveniences, amenities and services accessible within a 5-minute drive and roughly 2km walking distance from the Site including commercial centres, main employment clusters, educational institutions, healthcare facilities, childcare services, key arterial roads, and existing cycle networks (for active transport modes)⁵⁹.
113. Council's economic expert Mr Foy noted that the Site is not part of a residential neighbourhood and that the Site is 5-6km from the Ōtāhuhu and Middlemore train stations, and only one bus route (575) passed the Site, which he considered meant the area is not well served by public transport. He referred to Council's notified PC78 that proposed walkable catchments of 1,200m from the edge of the City Centre Zone and 800m from both the edge of Metropolitan Centre Zones and access points to existing or planned rapid transit stops. His understanding was that an 800m distance is typically used to reflect walkable catchments for centre proximity that he noted that this was less than half of the distance between this Site and the nearest town centres. He considered future residents would be heavily reliant on private vehicle trips to access all types of retail and services, commercial activities, and employment. He pointed out that, with the exception of employment within Highbrook, the nearest businesses were more than 2km away from the Site⁶⁰.
114. Mr Temperley also focussed on the importance of the walkability from the Site, including through referencing a 800 metre walkable catchment⁶¹.
115. The Applicant proposes a shuttle bus service to enhance accessibility of the Plan Change Area to key destinations such as public transport hubs and town centres. Transport Plan provisions would inform how that service would operate, for instance destinations and regularity. Mr McKenzie referred to other situations where shuttle buses had been proposed as an alternative means of transport. Commercial viability was not considered to be a relevant factor if the provisions required this service to be available⁶². Mr Carr agreed that the shuttle service is required to be provided under the proposed Precinct provisions, even if it is not viable in a commercial sense⁶³.
116. Ms Richmond's conclusion was that the Site is poorly suited to accommodating any residential activity due to its isolated location away from other residential activity and the retail, commercial and community services that the Site's occupants would use frequently⁶⁴.

Finding

117. The Panel agrees with Council specialists that, while walking routes are available, those routes are not within a walkable catchment of centres or planned rapid transit stops. The location is not an ideal one in respect of being within a convenient walkable reach of services residents of the site may wish to access. However we agree with Mr

⁵⁹ Mr Heath Evidence, paragraphs 9.4 – 9.5

⁶⁰ Mr Foy s42A Report Memorandum, paragraphs 4.43-4.52

⁶¹ Mr Temperley, Summary Statement

⁶² Mr McKenzie Rebuttal Evidence, Section 6

⁶³ Mr Carr Rebuttal Evidence, Section 6

⁶⁴ S42A Report paragraph 6.2

McKenzie that the consideration limited to walkability in isolation is unhelpful. Placing significant importance on one mode of transport does not recognise the range of transport modes available that could be utilised by future residents of the Site in addition to walking. In that respect we generally agree with the evidence of Mr Evans, Mr McKenzie and Mr Carr. As Mr Evans noted, the distance of the Site from services is no more unusual than many residential areas. There are established shared path routes giving direct access to the site.

118. We also agree with Mr McKenzie and Mr Carr that the use of shared paths available to the Site, and proposed to be enhanced through the proposed provisions, is not limited to walkers – other micro-mobility modes are also possible – and in our view should be encouraged for this site. We further find that the proposed shuttle service is an appropriate additional method to enhance accessibility from the Site to key destinations and is most appropriately assessed once a development concept has been confirmed.
119. We find that the Site is sufficiently accessible and connected for it to be suitable for the establishment of residential development.

Overall Finding

120. Our overall finding is that residential development can be enabled at the Site in a way that can be managed to avoid any significant adverse effects.

Planning – Is this an appropriate site and location for THAB Zoning?

121. Having found that the Site is suitable for residential development, the Panel now turns to consider whether a THAB zoning is appropriate for the Site, having regard to the planning framework that applies.
122. Several witnesses made reference to the NPSUD and the AUP RPS. PC80 proposes amendments to the RPS to achieve greater alignment with the NPSUD, including by reference to well-functioning environments. We were advised that the decision on PC80 is subject to appeal, however we have read the decision and have noted the amendments proposed.
123. Objectives 2 and 5 of the NPSUD identify the minimum requirements for planning decisions to contribute to well-functioning urban environments. These are described in Policy 1:

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

- (a) have or enable a variety of homes that:
 - (i) meet the needs, in terms of type, price, and location, of different households; and
 - (ii) enable Māori to express their cultural traditions and norms; and
- (b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and
- (c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and

- (d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and
 - a) support reductions in greenhouse gas emissions; and
 - b) are resilient to the likely current and future effects of climate change.

124. Ms Richmond presented her views in the s42A report opposing PC90 and they remained unchanged at the conclusion of the hearing. We have summarised the concerns expressed by Ms Richmond below⁶⁵:

(a) In respect of Policy 1 of the NPSUD Ms Richmond:

- did not consider PC90 to be in a location that has good accessibility for all people between housing (including other housing) and community services, including by way of public transport networks.
- noted AT had confirmed there are no plans to improve existing public transport in this location.
- considered the Applicant's use of private shuttles to be unproven and unlikely to substitute for public transport options.
- considered that PC90 did not support reductions in greenhouse gas emissions by intensification of residential activities outside of locations with good access to public transport with no practical alternative to the use of private vehicles.

(b) Ms Richmond considered the Site was located outside the locations directed by the NPSUD for intensification in Policy 3. Concentrating intensification around identified locations supported the concept of a well-functioning urban environment with the outcome of a quality, compact form.

(c) In respect of Chapter B2 of the RPS Ms Richmond:

- identified the central strategy as being to enable higher residential intensification in and around centres, along identified corridors; and close to public transport, social facilities (including open space) and employment opportunities. She considered the Site to be isolated from the closest centres of Ōtara (2.3km) and Ōtāhuhu (3.3km); not in a corridor identified for residential activity, with priority being for freight and industrial uses; and not close to public transport and social facilities.
- considered the isolated location of the site for residential use does not support the RPS hierarchy of centres approach which function as commercial, cultural, and social points as well as providing for a range of activities to support and serve as focal points for their local communities.
- considered the location of the site and the absence of place-based precinct provisions does not respond to the intrinsic qualities and physical characteristics of the site and area, including its setting or reinforce the

⁶⁵ Ms Richmond Summary Statement, paragraphs 7 - 15

hierarchy of centres and corridors (Objective B2.3.1(1) and Policy B2.2.2.(5)).

(d) Ms Richmond referred to the THAB Zone description at H6.1 stating that THAB zones are predominantly located around metropolitan, town and local centres and the public transport network to support the highest levels of intensification. Due to the isolated location of the Site, future residents would not have convenient access to services, education facilities, retail and entertainment opportunities, public open spaces and public transport. Ms Richmond considered the Site's location did not promote walkable neighbourhoods and increase the vitality of centres. Reference was made to Objective H6.2.(1) which is:

H6.2. (1) Land adjacent to centres and near the public transport network is efficiently used to provide high-density urban living that increases housing capacity and choice and access to centres and public transport.

125. Ms Richmond's view was that the relative isolation of the Site made it a spot zone located away from the services and other facilities that are envisaged to support a THAB zone. She acknowledged Mr Evans had identified other such spot zones in the wider area and Auckland more generally, however she considered spot zones approved elsewhere does not mean that they are generally appropriate, or appropriate in this area⁶⁶.

126. In response to Ms Richmond's concerns in relation to Policy 1 of the NPSUD Ms Singh expressed the view that:

"accessibility" can take different forms (in the context of PC90, this can be in the form of the provision of private shuttle bus to connect to a public transport network, or enhancing shared pathways to make it easy to walk or cycle to the vast employment opportunities within Highbrook and adjoining East Tāmaki industrial area). The term "accessibility" as used in Policy 1(c) should not be interpreted in a narrow form, to mean individual site access to public transport. Not all sites in urban Auckland front onto a current public transport network⁶⁷.

127. In respect of Policy 3 of the NPSUD Ms Singh acknowledged the Site was not within or near an identified centre or existing or planned rapid transit stops. However her view was that Policy 3, while requiring intensification to be enabled in those areas, did not require that that intensification should not occur outside those areas. She did not consider the policy precluded the application of THAB zoning in other parts of the tier 1 urban environments where it was appropriate to do so⁶⁸. She was of the view that enabling more people to live near an area with many employment possibilities was consistent with Objective 3(a) of the NPSUD⁶⁹.

128. In respect of the RPS Ms Singh considered that PC90 gives effect to both the operative RPS and the Decision on PC80. We repeat her reasoning below:

⁶⁶ Mr Foy s42A Addendum Report Memorandum, paragraph 2.16

⁶⁷ Ms Singh Evidence, paragraph 6.10

⁶⁸ Ms Singh Evidence, paragraph 6.16

⁶⁹ Ms Singh Rebuttal Evidence, paragraph 7.2 (page 25)

- (a) PC90 seeks urban growth in the form of residential intensification by enabling rezoning of land within the Rural Urban Boundary, thereby contributing to achieving quality compact urban form by optimising the efficient use of the existing urban area (Objective B2.4.1(1), Policies B2.2.2(4), and (7)).
- (b) The application of the THAB Zone enables higher density of development, which is consistent with the concept of compact urban form, and it provides for increased efficiency and utilisation of land resource, within the Rural Urban Boundary (B2.2.1).
- (c) Consistent with Objective B2.3.1, PC90 will achieve a quality-built environment to do all of the following:
 - (i) Highbrook Precinct responds to the intrinsic qualities and physical characteristics of the plan change area, including its setting beside an employment hub.
 - (ii) PC90 will not undermine the hierarchy of centres and corridors; instead, it will continue to reinforce their importance.
 - (iii) PC90 will contribute to providing a choice and opportunity for people to live in close proximity to their employment.
 - (iv) PC90 will increase the efficiency and use of an under-utilised land resource that is not subject to significant infrastructure funding or upgrading constraints.
 - (v) PC90 is an example of planning outcomes that are necessary to adapt to changing needs at a local level.
 - (vi) PC90 is informed by a Coastal Hazard Assessment to ensure that the plan change is suitable for intensification for residential purposes with regard to climate change matters.
 - (vii) The plan change area (including the Highbrook Precinct provisions) is strategically located to provide for employment, education, retail, open space, community facilities and transportation needs of the future residents.
- (d) Consistent with Policy B2.2.2(5) and Objective B2.4.1(3), PC90 seeks higher residential intensification close to an employment hub (which is identified as one of the opportunity areas as a primary focus for intensification).
- (e) Consistent with Policy B2.3.2, via the application of the THAB Zone provisions, the future form and design of subdivision, use and development will be managed to support the planned future environment; contribute to the safety of the site, street and neighbourhood; provide good access and enable a range of travel options; achieve a high level of amenity and safety for pedestrians and cyclists; meet the functional and operational needs of the site; and allow for change and innovative design.

129. In her rebuttal evidence Ms Singh referred to extracts from the recently released Council Future Development Strategy (**FDS**). She noted that the FDS identifies “Enabling housing near employment” as a key consideration⁷⁰. Ms Singh referred to the Pukewairiki Precinct which is approximately 200ha of land adjacent to the plan change area, the additional 35ha of industrial zoned land adjoining the plan change area (on the opposite side of Highbrook Drive). She noted the Pukewairiki Precinct contains a hotel, cafes, restaurants and bars, a supermarket, pharmacy, gym, childcare facilities and a medical centre. She noted that the objective for sub-precinct C of that precinct, which is adjacent to Highbrook Drive, is to establish a cluster of high technology tenants. It enables activities including offices and supporting retail and food and beverage outlets, supermarkets up to 450m², visitor accommodation and boarding houses. Ms Singh

⁷⁰ Ms Singh Rebuttal Evidence, paragraph 7.25

considered development of the Site accordance with the THAB zone provisions has the potential to complement the overall business park development by enabling residential choice within a walking distance of these employment opportunities⁷¹.

130. Mr Evans examined other residential zoning options in his evidence⁷². In respect of medium density zone options (Residential Mixed Housing Suburban / Urban) he acknowledged the Site was capable of physical development at 2-3 storeys. However he considered that the full potential of the Site to provide for taller apartment buildings would not be enabled. He considered that the location of the Site and the absence of existing neighbouring residential areas meant that it was capable of accommodating taller buildings without adverse effects to the neighbouring environment. Mr Pryor also concluded that the effects of development consistent with THAB development forms would result in effects no greater than those possible under the LIZ with the potential benefits of residential development likely to result in a superior landscape and visual amenity outcome. Mr Evans accordingly supported a THAB zoning as allowing for more efficient land use and increased housing capacity in a waterfront location.

Finding

131. While the Panel considers the provisions Ms Singh referred to in relation to employment have some relevance, we do not fully accept her argument that THAB zoning is justified in this area due to its close proximity to an employment area. Both Mr Foy and Mr Heath agreed that there is unlikely to be a strong relationship between the Site and the employment area.
132. In other respects we generally agree with and prefer the evidence of the Applicant.
133. We have considered the NPSUD, RPS and zone provisions and have concluded that, while they strongly promote intensification in and around centres and main transport nodes and routes, they do not prevent higher intensity development in other appropriate locations. As was pointed out to us, the description of the THAB Zone refers that zoning *predominantly* being located around metropolitan, town and local centres and the public transport network. The application of that zoning in other locations is possible, and we informed of other examples of that elsewhere.
134. The Panel finds that the Site is an appropriate location for THAB zoning given its waterfront location, size in one ownership, absence of sensitive neighbours and all of the other findings we have made above in respect of the Site's suitability for residential development.

Plan Change Provisions

135. In Hearing Direction #6 the Applicant was alerted to an issue relating to the need to incorporate the MDRS into the provisions of PC90 as required by section 77G(1) of the RMA. As this issue was raised just prior to the hearing the Panel allowed time after the hearing for the Applicant and Council to liaise as to the means by which the MDRS could be incorporated.

⁷¹ Ms Singh Rebuttal Evidence, paragraph 7.16

⁷² Mr Evans Evidence, paragraphs 7.1 – 7.5

136. The material the Panel received after the hearing added a number of further provisions to the Precinct. There were differences in opinion between Ms Singh⁷³ and Ms Richmond⁷⁴ as to what provisions need to be included, and in what structure.
137. Ms Singh invited us to consider the option of, pursuant to sections 77G(1) and 86BA of the RMA, simply accepting that PC90 would include the MDRS provisions within the THAB Zone, implemented via PC78 (being an IPI), as already having legal effect. She suggested that, in PC90 becoming operative, those MDRS provisions would have immediate legal effect within the THAB Zone applying to the PC90 area. In that option, no amendments to the Highbrook Precinct would be warranted to incorporate the MDRS⁷⁵.
138. We have considerable sympathy for the view expressed by Ms Singh. It seems to us that incorporating the MDRS into the precinct provisions would be inconsistent with the general approach taken in the AUP to cross-reference zone provisions unless there is a particular reason the precinct provisions should depart from the zone provisions. The associated issue is that the THAB zone provisions generally (although not entirely) enable development beyond the MDRS – including, for instance, higher building heights.
139. However, as Ms Singh acknowledged, the option of not including the MDRS would not be legally robust. We consider we are obliged to do so.
140. In respect of the differences between Ms Singh and Ms Richmond as to how the MDRS should be incorporated we have carefully worked through the reasoning given for the approaches taken by the respective planners. We have based the decision we have made on the mandated MDRS provisions with appropriate additional provisions, for instance those relating to matters of control and discretion and assessment criteria.
141. In respect of other changes and additions to the provisions Ms Singh provided a helpful record of the changes the Applicant and she supported, including comments relating to the submissions or other basis for the change⁷⁶. We have generally adopted the changes recommended to us with some further amendment. Attachment 1 to this Decision Report is a tracked change version of the decisions on provisions we have reached. We provide a record of all changes below.
1. The zoning (showing the precinct overlay) map is as notified.
 2. The Precinct Description has been amended to include a cultural statement (in relation to the request from Te Ākitai Waiohū), a change to the description of how traffic movements are to be managed (in response to issues raised by Goodman Property Trust) and an additional paragraph relating recognising the precinct provisions incorporate the MDRS.

⁷³ Ms Singh Closing Evidence

⁷⁴ Ms Richmond Post-Hearing Memorandum on Provisions

⁷⁵ Ms Singh Closing Evidence, paragraph 1.11(a)

⁷⁶ Ms Singh Closing Evidence, Attachment A.

3. A new objective 4 has been added in response to Auckland Transport's concern that particular attention should be given to safe and convenient pedestrian and cycling connections.
4. New Objectives 5 and 6 relate to the mandated MDRS.
5. Policies 2 and 3 are amended to reflect the change to how traffic movements are to be managed. We have removed one word ("Report") that we do not consider is necessary.
6. Policy 4 is amended to add a reference to safe pedestrian and cycle facilities and, in accordance with a change sought by Auckland Transport, to add a reference to the construction of a shared pedestrian / cycle facility providing a connection between the Access shown in Precinct Plan 1 and the intersection of Gridco Road and Hellabys Road.
7. Additional Policies (5) – (9) relate to the mandated MDRS.
8. We have amended the reference to traffic generation in Standard IXX.6.1 consistent with the change to how traffic movements are to be managed. We have also amended the references to other standards which are now to be within one standard (IXX.6.2) rather than three.
9. IXX.5 Notification has been amended to incorporate the mandated MDRS. We have also added a provision requiring notification of any resource consent application not meeting the standard in IXX.6.1 Total traffic generated.
10. Standard I4.6.1 has been amended as a result of the change to have trip generation measured by way of a vehicles per hour threshold rather than a number of dwellings.
11. We have adopted Ms Richmond's preference that the standards in I4.6.2 – I4.6.4 be combined, although we do not consider a table is necessary as there is only one "trigger"⁷⁷. We have also adopted a trigger relating to occupation of dwellings rather than, as proposed by Ms Singh, the first stage of development. Other amendments include:
 - (a) A standard relating to a shuttle bus, in response to a concern raised by Auckland Transport.
 - (b) A standard relating to provision of a separated shared pathway between the Precinct and the intersection of Gridco Road and Hellabys Road to Auckland Transport Design Standards. That had been proposed by Ms Singh in the assessment criteria, however we agree with Ms Richmond that this should be a standard.

⁷⁷ We note that this amendment changes the standards numbering that had been proposed, including the various cross-referencing provisions.

- (c) Reference to bus stops either side of Highbrook Drive, rather than one side only – in response to a concern raised by Auckland Transport and consistent with the evidence we received.
 - (d) Reference to a Transport Assessment rather than a Highbrook Transport Plan, noting we have included the requirement for a Transport Assessment as a special information requirement. These amendments respond to Ms Richmond’s concern that the references that had been proposed may be confusing and uncertain.
12. A coastal protection yard has been added to standard IXX.6.4 in response to concerns raised in the s42A report. Ms Richmond raised a concern that this should be identified as a qualifying matter. Ms Singh did not consider that necessary, however we have inserted a notation.
 13. The Standards in IXX4.6 have been amended as necessary to reflect incorporation of the MDRS. The mandated MDRS are added in standards 1XX.6.5 – 1XX.6.13. We note that Ms Richmond did not include standard 1XX.6.5 relating to the number of dwellings. We prefer to include it as one of the mandated MDRS rather than rely on a category in the activity table and note it does appear in council’s latest template.
 14. The mandated MDRS subdivision standards have been added in IXX.7.
 15. Matters of discretion and assessment criteria have been added to ensure that consideration is given to matters of design, safe integration with the proposed esplanade reserve and an appropriate interface with Highbrook Drive and State Highway 1. Reference is also made to managing access to the Ōtara Weir. These amendments respond to various issues raised in submissions and in the s42A report.
142. Section 32AA of the RMA requires a further evaluation for any changes that are proposed to the notified plan change after the section 32 evaluation was carried out. This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes. As outlined above, we consider the proposed changes enhance positive outcomes and reduce potential adverse effects with respect to the plan change assessed in the original section 32 evaluation. In our view the s32AA analysis that has been provided by Ms Singh, together with this decision report, which among other things addresses the modifications we have made to the provisions of PC90, satisfies the section 32AA obligations.

DECISIONS ON SUBMISSIONS

143. This decision sets out the reasons why the Panel has approved PC90 and the reasons for our decisions on changes sought by submitters to the precinct provisions. Our decisions on submissions with reference to specific points are set out in Attachment 2. For ease of reference, the table in Attachment 2 records our decisions on the submission

points identified in the s42A report. Attachment 2 should be read in conjunction with this decision.

PART 2 OF THE RMA

144. Section 32(1)(a) of the RMA requires assessment of whether the objectives of a plan change are the most appropriate way for achieving the purpose of the RMA in Part 2. Section 72 of the Act also states that the purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA. In addition, section 74(1) provides that a territorial authority must prepare and change its district plan in accordance with the provisions of Part 2. While this is a private plan change, these provisions apply as it is the Council who is approving the private plan change, which will change the AUP.
145. For all of the reasons set out in this decision, the Panel is satisfied the matters set out in sections 6, 7 and 8 of the RMA have been addressed. PC90 and its provisions, as we have modified them, have respectively recognised and provided for, have had particular regard to, and taken into account, those relevant section 6, 7 and 8 matters.
146. Finally, in terms of section 5 of the RMA, it is our finding that the provisions of PC90 are consistent with, and the most appropriate way, to achieve the purpose of the Act. PC90 will enable the efficient development of the site for accommodation and residential activities while also protecting identified values and avoiding, remedying, or mitigating any adverse effects on the environment.

DECISION

147. Our decision on submissions pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991 is that Proposed Plan Change 90 to the Auckland Unitary Plan (Operative in Part) be approved, subject to the modifications as set out in this decision, and as set out in Attachment 1.

The reasons for the decision are that Plan Change 90:

- (a) Is supported by necessary evaluation in accordance with s 32 and s 32AA of the RMA;
- (b) Will give effect to the NPSUD and the RPS;
- (c) Satisfies the provisions of Part 2 of the RMA;
- (d) Is consistent with the objectives and policies in the NZCPS;
- (e) Will assist the Council in achieving the purpose of the RMA;
- (f) Enables efficient utilisation of land for residential purposes on land that has been shown as suitable for that use;

- (g) Is appropriately zoned THAB given the Site's accessibility to the wider road network, the presence of existing shared path connections, the location adjoining the Tāmaki River, the absence of any sensitive neighbouring sites, the size and shape of the site and the single ownership.
- (h) Provides appropriately for public access around the coast;
- (i) Will not create adverse traffic and transportation effects that cannot be avoided, remedied or mitigated;
- (j) Appropriately recognises and protects local ecology values;
- (k) Provides adequately to avoid, remedy or mitigate potential coastal hazard effects
- (l) Will help with the effective implementation of the plan.



Peter Reaburn
Chairperson

And on behalf of Commissioners Lee Beattie and James Whetu

Date: 27 August 2024
Reissued 9 October 2024