BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2018] NZEnvC 49

IN THE MATTER	of the Resource Management Act 1991 and the Local Government (Auckland Transitional Provisions) Act 2010
AND	
IN THE MATTER	of an appeal under section 156(1) of the Local Government (Auckland Transitional Provisions) Act 2010
BETWEEN	SELF FAMILY TRUST
	ENV-2016-AKL-199
	Appellant
AND	AUCKLAND COUNCIL
	Respondent

Court:	Environment Judge J R Jackson Environment Commissioner E H von Dadelszen Deputy Environment Commissioner J T Baines
Hearing:	at Auckland on 13 to 17 November 2017 (Final submissions received 23 February 2018)
Appearances:	R J Bartlett QC for the Self Family Trust H J Ash and T R Fischer for Auckland Council A Webb for Mr J and Mrs F Gock (section 274 party) M Savage for Mr T Edwards (section 274 party) R B Enright for the Volcanic Cones Protection Society Incorporated (section 274 party) L J Eaton and R Robilliard for Auckland International Airport Limited (section 274 party) G K Chappell for Boards of Airlines Association New Zealand Incorporated (section 274 party)
Date of Decision:	18 April 2018
Date of Issue:	18 April 2018

DECISION

A: Under section 290(2) of the Resource Management Act 1991 the Environment Court confirms the decision of the Auckland Council in its decision of 22 July 2016 as to the location of the Rural Urban Boundary in the vicinity of the Pūkaki Peninsula and Crater Hill (Ngā Kapua Kohuora) as shown on map "C" annexed to this decision.

B: Costs are reserved.

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REASONS

PART A — INTRODUCTION

1. Background

1.1 The issue: where's the RUB to be?

[1] The principal issue in this appeal is whether "greenfields" (largely rural) land at Crater Hill (Ngā Kapua Kohuora) and Pūkaki Peninsula east of the Auckland International Airport should be relocated to the urban side of the Rural Urban Boundary ("RUB") in the Auckland Unitary Plan ("AUP").

[2] The land which is the subject of this appeal is located near the Manukau Harbour and is immediately west of State Highway 20 ("SH 20"). The land area is complex, being incised by creeks, containing different land uses and a low, dormant volcano. A copy of the relevant part of a topographical map[1] showing these features in their context is annexed marked "X".

[3] From a utilitarian point of view, the land comprises two enclaves of rural land sandwiched between urban development — Mangere is to the north, Papatoetoe to the east, Manukau City to the southeast, and Auckland International Airport to the west – and the coastal margin. The two sites are Crater Hill (Ngā Kapua Kohuora) and Pūkaki Peninsula. They are shown on the site location map attached as "A"[2]. The sites are separated by two arms of Waokauri Creek and by strips of residential large lots and open space between those arms. This creek is a tributary of the larger Pūkaki Creek, which runs into the Manukau Harbour immediately east of the Auckland International Airport. The two sites outlined in red on map "A" – Pūkaki Peninsula on the left, and Crater Hill on the right – will be called "the land".

[4] The eastern site is Crater Hill (Ngā Kapua Kohuora) which covers approximately 100 hectares. Its entrance is located at 286 Portage Road, Mangere and sits immediately to the west/southwest of the Southwestern Motorway (SH20).

[5] The second site is the Pūkaki Peninsula, a similar sized area situated along Pūkaki Road south of Mangere. The peninsula is bounded by Pūkaki Creek to the west

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1 NZ Topo 50-BB32.

2 C A Trenouth "Site Location Map" [Exhibit 11.3].

and Waokauri Creek to the southeast. Crater Hill (Ngā Kapua Kohuora) sits further southeast of the latter. Another dormant volcano — Pūkaki Crater, sits immediately northeast of the peninsula.

[6] Although, as stated, they are not contiguous (being separated by a creek) the Pūkaki Peninsula and Crater Hill (Ngā Kapua Kohuora) are treated in the AUP as a sub-precinct[3] of a larger area called the Puhinui Peninsula[4] which is a special "precinct" under the AUP as explained shortly.

1.2 The RUB and the parties

[7] Under special legislation, including the Local Government (Auckland Transitional Provisions) Act 2010 ("LGATPA"), set up to provide a "Unitary Plan" for the greater Auckland Council, an Independent Hearing Panel ("IHP") recommended that the RUB follow (generally) the coastal margin so that both Crater Hill (Ngā Kapua Kohuora) and the Pūkaki Peninsula would be included on the urban side of the line as shown on the attached map "B". In its decision dated 22 July 2016 the Auckland Council did not accept the recommendation, and decided to draw the line to the north of the Pūkaki Peninsula and east of Crater Hill. Its RUB is shown by the black dashed line on attachment "C" which is a copy of the map attached to the Council's decision called "Puhinui Precinct Zoning and Rural Urban Boundary".

[8] The Self Family Trust ("the Self family"), owner of most of Crater Hill, appealed to the Environment Court. The notice of appeal by the Self family seeks as relief first that the Auckland Council's decision be set aside, and second:

> That the Independent Hearings Panel recommendation to Auckland Council concerning location of the Rural Urban Boundary at Puhinui and consequential zonings, including but not limited to the Self land, be accepted and adopted, subject to any modifications considered by the Court to be necessary and appropriate;
>
> ...

[9] As we stated at the beginning, the principal issue for us to decide is the location of the RUB. For the Self family a subsidiary issue is whether, if the appeal is allowed, there is adequate information to support the proposed zonings – which would allow

3 AUP sub-precinct H on map I432.10.5.
4 AUP sub-precinct H on map I432.10.5.

approximately 575 new dwellings – or whether a Future Urban Zoning ("FUZ") is preferable to allow further reports to be obtained and design work completed. While the Self family's interests are restricted to Crater Hill, its appeal was wide enough to cover Pūkaki Peninsula. Consequently, two sets of landowners on the peninsula joined the proceeding as section 274 parties seeking that the IHP's RUB be reinstated in that area also. They are:

- Mr J and Mrs F Gock, who own 58 hectares at the southern end and western side of the peninsula; and
- Mr T Edwards who owns a smaller block of land at 77 Pūkaki Road at the northern end of the peninsula, adjacent to Pūkaki Creek.

[10] Several other persons joined the proceeding as section 274 parties supporting parts of the Auckland Council's case:

- the Auckland Volcanic Cones Society Incorporated ("the AVCS") supported the Council in relation to the location of the RUB to the east of Crater Hill;
- Auckland International Airport Limited ("AIAL") and the Board of Airline Representatives New Zealand Incorporated ("BARNZ") were concerned that if the RUB is moved from the Auckland Council's line, then residential development (Living Zone(s)) should not be permitted in any area affected by noise from the operations of the airport.

1.3 The route to the Environment Court

[11] The RUB is a method[5] or "rule" used in the AUP. The AUP is a composite — and complex — document under the LGATPA being at once the regional policy statement, regional plan and district plan.

[12] We have described how the Council rejected the IHP's recommendation about the RUB and consequential rezonings for Crater Hill and the Pūkaki Peninsula. The Self family appealed under section 156 of the LGATPA. That section describes the right of appeal to the Environment Court and the procedure to be followed[6]:

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5 The RUB replaces the "metropolitan urban limit" set in the former Auckland Regional Policy Statement.

6 Section 156: Inserted on 4 September 2013, by section 6 of the LGATP Amendment Act 2013.

156 Right of appeal to Environment Court

(1) A person who made a submission on the proposed plan may appeal to the Environment Court in respect of a provision or matter relating to the proposed plan—

(a) that the person addressed in the submission; and

(b) in relation to which the Council rejected a recommendation of the Hearings Panel and decided an alternative solution, which resulted in —

(i) a provision being included in the proposed plan; or

(ii) a matter being excluded from the proposed plan.

(2) However, if the Council's alternative solution included elements of the Hearings Panel's recommendation, the right of appeal is limited to the effect of the differences between the alternative solution and the recommendation.

(3) A person may appeal to the Environment Court in respect of a provision or matter relating to the proposed plan if —

(a) the Council's acceptance of a recommendation of the Hearings Panel resulted in —

(i) the provision being included in the proposed plan; or

(ii) the matter being excluded from the proposed plan; and

(b) the Hearings Panel had identified the recommendation as being beyond the scope of the submissions made on the proposed plan; and

(c) the person is, was, or will be unduly prejudiced by the inclusion of the provision or exclusion of the matter.

(4) The Environment Court must treat an appeal under this section as if it were a hearing under clause 15 of Schedule 1 of the RMA and, except as otherwise provided in this section, clauses 14(5) and 15 of Schedule 1 of the RMA and Parts 11 and 11A of the RMA apply to the appeal (including, to avoid doubt, sections 299 to 308).

(5) Notice of the appeal must be in the prescribed form and lodged with the Environment Court, and served on the Auckland Council, no later than 20 working days after the Council notifies the matters under section 148(4)(a).

(6) If the subject matter of the notice of appeal relates to the coastal marine area, the person must also serve a copy of the notice on the Minister of Conservation no later than 5 working days after the notice is lodged with the Environment Court.

[13] More specifically, the appeal was brought under section 156(1) above since the Council did not accept the IHP's recommendations as to the RUB in relation to Crater Hill or Pūkaki Peninsula.

[14] Most of the AUP is now operative. Some objectives and policies relevant to this appeal were under challenge under other appeals at the time Self family lodged its appeal, but they were resolved by subsequent consent orders and now have legal effect.

1.4 The matters to be considered

[15] We must treat the appeal as if[7] it is a hearing under clause 15 of Schedule 1 to the RMA to which Parts 11 (Environment Court) and 11A (Trade Competitors) apply. The relevant form of the RMA is its form after the Resource Management Amendment Act 2013[8] was enacted. The Resource Legislation Amendment Act 2017 does not apply[9].

[16] The appeal seeks to change the position of the RUB on the land. The chapter in the AUP on what the RUB is and how it can be changed is very short. It states in full:

> **G1 Rural Urban Boundary**
> The Rural Urban Boundary identifies land potentially suitable for urban development.
> The location of the Rural Urban Boundary is a district plan land use rule pursuant to section 9(3) of the Resource Management Act 1991.
> The planning maps show the Rural Urban Boundary line. The only method for relocating the Rural Urban Boundary is by way of a plan change pursuant to Schedule 1 of the Resource Management Act 1991.
> Any relocation of the Rural Urban Boundary must give effect to the objectives and policies of the regional policy statement which establish it.

[17] The RUB is identified[10] as "a district plan land use rule". In passing we doubt if the RUB is a valid rule since it does not in itself impose restrictions on the use of land: it is simply a line on a map. No person contravenes the RUB by using land in a certain way, which is what section 9 requires of land use rules. We understand that the IHP considered the RUB should be a provision in the district plan so that any person could apply to change it (in contrast to a provision in a regional policy statement or regional plan). However, it does not need to be a rule in the district plan to achieve that end. In our view the RUB is more properly viewed as either a method[11] under section 75(2)(c) for implementing the policies of the RPS, or perhaps a subordinate policy[12] in the district plan for implementing the higher order policies.

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7 Section 156(4) LGATPA.

8 See section 2(a) Resource Management Amendment Act 2013 (2013 No. 63).

9 Clause 13, Schedule 2 Resource Legislation Amendment Act 2017.

10 There is one exception: at Waiheke Island the RUB is identified as an RPS provision. That is irrelevant to this proceeding.

11 As the Environment Court said the MUL was in *North Shore City Council v Auckland Regional Council* [1995] NZRMA 74 (NZPT).

12 As the Court of Appeal treated the MUL in a decision on direct appeal to that court from the decision in the previous footnote: *Auckland Regional Council v North Shore City Council* [1995] NZRMA 424 (CA).

[18] There are no district plan objectives and policies for the RUB, instead the rule states that the relocation of the RUB must give effect to the objectives and policies in the Regional Policy Statement ("the RPS") which is found in chapter 3 of the AUP.

[19] The statutory tests relevant to this case are those for a district plan rule or method and therefore the RUB must accord with the functions of a territorial authority[13], the purpose and principles of Part 2[14], and the evaluation report prepared under section 32 of the Act[15]. In addition, as a provision in a district plan, the RUB must give effect to any national policy statement, the New Zealand coastal policy statement[16] and regional policy statement[17], must not be inconsistent with any operative regional plans[18], and must have regard to any proposed regional plans[19]. Regard must also be had to any management plans and strategies prepared under other Acts[20].

[20] In this proceeding the relevant statutory documents appear to be:

- the New Zealand Coastal Policy Statement ("the NZCPS");
- the National Policy Statement Urban Development Capacity ("NPSUDC");
- chapter B of the AUP – the Regional Policy Statement ("RPS");
- the Proposed Regional Coastal Plan ("PRCP");
- the AUP comprising the regional and district plans; and
- the Auckland Plan.

While reference to the last is not required but optional under the RMA[21], we are obliged by section 145(2) LGATPA to have regard to any strategy prepared under the Local Government (Auckland Council) Act 2009 and the Auckland Plan provides such a strategy.

[21] An important, albeit non-statutory, guide to the application of, and inter-

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13 Section 74(1)(a) RMA.
14 Section 74(1)(b) RMA.
15 Clause 5(1)(a) of Schedule 1, and section 74(1)(d) and (e) RMA.
16 Section 74(1)(ea) RMA.
17 Section 75(3)(c) RMA.
18 Section 75(4) RMA.
19 Section 74(2)(a)(ii).
20 Section 74(2)(b)(i).
21 Section 74(2)(b)(i) RMA.

relationship between, such statutory instruments is the decision of the Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd*[22] *("King Salmon")* and we will refer to that where it binds us or otherwise assists.

[22] A rule or other method in a district plan must also be for the purpose of carrying out the territorial authority's functions under the Act and should achieve the objectives and policies of the plan[23].

[23] Finally, we record that we must have regard to the Council's decision under section 290A RMA.

1.5 Jurisdictional issue(s)

[24] For Mr Edwards, Mr Savage argues that the Council and consequently the court has no jurisdiction to move the RUB because that was not sought in a submission. Mr Savage refers to section 148 of the LGATPA which states:

> (1) The Auckland Council must —
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> (a) decide whether to accept or reject each recommendation of the Hearings Panel; and
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> (b) for each rejected recommendation, decide an alternative solution, which —
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> (i) may or may not include elements of both the proposed plan as notified and the Hearings Panel's recommendation in respect of that part of the proposed plan; but
>
> (ii) must be within the scope of the submissions.

He submits that the qualifying word "but" in section 148(1)(b)(i) imposes a mandatory requirement to confine any "alternative solution" decided by the Council to relief sought specifically in submissions. He concludes that[24]:

> ... the narrowed scope of the Council role strongly indicates that where it decides to reject a recommendation and decide an "alternative solution", that solution must be one that a submitter had actually requested.

[25] There are two components to section 148(1)(b): subparagraph (i) provides that

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22 *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593, [2014] NZRMA 195, [2014] 17 ELRNZ 442.

23 Section 76(1) RMA.

24 M Savage closing submissions para 24 [Environment Court document 36].

an alternative solution may or may not include elements of both the proposed plan and the Hearings Panel's recommendation. In this case the Council's alternative solution for the location of the RUB and consequential zoning was to revert to the notified version of the plan. Thus the alternative solution clearly satisfies subparagraph 148(1)(b)(i) of the LGATPA.

[26] Subparagraph (ii) requires that the alternative must be within the scope of submissions. The second subparagraph is introduced by "but" for emphasis, although its logical meaning is "and". We accept Ms Ash's submission[25] that the word "but" when used at the end of subsection (1)(b)(i) is conjunctive. It is incorrect to read the requirement for alternative solutions to be "within the scope of the submissions" as requiring the alternative solutions be "requested in submissions". We hold that the Council's alternative solution, to revert generally to the notified PAUP, therefore also comes within subparagraph 148(1)(b)(ii).

[27] In any event there are a number of submissions which effectively seek the "alternative solution" decided by the Council when it rejected the IHP recommendations:

- Te Ākitai's original submission (#6386) generally supports "the location of the Rural Urban Boundary in respect of Puhinui and Mangere and the zoning of this land as Rural Production". The relief sought in its original submission included: "That those aspects of the PAUP identified as being supported in each of the [preceding] sections of this submission are retained in order it support the issues raised in this submission";
- Te Ākitai lodged a further submission (FS#3321) on the original submission by *Self Family Trust* (#3866), opposing the request to amend the RUB at Puhinui to follow the coast line and rezone the land for a range of urban purposes. The relief sought by Te Ākitai in its further submission was "Do not accept the relief sought by *Self Trust* unless a collaborative and comprehensive structure planning process identifies that urban development can occur without having significant cumulative adverse effects on Te Ākitai's cultural values in the Puhinui Peninsula".

25 H Ash closing submissions for Auckland Council para 3.10 [Environment Court document 40].

[28] Similarly, there were further submissions from AIAL (FS#2834), BARNZ (FS#3060) and the New Zealand Transport Agency (FS#1394) on the original submission by *Self Family Trust* (#3866):

- AIAL (FS#2834) and BARNZ (FS#3060):
  (a) both opposed the appellant's original submission to "Rezone "*Self Trust*" land to Mixed Housing Suburban" and sought that the submission be disallowed[26]; and
  (b) opposed the appellant's submission to "Amend the extent of the RUB to include all land along the coastline in Puhinui area within RUB" and sought that the submission be disallowed[27].
- The New Zealand Transport Agency (FS#1394) opposed the appellant's original submission seeking to amend the RUB at Puhinui to follow the coastline and rezone the land for a range of urban purposes. It sought that the whole of the submission be disallowed.

[29] We hold that the Council's RUB is within jurisdiction.

2. The environment

2.1 Overview of the landscape

[30] The land comprises an area of green space between Papatoetoe and the Auckland International Airport. It is separated from the latter by the tidal area known as Pūkaki Creek with its fringing mangroves. The land is part of a series of gentle ridges and basins sloping towards Manukau Harbour. It is dissected by the Pūkaki – Waokauri Creek system and punctuated by two extensive low craters — Pūkaki Crater and Crater Hill. The head of Pūkaki Creek is in Mangere to the north and it runs south to the Manukau Harbour. The Waokauri Creek joins the larger Pūkaki Creek from the east. Both have "... numerous tributaries that frame and partly wrap around Crater Hill"[28].

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26 Auckland International Airport Limited, p 46; Board of Airline Representatives of New Zealand Incorporated, p 63.

27 Auckland International Airport Limited, p 50; Board of Airline Representatives of New Zealand Incorporated, p 17.

28 S K Brown evidence-in-chief at 5.6 [Environment Court document 3].

[31] Above the main creeks are clay cliffs[29] up to 10 metres high, and above those the land contains a variety of uses — open pasture, market gardens, horticulture and shelter belts of pine and eucalyptus[30] — but is generally a relatively open rural[31] part of the landscape. Within the clay banks the tidal creeks are a mix of crumbling cliffs, mud banks and mangroves[32].

[32] It is difficult to see the area containing the two sites as a whole except from the air. From the ground the area lacks "visual coherence"[33]. As described, the area contains two volcanic features — Crater Hill and the Pūkaki Crater. While neither is unmodified, Crater Hill and Pūkaki Lagoon are identified[34] in the Auckland Unitary Plan (Operative in Part) as being the "two best remaining" examples of explosion craters and tuff rings within Auckland's former Manukau City area.

[33] The landscape architect called by the Council, Mr S K Brown, observed of Crater Hill and Pūkaki Crater that[35]:

> ... both cones retain a strong sense of connection with the open space of the adjoining Manukau Memorial Gardens, Colin Dale Park and Puhinui Reserve (formerly Thurlows Farm) — 'glued together' visually by the residual farmland either side of Puhinui Road.

That state is unlikely to continue. The land and its adjacent creeks are going to appear more isolated in an area of urban and light industrial development in the future because the land between Puhinui Road (SH8 and 20B between Manurewa and the Airport) and Waokauri Creek was brought within the RUB and rezoned for light industrial development and housing by the IHP as shown on the Puhinui Precinct Plan. Apart from their tidal connection under the SH bridge to the Papakura Channel and the wider Manukau Harbour, Pūkaki Peninsula and Crater Hill will largely, but not completely, lose their remaining connections to the non-urbanised world regardless of the outcome of this proceeding.

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29 The presence of these clay cliffs mean that sea-level rise as a result of climate change is not an issue in this proceeding.

30 S K Brown evidence-in-chief at 7.1 [Environment Court document 3].

31 S K Brown evidence-in-chief at 4.6 [Environment Court document 3].

32 S K Brown evidence-in-chief at 4.7 [Environment Court document 3].

33 S K Brown evidence-in-chief at 3.9 [Environment Court document 3].

34 S K Brown evidence-in-chief at 5.7 and Annexure 12 [Environment Court document 3].

35 S K Brown evidence-in-chief at 5.6 [Environment Court document 3].

2.2 The coastal environment

[34] It is common ground[36] that the extent of the coastal environment is as shown on the map in Mr Brown's evidence-in-chief[37]. This shows that the Pūkaki Lagoon within Pūkaki Crater is inside the coastal environment but the crater lake of Crater Hill is excluded. Conversely the external slopes of Pūkaki Crater are not within the coastal environment, but those of Crater Hill are. We note that this differs from the AUP which includes the crater of Crater Hill but excludes Pūkaki Lagoon). The reason for Mr Brown's position is that Pūkaki Lagoon is now tidal (again) and contains "re-emerging, brackish water wetlands"[38]. In contrast, Crater Hill is a freshwater system[39] without direct tidal influences. We find that it is correct in any event and proceed on that basis following the same course as the Environment Court in *Chance Bay Marine Farms Ltd v Marlborough District Council*[40] (followed in *Kaupokonui Beach v South Taranaki District Council*[41]). That approach was approved by the High Court on appeal in *Chance Bay Marine Farms Ltd v Marlborough District Council*[42].

[35] We annex as Attachment "D" a copy of Mr Brown's map of the coastal environment.

2.3 The Māori cultural landscape

[36] There is a strong Mana Whenua, specifically Te Ākitai Waiohua, connection to the landscape[43] containing the sites. In Māori mythology the volcanic craters of South Auckland are the footprints of Mataoho. Mr WAH Kapea, the cultural expert called by the Self family, acknowledged that in respect of the Pūkaki Crater (immediately north-east of the eponymous peninsula) and then stated:

> If we now turn our attention to Ngā Kapua Kohuroa [Crater Hill] we see a similar footprint or crater and the shading captures the indentation of the footprint of Mataoho up to the rim and

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36 Landscape JWS section 1.
37 S K Brown evidence-in-chief at 5.13 [Environment Court document 3].
38 S K Brown evidence-in-chief at 5.11(b) [Environment Court document 3].
39 S K Brown evidence-in-chief at 5.1 [Environment Court document 3].
40 *Chance Bay Marine Farms Ltd v Marlborough District Council* [2000] NZRMA 3 (NZEnvC) at [159].
41 *Kaupokonui Beach v South Taranaki District Council* (NZEnvC) W030/2008 at [41].
42 *Chance Bay Farms Ltd v Marlborough District Council* AP 210/99 (NZHC) 15 March 2000, at [27].
43 S K Brown evidence-in-chief at 4.5 [Environment Court document 3].

> that's consistent with what you see with Pukaki. The **footprint indentation** of **Mataoho is significant** and the Self family members, as I did during the cultural caucusing [accept] that position taken by Te Ākitai Waiohua.[44]

[37] Most of the area on and around Pūkaki Crater and Crater Hill and the associated coastline was and to an extent remains the focus for habitation, gardening and food gathering by Te Ākitai. In addition, Crater Hill is closely linked to both the historic portage routes from the Tamaki River to the Manukau Harbour, especially the Te Karetu Portage running down the northern arm of Waokauri Creek. This portage route has long been recognised in post-European Aotearoa by the fact that Portage Road — one end of which is at Crater Hill — is named after the Māori route.

[38] We find that the volcanoes of Ngā Kapua Kohuora (Crater Hill) and Pūkaki Crater — physically connected to Pūkaki Marae via the Pūkaki Peninsula, Waokauri Creek and other coastal margins — lie at the centre of a "cultural landscape"[45] of significance to Te Ākitai Waiohua. At the heart of that area is a Māori Reservation in Pūkaki-Waokauri under the Te Ture Whenua Act 1993. That is reserved for the exclusive use of the Pūkaki Marae as a landing place, catchment area, bathing place and a place of historic spiritual and cultural significance[46].

[39] Chapter I432 of the AUP[47] states:

> **Mana Whenua cultural landscape**
>
> The Puhinui peninsula reveals a complex but unique cultural ecosystem of inter-related settlements, travel routes, and fishing, gardening and food and resource gathering areas all closely associated with a series of prominent natural features and waterways that together form an integral part of the stories, genealogy, mythology and history of Te Ākitai Waiohua.
>
> The Puhinui peninsula is notable for its continued occupation by Te Ākitai Waiohua since pre-European times due to its proximity and access to the coast (Manukau Harbour and its tributaries) for collecting kaimoana, fertile soils for food growing, and maunga for defence purposes. Puhinui is inextricably linked to the history, stories, whakapapa and mythology of Te Ākitai Waiohua. Te Ākitai Waiohua have a strong spiritual (Taha wairua) association with Puhinui which gives its people a sense of meaning and purpose.

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44 W A H Kapea, evidence, para 6.4 [Environment Court document 30].
45 We comment on the use of this terminology later.
46 AUP, 419 Purpose.
47 The first letter of the Chapter is a capital I, not the number 1.

[40] The main features of the Te Ākitai cultural landscape are shown on the Council's Puhinui Precinct Plan 1, a copy of which is attached to these Reasons as "E". Specific features of cultural significance on the Pūkaki Peninsula are described later in these Reasons.

[41] More recently the sites have been changed by the current owners as described earlier and detailed next.

2.4 The soils and their recent use

[42] It is common ground that almost all of the Pūkaki Peninsula is elite or prime soil. The areas of elite and prime soil are 78.3 hectares and 9.4 hectares respectively, giving a total of 87.7 hectares or 86.7% of Pūkaki Peninsula[48]. The soil experts, Dr D L Hicks and Dr P Singleton, agreed that "elite soils" are uncommon in New Zealand: they comprise only 5% of New Zealand soils. They have a unique range of soil properties that make them versatile for a range of uses and the elite soils mapped on the site have these features[49].

[43] Most areas of elite and prime soil on Pūkaki Peninsula have been in continuous market gardening for decades. They are similar to elite and prime soils used for market gardens and orchards elsewhere in the Auckland region[50]. Mr and Mrs Gock have worked on their land since the early 1950s, a history of persistent hard work that few emulate. Their success is shown by the expansion of their land as described by their planner Mr B W Putt.

[44] Mr S J Ford, the agricultural economist called for the Council, and Ms L G Hawes, the horticultural consultant called by Mr and Mrs Gock, agreed that "in general, the soils are suitable and likely to be commercially successful for shallow rooting (e.g. salad greens; annual vegetables — planted once or more frequently per year; strawberries) and root vegetable crops (with appropriate soil management)[51].

[45] The Self family has owned Crater Hill for generations. Its family homestead is on

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48 D L Hicks, evidence-in-chief, para 7.3 [Environment Court document 5].

49 Joint Witness Statement for Soils and Agricultural Economics at Pūkaki Peninsula, dated 19 April 2017, para 4 – attachment G to D L Hicks evidence-in-chief [Environment Court document 51].

50 D L Hicks, evidence-in-chief, para 8.6 [Environment Court document 5].

51 Joint Witness Statement for Soils and Agricultural Economics at Pūkaki Peninsula, dated 19 April 2017, para 9.

the eastern side of SH20, now cut off from the rest of the farm by that four-lane highway, so that the only access is via the Portage Road overbridge. The Self family leased a scoria cone inside the eastern face of Crater Hill to a quarrying company for many years. The core and adjacent scoriaceous rock has now been removed and the Self family is now using the quarry site for clean waste disposal. The rest of Crater Hill has been used for raising cattle and some horticulture.

[46] Dr Hicks said that[52] approximately half or a little less of Crater Hill (other than the lake) is elite or prime soil.

[47] We describe the sites in more detail in Parts B and C of these Reasons respectively.

2.5 Airport noise restrictions

[48] Most of Pūkaki Peninsula and a part of Crater Hill are subject to airport noise. This noise derives chiefly from aircraft landing and taking off, but also from engine testing. Various overlays — we explain their place in the planning context later — have been identified in the AUP which show noise contours known as the:

- Moderate Noise Management Area ("MANA")
- High Aircraft Noise Area ("HANA")
- Engine noise testing area (the area within the 57 dBLdn contour).

[49] Pūkaki Peninsula is affected by the Airport Noise Overlay in relation to the MANA associated with the flight path of the proposed northern runway, and also by the HANA. Much of the peninsula is also affected by the airport's 57 dBLdn engine testing noise area[53].

[50] An Airport Noise Overlay affects a small portion (approximately 2.4 hectares) of Crater Hill at the north-western edge of the site being in the MANA.

[51] All relevant overlays in the AUP are shown on map "F" attached[54].

52 Transcript p 21.
53 C A Trenouth evidence-in-chief at 5.14 [Environment Court document 13].
54 C A Trenouth evidence-in-chief at 5.14 [Environment Court document 13].

3. The relevant statutory instruments

3.1 The New Zealand Coastal Policy Statement

[52] Since much of the land is within the coastal environment the NZCPS appears to be relevant.

[53] Objectives 1, 2, 3 and 6 of the NZCPS are the provisions most relevant to this appeal. Objectives 1 and 2 seek to safeguard the integrity of the coastal environment and preserve its natural character. Objective 3 seeks recognition of the role of tangata whenua as kaitiaki and provides for tangata whenua involvement in the management of the coastal environment. Objective 6 provides for use and development within the coastal environment to enable people and communities to provide for their social, economic, cultural and environmental wellbeing. As the planner called by the Council, Ms C A Trenouth, observed[55] there are both enabling and protection themes in the NZCPS. Both themes are implemented by policies.

[54] Policy 1 of the NZCPS establishes the extent and characteristics of the coastal environment by including the coastal marine area and areas where coastal processes, influences or qualities are significant, including tidal estuaries, coastal wetlands and the margins of these together with elements and features that contribute to the natural character, landscape, visual qualities or amenity values.

[55] Policy 2 of the NZCPS elaborates on how to take into account the principles of the Treaty of Waitangi in the coastal environment in accordance with section 8 of the Act. Among other things, policy 2 requires recognition of the traditional and contemporary relationship that Tangata Whenua have with the coastal environment[56], incorporation of mātauranga Māori in plans[57], and recognition of the importance of Māori cultural and heritage values[58].

[56] The enabling theme of the NZCPS is reflected in policy 6 which states (relevantly):

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55 C A Trenouth evidence-in-chief at 4.6 [Environment Court document 11].
56 NZCPS policy 2(a).
57 NZCPS policy 2(c).
58 NZCPS policy 2(g).

Policy 6 Activities in the coastal environment

(1) In relation to the coastal environment:

...

(b) consider the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment;

(c) encourage the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement and urban growth;

...

(h) consider how adverse visual impacts of development can be avoided in areas sensitive to such effects, such as headlands and prominent ridgelines, and as far as practicable and reasonable apply controls or conditions to avoid those effects;

(i) set back development from the coastal marine area and other water bodies, where practicable and reasonable, to protect the natural character, open space, public access and amenity values of the coastal environment; and

(j) where appropriate, buffer areas and sites of significant indigenous biological diversity or historic heritage value.

Sub-policy (2) is not relevant because it relates to activities in the coastal marine area.

[57] Policy 6 enables development that is appropriate having regard to (amongst other things which are less relevant):

- avoiding visual impacts in sensitive areas[59];
- setting back development from the coastal marine area[60]; and
- providing buffer areas for sites of significant indigenous biological diversity or historic heritage value[61].

Later, more specific policies give further guidance as to how to achieve that.

[58] Policies 11, 13, 15, 16 and 17 all seek to protect or preserve values of the coastal environment. Policies 13, 15 and 17 are the most relevant policies for this appeal as they relate respectively to the protection of natural character, ONFs and historic heritage of the coastal environment.

[59] The first relevant policy, policy 13(1)(b), is:

59 NZCPS policy 6(1)(h).
60 NZCPS policy 6(1)(i).
61 NZCPS policy 6(1)(j).

> To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:
>
> ...
>
> b. avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment.

It is common ground that the land is not of outstanding natural character and so policy 13(a) does not apply.

[60] However, Crater Hill is recognised as an outstanding natural feature in the AUP. That means policy 15 is relevant. It states (relevantly):

> **Policy 15 Natural features and landscapes**
>
> To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:
>
> (a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and
>
> (b) avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment;
>
> including by:
>
> (c) identifying and assessing the natural features and natural landscapes of the coastal environment of the region or district, at minimum by land typing, soil characterisation and landscape characterisation and having regard to:
>
> (i) natural science factors, including geological, topographical, ecological and dynamic components;
>
> (ii) the presence of water including in seas, lakes, rivers and streams;
>
> (iii) legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;
>
> (iv) aesthetic values including memorability and naturalness;
>
> (v) vegetation (native and exotic);
>
> (vi) transient values, including presence of wildlife or other values at certain times of the day or year;
>
> (vii) whether the values are shared and recognised;
>
> (viii) cultural and spiritual values for tangata whenua, identified by working, as far as practicable, in accordance with tikanga Māori, including their expression as cultural landscapes and features;
>
> (ix) historical and heritage associations; and
>
> (x) wild or scenic values;
>
> (d) ensuring that regional policy statements, and plans, map or otherwise identify areas where the protection of natural features and natural landscapes requires objectives,

policies and rules; and

(e) including the objectives, policies and rules required by (d) in plans.

We note that the NZCPS recognises the concept of "cultural landscapes" in sub-para (c)(viii).

[61] Policy 15 states how section 6(a) RMA is to be achieved. The introductory words of policy 15 abbreviate the equivalent words in section 6's introduction and in section 6(a) RMA. The policy then relevantly states that:

- adverse effects on outstanding natural features in the coastal environment are to be avoided; and
- significant adverse effects on other natural features are to be avoided, and other adverse effects are to be avoided, remedied or mitigated.

The methods by which local authorities are to implement those policies is ultimately left open, but should include the methods identified in policies (c) to (e) of policy 15. "Avoid" in policy 15 NZCPS " ... has its ordinary meaning of "not allow" or "prevent the occurrence of"[62].

[62] The relationship between the earlier policies in the NZCPS and the avoidance policies 13(a) and 15(a) has been considered in two important and authoritative decisions. The first is *King Salmon*[63]. The second is the more recent decision of the Court of Appeal in *Man O'War Station Ltd v Auckland Council*[64] *("Man O'War")* which, while it involved outstanding natural landscape and not ONF issues, is still relevant to this proceeding. In *Man O'War*, Cooper J, giving the decision of the Court of Appeal stated[65] in relation to *King Salmon*:

> The [Supreme] Court observed that the scope of the word "inappropriate", used in section 6(a) and (b) of the Act, is heavily affected by context. It said:
>
> > *[101] We consider that where the term "inappropriate" is used in the context of protecting areas from inappropriate subdivision, use or development, the natural meaning is that "inappropriateness" should be assessed by reference to what it is*

62 *King Salmon* above n 22 at [62] and then, more definitively at [96].
63 *King Salmon* above n 22.
64 *Man O'War Station v Auckland Council* [2017] NZCA 24, [2017] NZRMA 121, (2017) 19 ELRNZ 662.
65 *Man O'War Station* at [51] and [52].

that is sought to be protected.

> Consequently, in the particular context of section 6(b) of the Act, a planning instrument that provided that *any* subdivision, use or development adversely affecting an area of outstanding natural attributes is inappropriate, would be consistent with the provision.

[63] The Court of Appeal in *Man O'War*[66] continued by referring to the following two further passages from *King Salmon*:

> ... the standard for inappropriateness relates back to the natural character and other attributes that are to be preserved or protected ... . The word "inappropriate" in policies 13(1)(a) and (b) and 15(a) and (b) of the NZCPS bears the same meaning.

and[67]:

> ... the effect of Policy 13(1)(a) is that there is a policy to preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development *by avoiding the adverse effects on natural character in areas of the coastal environment with outstanding natural character.* The italicised words indicate the meaning to be given to "inappropriate" in the context of Policy 13.

[64] The Court of Appeal summarised this as[68]: "In the result, inappropriate is to be interpreted in section 6(a) and (b) against the 'backdrop of what is sought to be protected or preserved'[69]". It is clear that context is very important in determining what activities might be appropriate or inappropriate so we will take care in establishing the relevant context of each policy in the relevant instruments.

[65] As is implicitly acknowledged by those authorities, what is omitted from policy 15 is any express reference to whether subdivision, use, and development is appropriate. Rather, it does so implicitly in this way:

(1) if there is an outstanding natural feature (or ONL) in the coastal environment then any adverse effects are inappropriate and therefore they should be avoided;

(2) if there are "significant" adverse effects on any other feature they too are

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66 *Man O'War Station* at [52] to [53].

67 *King Salmon* above n 22 at [102].

68 *Man O'War Station* above n 64 at [53].

69 *King Salmon* above n 22 at [105].

to be avoided; and

(3) other adverse effects are to be avoided, remedied or mitigated.

In relation to (2) – the other category of features in the coastal environment – the value-laden word 'significant' has been substituted for the equally value-laden original "inappropriate" so to that extent the NZCPS is not a large clarification of section 6(a) RMA. However, the first and, possibly, the third category makes the task of local authorities easier by giving clearer policy guidelines in those situations.

[66] In *King Salmon*[70] Arnold J, for the majority, stated the correct approach to preparing a plan under the RMA as being:

> [129] When dealing with a plan change application, the decision-maker must first identify those policies that are relevant, paying careful attention to the way in which they are expressed. Those expressed in more directive terms will carry greater weight than those expressed in less directive terms. Moreover, it may be that a policy is stated in such directive terms that the decision-maker has no option but to implement it. So, "avoid" is a stronger direction than "take account of". That said however, we accept that there may be instances where particular policies in the NZCPS "pull in different directions". But we consider that this is likely to occur infrequently, given the way that the various policies are expressed and the conclusions that can be drawn from those differences in wording. It may be that an apparent conflict between particular policies will dissolve if close attention is paid to the way in which the policies are expressed.
>
> [130] Only if the conflict remains after this analysis has been undertaken is there any justification for reaching a determination which has one policy prevailing over another. The area of conflict should be kept as narrow as possible. ... As we have said, s5 should not be treated as the primary operative decision-making provision.

[67] While *King Salmon* was about a plan change, rather than a plan we consider, the same general approach applies, so we respectfully follow the approach of the Supreme Court in. Provisionally we do not see any conflict between policies 6 and 15 of the NZCPS. Rather, policy 15(a) and (b) give directions on how to avoid visual impacts in sensitive areas as required by policy 6(1)(h). We look at this issue more closely in part D of these Reasons.

[68] Ms Trenouth wrote that policy 17 (historic heritage identification and protection) is relevant as follows[71]:

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70 *King Salmon* above n 22 at [129].

71 C A Trenouth evidence-in-chief at 7.8 [Environment Court document 11].

> ... although this policy requires protection from inappropriate subdivision, use, and development, it does this by identification and integrated management through the statutory planning documents, and does not expressly require adverse effects to be avoided in the way that Policy 13 and 15 do.

3.2 The National Policy Statement for Urban Development Capacity

[69] The NPSUDC came into effect on 1 December 2016, after the Council issued its decision on the RUB for this area. It states that well-functioning urban environments are of national importance, and gives direction on how to respond to population growth in order to achieve the sustainable management purpose of the Act. The NPSUDC is focused on planning decisions made in relation to development capacity and infrastructure provision to meet demand for housing and business land while recognising that urban environments will develop and change to accommodate growth.

[70] Auckland is identified in the NPSUDC as being a 'high-growth urban area'. Consequently, all the objectives and policies of the NPSUDC apply. We note that not all of the policies took effect from 1 December 2016. A number of policies will take effect later to give councils time to prepare the relevant assessments and documentation required.

[71] The objectives are:

> The following objectives apply to all decision-makers when making planning decisions that affect an urban environment.
>
> ***Objective Group A – Outcomes for planning decisions***
>
> OA1: Effective and efficient urban environments that enable people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing.
>
> OA2: Urban environments that have sufficient opportunities for the development of housing and business land to meet demand, and which provide choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate businesses.
>
> OA3: Urban environments that, over time, develop and change in response to the changing needs of people and communities and future generations.
>
> ***Objective Group B – Evidence and monitoring to support planning decisions***
>
> OB1: A robustly developed, comprehensive and frequently updated evidence base to inform

planning decisions in urban environments.

Objective Group C – Responsive planning

OC1: Planning decisions, practices and methods that enable urban development which provides for the social, economic, cultural and environmental wellbeing of people and communities and future generations in the short, medium and long-term.

OC2: Local authorities adapt and respond to evidence about urban development, market activity and the social, economic, cultural and environmental wellbeing of people and communities and future generations, in a timely way.

Objective Group D – Coordinated planning evidence and decision-making

OD1: Urban environments where land use, development, development infrastructure and other infrastructure are integrated with each other.

OD2: Coordinated and aligned planning decisions within and across local authority boundaries.

[underlining added]

[72] The NPSUDC contains a very useful definition of "demand" in relation to housing demand. It states:

Demand means:

In relation to housing, the demand for dwellings in an urban environment in the short, medium and long-term, including:

a) the total number of dwellings required to meet projected household growth and projected visitor accommodation growth;

b) demand for different types of dwellings;

c) the demand for different locations within the urban environment; and

d) the demand for different price points

recognising that people will trade off (b), (c) and (d) to meet their own needs and preferences.

That identifies at least some of the multivarious facets of demand, so that a "one-size-fits-all" approach cannot be taken to managing the supply of land for housing.

[73] Policy PA1 requires that development capacity must be:

- feasible, zoned and serviced with development infrastructure in the short term (3 years) and medium term (10 years); and
- feasible and identified in relevant plans and strategies in the long term (30 years).

[74] Policy PA3 requires that any planning decisions that affect development capacity have particular regard to:

- promoting efficient use of urban land and development infrastructure; and
- limiting adverse impacts on the competitive operation of land and development markets.

[75] Policy PA4 requires the benefits of urban development to be taken into account "... with respect to the ability for people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing"[72].

[76] Also relevant is the requirement[73] to assess the benefits and costs at a national, inter-regional, regional and district scale, as well as local effects.

[77] Policies PC1 to PC4 require the consideration of feasible development capacity and the need to identify and respond to any shortages in the short, medium and long term by providing further development capacity and enabling development by considering all practicable options available.

[78] In the opinion[74] of Ms Trenouth:

> The NPSUDC elevates the significance of ensuring that sufficient feasible development capacity is provided for in the district plans of high growth urban areas, for the medium term. However, this is not at the expense of other values to people and communities, and the requirement to have regard to the efficient use of urban land and take into account the benefits and costs still remain. Therefore, the NPSUDC seeks to enable people and communities and future generations to provide for their social, economic, cultural and environment wellbeing including the appropriate management of natural and physical resources. The NPSUDC recognises the importance of ensuring sufficient development capacity is maintained through planning decisions, but it does not override the sustainable management purpose of the Act that includes protection of natural and physical resources.

We accept that summary of how the NPSUDC applies to the land.

3.3 Introducing the AUP and its regional policy statement

[79] The AUP became operative (in part) on 29 September 2016. The AUP as a whole appears to be a virtual document. The Council was reluctant for reasons of expense to

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72 Policy PA4(a) [NPSUDC p 11].
73 Policy PA4(b) [NPSUDC p 11].
74 C A Trenouth evidence-in-chief at 9.2 [Environment Court document 11].

produce hard copies of the whole AUP for the court. Instead, copies of what the parties agreed were relevant parts were produced in two common bundles of documents. We understand the Council's wish to keep copying costs down, but its approach means that it is very difficult for anyone (not involved with the writing of the AUP) to get a real sense of the architecture of the plan. We were also supplied with iPads containing PDF version of the sundry components of the AUP prior to their resolution by appeals.

[80] The AUP combines[75] the regional policy statement ("the RPS" but referred to in lower case in the AUP), proposed regional coastal plan ("rcp"), regional plan ("rp") and district plan ("dp") into one "unitary" plan. The AUP is divided into 14 chapters:

Chapter A	Introduction
Chapter B	Regional policy statement
Chapter C	General rules
Chapter D	Overlays
Chapter E	Auckland-wide
Chapter F	Coastal
Chapter G	Rural urban boundary
Chapter H	Zones
Chapter I	Precincts
Chapter J	Definitions
Chapter K	Designations
Chapter L	Schedules
Chapter M	Appendices
Chapter N	Glossary of Māori terms.

[81] Chapter A introduces the AUP. It explains that the AUP uses six types of plan "provisions"[76] by which it appears to mean methods including rules and maps and may mean policies. They are:

(1) general rules[77] (mainly in Chapter C of the AUP);

(2) overlays[78] (Chapter D AUP) – which we elaborate on shortly;

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75 Under section 80 RMA.

76 AUP, A1.6 Plan Provisions (p A6).

77 AUP, A1.6.1.

78 AUP, A1.6.2.

(3) Auckland-wide provisions[79] (Chapter E AUP);

(4) Zones[80] (Chapters F and H);

(5) Precincts[81] (Chapter I);

(6) Standards[82] (throughout Chapters D, E, F, H and I).

[82] After Chapter B (the RPS), which contains the objectives and policies required of a regional policy statement, most of the chapters provide objectives and policies and regional and district rules on particular resource management issues or areas. The provisions are always noted with "rp" or "rcp" or "dp" or two of those. In other words an objective, policy or rules can be both a regional plan rule and a district plan rule. This is further complicated by the fact that as at the date of the hearing the rcp was not yet operative because it had not yet been approved by the Minister of Conservation.

[83] Chapter D introduces "overlays" as shown on the AUP's maps. These include zone and Auckland-wide standards such as the "Height Variation Control" or the "Subdivision Variation Control".

[84] There are also area-specific overlays. A number are relevant to the land in this proceeding. They are the:

- Outstanding Natural Features ("ONF") Overlay;
- Significant Ecological Areas ("SEA") Overlay;
- Airport Noise Overlays (already discussed);
- Wetland Management Areas Overlay;
- High-Use Aquifer Management Areas Overlay; and
- Sites of Significance to Mana Whenua Overlay.

We have already attached as "F" a map of the zoning and overlays affecting the land.

[85] The land is also in the Puhinui Precinct as shown on attached plan "G" being the AUP's "Puhinui: Precinct Plan 5 – sub-precincts". It will be seen that the two sites together comprise sub-precinct H.

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79 AUP, A1.6.3.
80 AUP, A1.6.4.
81 AUP, A1.6.5.
82 AUP, A1.6.6.

[86] The AUP explains the concept of "precincts" as follows[83]:

> **A1.6.5 Precincts**
> Precincts enable local differences to be recognised by providing detailed place-based provisions which can vary the outcomes sought by the zone or Auckland-wide provisions and can be more restrictive or more enabling. In certain limited circumstances the rules in a precinct vary the controls of an overlay, either by being more restrictive or more enabling. However, the general approach is that overlays take precedence over a precinct.

[87] We now turn to identify the relevant policies.

3.4 Urban growth and the RUB under the RPS (Chapter B2)

[88] The RPS provisions relevant to this appeal identify the factors to be considered in determining the location of the RUB, and consequential rural or urban zoning. The first set are in sub-Chapter B2 under the heading "B2 Urban growth and form".

The objectives

[89] There are five objectives[84]:

(1) "a quality compact urban form" that enables seven general social, cultural and environmental desiderata;
(2) focusing of urban growth primarily within the 2016 metropolitan area;
(3) provision of sufficient land and development capacity to accommodate growth;
(4) containment of urbanisation with the RUB and rural and coastal towns and villages;
(5) integration of development within the RUB (and towns and villages) with infrastructure.

[90] These objectives are vague and difficult to reconcile with the reality of Auckland's spread and multi-nodal character. Nor do they directly address one of Auckland's major

83 AUP, A1.6.5 Precincts.
84 AUP, Objective B2.2.1.

resource management issues: the notorious[85]congestion on its roads. The answer to this last point could potentially be that congestion issues are answered in sub-chapter B3 (infrastructure, transport and energy) but as we shall see, they are not (directly).

[91] The objective of "a quality compact urban form" is particularly unclear given the profusion of urban nodes or "centres" in the city. For example within 10 kilometres of the land in this proceeding there are important nodes at the Auckland International Airport and at Manukau City. Read in the context of the AUP as a whole, the objective should probably be read as "Quality compact urban form around the existing (as at 2016) hierarchy of centres (city, metropolitan, and towns". That reading corresponds to the specific "Quality compact urban form" subheading[86] before policy B2.2.2(4).

[92] In effect objective B2.2.1(4) directs that urbanisation is to be contained within the RUB (or within towns and villages outside the RUB) and objective (3) dictates that sufficient land and development capacity should be provided to support expected growth in the quantity of houses demanded.

Policy B2.2.2(1) and (2)

[93] The most relevant policies are in B2.2.2 ("Development capacity and supply of land for urban development"[87]). To deliver "sufficient development capacity", policy B2.2.2(1) requires a minimum of seven years appropriately zoned land to be included within the RUB at any one time to ensure land supply is maintained to meet growth in the quantity of land demanded.

[94] Policy B2.2.2(2) then establishes the criteria to be considered when determining the location or relocation of the RUB. It reads:

> (2) Ensure the location or any relocation of the Rural Urban Boundary identifies land suitable for urbanisation in locations that:
>
> (a) promote the achievement of a quality compact urban form;
>
> (b) enable the efficient supply of land for residential, commercial and industrial activities and social facilities;
>
> (c) integrate land use and transport supporting a range of transport modes;

85 In a legal sense (and probably in a colloquial sense too).

86 With the indefinite article dropped.

87 As amended by consent order dated 23 June 2017 in ENV-2016-AKL-000214: *Todd Property Group v Auckland Council*.

(d) support the efficient provision of infrastructure;

(e) provide choices that meet the needs of people and communities for a range of housing types and working environments;

(f) follow the structure plan guidelines as set out in Appendix 1;

while:

(g) protecting natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage and special character;

(h) protecting the Waitākere Ranges Heritage Area and its heritage features;

(i). ensuring that significant adverse effects from urban development on receiving waters in relation to natural resource and Mana Whenua values are avoided, remedied or mitigated;

(j) avoiding elite soils and avoiding where practicable prime soils which are significant for their ability to sustain food production.

(k) avoiding mineral resources that are commercially viable;

(l) avoiding areas with significant natural hazard risks and where practicable avoiding areas prone to natural hazards including coastal hazards and flooding; and

(m) aligning the Rural Urban Boundary with:

(i) strong natural boundaries such as the coastal edge, rivers, natural catchments or watersheds, and prominent ridgelines; or

(ii) where strong natural boundaries are not present, then other natural elements such as streams, wetlands, identified outstanding natural landscapes or features or significant ecological areas, or human elements such as property boundaries, open space, road or rail boundaries, electricity transmission corridors or airport flight paths.

[95] The first part of the policy establishes that the purpose of the RUB is to identify land that is "suitable for urbanisation". The policy then lists a range of criteria to be considered when determining whether the particular land is suitable for urbanisation. The list includes a requirement to follow the structure plan guidelines as well as to ensure adverse effects on natural and physical resources are avoided. Ms Trenouth explained the policy as follows[88]:

> ... The criteria are set out in two parts. The first group of criteria (a) to (f) are more general in terms of determining whether land is suitable for urbanisation. The second group of criteria (g) to (m), which must be met at the same time as the first group of criteria, are focused on protecting the existing environment (particularly those that are scheduled in the AUP) and avoiding adverse effects. There is no hierarchy between the criteria, instead each criterion must be met when relocating the RUB. Therefore, a proposal to relocate the RUB could meet criteria (a) through to (f) but if it does not also achieve each of the directive

88 C A Trenouth evidence-in-chief at 10.30 [Environment Court document 11].

> criteria (g) to (m) then land could not be considered suitable for urbanisation in accordance with the policy.

[96] In this case all the criteria are relevant to the RUB location on the land except for criteria (h), (k), and (l)[89] because the subject area is not within the Waitakere Ranges Heritage Area; the commercial viability of the quarry at Ngā Kapua Kohuora (Crater Hill) is no longer relevant because it has been decommissioned; and no significant natural hazards are identified in the subject area.

[97] There was some disagreement about how to apply three parts of policy B2.2.2(2): paragraphs (f), (j) and (m).

Following the structure plan guidelines (B2.2.2(2)(f))

[98] Policy B2.2.2(2)(f) requires proposals to relocate the RUB to follow the structure plan guidelines in Appendix 1 of the AUP. The structure plan guidelines are therefore an RPS provision.

[99] The details of Appendix 1 are given below, but for present purposes we adopt Ms Trenouth's description[90] of structure planning as:

> ... the process undertaken to analyse an area to determine the appropriate urban form and structure, including land uses, location of infrastructure, and integration and management of effects on the environment. The structure planning guidelines ensure a collaborative process with multiple parties including landowners and key stakeholders such as Mana Whenua to identify a high level plan that guides future development including the preparation of a plan change to relocate the RUB.

[100] The disagreement over policy B2.2.2(2)(f) is about when the structure plan process should be used. On the view taken by Mr Putt as an expert witness for the Self family and by Mr Webb as counsel for Mr and Mrs Gock, it only needs to be considered if we decide the RUB should be moved. However, that rather overlooks that rezoning of land within the RUB is the subject of policy B2.2.2(7) which also requires following the structure plan guidelines. Thus it is clear that those guidelines are relevant to location of the RUB. Ms Trenouth explained the rationale in cross-examination[91]:

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89 C A Trenouth evidence-in-chief at 10.28 [Environment Court document 11].
90 C A Trenouth evidence-in-chief at 10.32 [Environment Court document 11].
91 Transcript p 249.

> So when you are looking to relocate the RUB you need to think about what is the land use going to be, what sort of land use, how efficient is it going to be, does it protect the natural and physical resources, you have to do that analysis, that structure plan analysis before you relocate the RUB because you don't want to move the RUB if the answer's going to be we'll move the RUB but actually there's nothing that you can achieve in there, it's [not] going to meet those criteria. So in this example, in this situation, we've got, ... an ONF and we've heard one of the key issues is the ONF and we've heard the evidence before me today about the impacts of residential development and urbanisation on that feature. So my question would be why would you move the RUB if you're going to have such significant impacts on the environment.

[101] The relevance of that answer is increased by another consideration which is that without the inclusion of the structure plan matters the list of considerations in policy B2.2.2(2) would be incomplete in that it otherwise omits consideration of the Mana Whenua objectives and policies in sub-chapter B6 and most of the coastal environment considerations in sub-chapter B8 unless they have been "scheduled" so that policy B2.2.2(2)(g) applies.

[102] We hold that the structure plan process needs to be followed whenever location or movement of the RUB is being considered. It is therefore relevant to this proceeding.

Elite and prime soils (B2.2.2(2)(j))

[103] Paragraph (j) relating to elite and prime soils is discussed in the context of the AUP's policy B9 (Rural environment) below.

A strong natural boundary for the RUB (B2.2.2(2)(m))

[104] As for paragraph (m), Mr Webb submits that this policy has primacy such that if there is a coastal edge, the RUB must follow it. Mr Enright, for AVCS, submits that paragraph (m) simply raises a locational issue, and that "... coastal edge, rivers, ... ridgelines" are just examples of "strong natural boundaries" as shown by the introductory words "such as". He submitted that other "strong natural boundaries" such as volcanoes may be used.

[105] The wording of criterion (m) suggests it is not highly directive for these reasons. First, the words "aligning with" are less directive than "on" a natural boundary and may

mean, for example, "approximately parallel to" depending on circumstances. Second, the lists in m(i) and (ii) are not exhaustive. Finally the word "present" is imprecise as to spatial location and extent.

[106] In applying policy B2.2.2(2)(m) regard must be had to the purpose of the policy as a whole. That purpose is to ascertain whether land is suitable in general terms for urban development (at some point in the future) having regard to a long list of criteria. To see the absurdity of giving (m) an automatic binding tick for moving the RUB would make nonsense of the policy as a whole if land being considered is unsuitable on other criteria. We hold that the location of the RUB under (m) is a question of judgement in the specific context being considered in each case, informed to a considerable extent by, but not definitively directed by, the presence of a coastal edge.

Other urban growth policies (B2.2.2(3) and (4))

[107] A separate policy B2.2.2(3) about future urban zoned land reinforces the conclusions we reached about the role of structure planning when considering a change to the RUB. It is:

> (3) Enable rezoning of future urban zoned land for urbanisation following structure planning and plan change processes in accordance with Appendix 1 Structure plan guidelines.

[108] A series of policies under the heading "Quality compact urban form" follows:

> (4) Concentrate urban growth and activities within the metropolitan area 2010 (as identified in Appendix 1A), enable urban growth and activities within the Rural Urban Boundary, towns, and rural and coastal towns and villages, and avoid urbanisation outside these areas.
> (5) 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.
> (6) Identify a hierarchy of centres that supports a quality compact urban form:
> (a) at a regional level through the city centre, metropolitan centres and town centres which function as commercial, cultural and social focal points for the region or sub-regions; and
> (b) at a local level through local and neighbourhood centres that provide for a range of activities to support and serve as focal points for their local communities.

(7) Enable rezoning of land within the Rural Urban Boundary or other land zoned future urban to accommodate urban growth in ways that do all of the following:
  (a) support a quality compact urban form;
  (b) provide for a range of housing types and employment choices for the area;
  (c) integrate with the provision of infrastructure; and
  (d) follow the structure plan guidelines as set out in Appendix 1.

(8) Enable the use of land zoned future urban within the Rural Urban Boundary or other land zoned future urban for rural activities until urban zonings are applied, provided that the subdivision, use and development does not hinder or prevent the future urban use of the land.

[109] A complementary objective is provided under the heading "B2.3 A quality built environment". This seeks that subdivision, use and development will achieve all of the following:

(a) respond to the intrinsic qualities and physical characteristics of the site and area including its setting;
(b) reinforce the hierarchy of centres and corridors;
(c) contribute to a diverse mix of choice and opportunity for people and communities;
(d) maximise resource and infrastructure efficiency;
(e) are capable of adapting to changing needs; and
(f) respond and adapt to the effects of climate change.

[110] Objective (a) in that list is a reminder that when making decisions under the RPS its provisions have been particularised in the plan provisions which comprise most of the AUP, and so that is where the detailed guides for development, use and protection are initially found.

Appendix 1 of the AUP: the structure plan guidelines

[111] It will be recalled that policy B2.2.2(2)(f) requires reference to "Appendix 1". That document is a separate PDF file floating in the "cloud". Appendix 1 forms part of the regional policy statement as its first sentence confirms.

[112] The Appendix explains[92] that the RPS promotes the preparation of structure plans to support (amongst other things) "identifying greenfield land suitable for urbanisation". It adds that the level of analysis required needs to be appropriate to the type and scale of development — referring back to sub-chapter B2 of the AUP. The Appendix then lists

92 AUP, Appendix 1 para 1.2.

various "external" documents which are to be considered where appropriate. One of the documents listed is the RPS. How the RPS, which is part (Chapter B) of the AUP, can be seen as an external document escapes us. As for the other documents, we will refer to them when raised by the evidence.

[113] Paragraph 1.4 of Appendix 1 AUP states that a structure plan is to identify, investigate and address the matters listed (at length). Ms Trenouth conveniently summarised the list for us as follows[93]:

- future supply and projected demand for residential and business land to achieve an appropriate capacity to meet sub-regional growth projections in the Auckland Plan[94];
- the phases and timing for the staged release of land in coordination with infrastructure[95];
- linkages with existing urban zoned land adjoining the structure plan area through careful edge or boundary treatment[96];
- the protection, maintenance and enhancement of natural resources, particularly those that have been scheduled in the Unitary Plan and demonstrate how subdivision, use and development achieves this[97];
- the existence of natural and physical resources that have been scheduled in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage and special character[98];
- contribution to a compact urban form and the efficient use of land in conjunction with existing urban areas to give effect to the regional policy statement[99];
- recognising the values of natural heritage, Mana Whenua, natural resources, coastal, historic heritage and special character through identification of sites to be scheduled[100];
- a desirable urban form at a neighbourhood scale including pedestrian connectivity, diversity of lot sizes within blocks, provision of open spaces,

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93 C A Trenouth evidence-in-chief at 10.4 [Environment Court document 11].
94 AUP, Appendix 1, 1.4.1(1).
95 AUP, Appendix 1, 1.4.1(2),
96 AUP, Appendix 1, 1.4.1(4).
97 AUP, Appendix 1, 1.4.2(1) and (2).
98 AUP, Appendix 1, 1.4.3.
99 AUP, Appendix 1, 1.4.4(1).
100 AUP, Appendix 1, 1.4.4(2)(b).

integrated stormwater management approach[101];

- integration of land use and development with the local and strategic transport networks[102];
- the location, scale and capacity of existing and new infrastructure to serve the structure plan area[103];
- feedback from consultation with landowners, infrastructure providers, council controlled organisations and communities[104]; and
- a range of specialist documents to support the structure plan and plan change: including infrastructure assessments for stormwater, transport water and wastewater; assessments of impacts on natural and cultural values; assessment of environmental risk; and implement plans[105].

[114] We accept that summary as covering the main points while bearing in mind the level of detail that might be required depends on circumstances.

[115] We can interpolate here that all the relevant experts agree[106] that some sort of process that follows the structure planning guidelines would be useful when determining the appropriate location of the RUB. The disagreement focuses on whether such a process has in fact been adopted sufficiently robustly in these proceedings.

3.5 Other relevant provisions of the RPS

B3 Infrastructure, transport and energy

[116] This sub-chapter states as an issue, that realising Auckland's full economic potential, while maintaining the quality of life for its citizens, will require addressing "efficiency in developing, operating, maintaining and upgrading infrastructure"[107] (underlining added), amongst other things. The objective[108] is that infrastructure be

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101 AUP, Appendix !, 1.4.5.

102 AUP, Appendix 1, 1.4.6(1).

103 AUP, Appendix 1, 1.4.7(2).

104 AUP, Appendix 1, 1.4.8.

105 AUP, Appendix 1, 1.5.

106 B W Putt evidence-in-chief at 1.6 and 4.15 [Environment Court document 31]; D J Scott evidence-in-chief at 77 [Environment Court document 29A]; D J Scott evidence-in-chief at 76 [Environment Court document 29A]; G J Lawrence Transcript at p 378; C A Trenouth where she considered Self family had given insufficient information, Transcript at pp 248-253, particularly p 252.

107 Issue B3.1(1).

108 Objective B3.2.1(1).

"resilient, efficient and effective". The implementing policy merely repeats the words in the issue.

[117] The complement (and point) of providing infrastructure for transport is its use. The relevant transport objective is to have "effective, efficient and safe transport". The closest the policies come to recognising Auckland's (not mentioned) congestion issue is policy B3.3.2(5)(b) "encouraging land use development and patterns that reduce the rate of growth in demand for private vehicle trips"[109]. We received minimal (implicit) evidence on this.

[118] The repeated emphasis on the hierarchical nature of the centres and "corridors" is interesting. We would have thought that it was equally important to stress the interdependence of centres so that each can be high "quality" and compact. Once a city recognises the reality that it is multi-nodal as Auckland Council appears to be doing in the more specific provisions of the AUP, the whole concept of "compactness" becomes much more complex as Dr J D M Fairgray, the economist called by the Council, observed.

B4 Outstanding natural features

[119] Crater Hill (Ngā Kapua Kohuora) is identified as an outstanding natural feature ("ONF") in Schedule 6 of chapter L of the AUP. Consequently, the RPS objectives and policies for ONFs in sub-chapter B4 are relevant to Crater Hill. Objective B4.2.1(1) repeats section 7(b) RMA by seeking to protect ONFs from inappropriate subdivision, use and development. Objective B4.2.1(2) recognises and provides for the ancestral relationships of Tangata Whenua and their associations with ONFs. Objective B4.2.1(3) complements the first objective by referring to the need to protect and where practicable enhance the *physical* and *visual* integrity of significant volcanic features as well as their values (historic, archaeological and cultural). We consider that enhancement is a form of remediation or mitigation, when it is coupled with use or development that causes diverse effects on the ONF.

[120] The relevant implementing policies B4.2.2 (4) to (8) are to:

> ...
>
> (4) Identify and evaluate a place as an outstanding natural feature considering the

109 Policy B3.3.3.2(5) is subject to appeal: *Vernon v Auckland Council* ENV-2016-AKL-000243.

following factors:

(a) the extent to which the landform, feature or geological site contributes to the understanding of the geology or evolution of the biota in the region, New Zealand or the earth, including type localities of rock formations, minerals, and fossils;

(b) the rarity or unusual nature of the site or feature;

(c) the extent to which the feature is an outstanding representative example of the diversity of Auckland's natural landforms and geological features;

(d) the extent to which the landform, geological feature or site is part of a recognisable group of features;

(e) the extent to which the landform, geological feature or site contributes to the value of the wider landscape;

(f) the extent of community association with, or public appreciation of, the values of the feature or site;

(g) the potential value of the feature or site for public education;

(h) the potential value of the feature or site to provide additional understanding of the geological or biotic history.

(i) the state of preservation of the feature or site;

(j) the extent to which a feature or site is associated with an historically important natural event, geologically related industry, or individual involved in earth science research; and

(k) the importance of the feature or site to Mana Whenua.

(5) Include a place identified as an outstanding natural feature in Schedule 6 Outstanding Natural Features Overlay Schedule.

(6) Protect the physical and visual integrity of Auckland's outstanding natural features from inappropriate subdivision, use and development.

(7) Protect the historic, archaeological and cultural integrity of regionally significant volcanic features and their surrounds.

(8) Manage outstanding natural landscapes and outstanding natural features in an integrated manner to protect and, where practicable and appropriate, enhance their values.

[121] Policy B4.2.2 requires close analysis of the kind required by *King Salmon*[110]. Since its provisions are crucial and must be examined in the context of the proposed (competing) RUBs, we will carry that analysis out in part D of this decision.

[122] There is a further potentially important component of the AUP in relation to ONFs: the Overlay provisions in Part D10. These are specifically stated to give effect not only to the objectives and policies in B4.2 (the RPS) but also NZCPS 2010 policy 15(a) and we discuss them shortly in section 3.6 of these Reasons.

110 *King Salmon* above n 22 at [129].

B5 Built heritage and character

[123] Sub-chapter B5 has a rather misleading title "Built heritage and character". That is confusing because it is apparent from the text that it covers all aspects of human heritage including archaeological. Certainly the objectives and policies of the RPS include archaeological matters. Objective B5.2.1(1) requires protection of significant historic places from inappropriate subdivision, use and development.

[124] Mr Bartlett observed, correctly, that Crater Hill has no historic heritage status under the AUP[111]. However, Dr M L Campbell, the anthropologist called by the Council, explained[112] that consideration of heritage status of this feature was deferred because the Council simply ran out of time – there was already a backlog of legacy nominations"[113]. He also wrote that this volcano has been identified as a priority for elective evaluation"[114]. We accept that explanation as plausible given that the Council (like the IHP later) was given too short a period to complete the draft unitary plan.

[125] In any event, policies B5.2.2(1), (2), and (3) are relevant because they identify the criteria for:

- evaluating whether a place has significant historic heritage value;
- determining the extent of place, and require significant historic heritage places to be scheduled in the AUP if one or more of the factors listed in Policy B5.2.2(1) are met and the place is of considerable or outstanding overall significance to the locality or greater geographic area.

[126] In addition, Policies B5.2.2(6) and (7) in relation to the management approach require significant adverse effects to be avoided.

[127] One of the difficulties of this proceeding is that the historic heritage is largely (but not exclusively) Māori so in all that follows we bear in mind the danger of double-counting.

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111 Specifically it is not scheduled under any of:
- Appendix 4.1 (sites and places of significance to Mana Whenua;
- Appendix 14.1 Schedule of Historic Heritage Areas; or
- D17 Historic Heritage overlays.

112 M L Campbell rebuttal evidence at 6.8-6.10 [Environment Court document 8].

113 M L Campbell rebuttal evidence at 6.9.

114 M L Campbell rebuttal evidence at 6.10.

B6 Mana Whenua values

[128] The relevant RPS objectives recognise[115] the Treaty of Waitangi partnerships and participation, recognise Mana Whenua values[116] and require protection of Mana Whenua cultural heritage[117]. "Mana Whenua" is defined in section 2 of the RMA as meaning "... customary authority exercised by an iwi or hapu in an identified area". The expression is then used only once in the RMA – in the section 2 definition of "tangata whenua".

[129] There is an informative discussion of the rather problematic concept of Mana Whenua in a paper[118] by Ms C I Magallanes. She points out that the Local Government (Auckland Council) Act 2009 which established the Auckland Council was amended in 2010 to establish an advisory group, including "mana whenua groups", on (our words) Auckland Māori issues. While "mana whenua" is not defined, the relevant group is[119]:

> **mana whenua group** means an iwi or hapu that —
>
> (a) exercises historical and continuing mana whenua in an area wholly or partly located in Auckland; and
>
> (b) is 1 or more of the following in Auckland:
>
> (i) a mandated iwi organisation under the Māori Fisheries Act 2004;
>
> (ii) a body that has been the subject of a settlement of the Treaty of Waitangi claims;
>
> (iii) a body that has been confirmed by the Crown as holding a mandate for the purposes of negotiating Treaty of Waitangi claims and that is currently negotiating with the Crown over the claims.

[130] Fortunately in this proceeding the parties all agree that Te Ākitai hold mana whenua regardless of who else may be able to speak for other iwi or hapu with interests in the area. We do not have to resolve any issues that are more properly the province of the Maori Land Court or the Waitangi Tribunal (which has been critical of the very concept of "mana whenua": *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands*[120]).

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115 AUP, Objective B6.2.1.

116 AUP, Objective B6.3.1.

117 AUP, Objective B6.5.1.

118 C I Magallanes "The use of tangata whenua and mana whenua in New Zealand Legislation: attempts at cultural recognition" (2011) 42 VUWLR 259. We rely on this in what follows.

119 Section 4 Local Government (Auckland Council) Act 2009.

120 *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (WAI 64 Ministry of Justice 2001) at 28-29 (adopted in *Golden Bay Marine Farmers v Tasman District Council* (NZEnvC) W19/2003, 27 March 2003 at [255].

[131] Objective B6.3.1(1) specifically recognises the need to accord "sufficient" weight to Mana Whenua values, tikanga and mātauranga Māori in resource management decisions, highlighting the relationship of Mana Whenua with natural and physical resources. No assistance is given in the objective to identifying what is "sufficient". The evidence in this case bears out that what landowners may consider very generous recognition is insufficient from the tangata whenua's point of view.

[132] Policy B6.3.2(6) is the most relevant implementing policy because it requires resource management decisions to have particular regard to potential impacts on Mana Whenua values identified as:

> (a) the holistic nature of the Mana Whenua world view;
> (b) the exercise of kaitakitanga;
> (c) mauri, particularly in relation to freshwater and coastal resources;
> (d) customary activities, including mahinga kai;
> (e) sites and areas with significant spiritual or cultural heritage value to Mana Whenua; and
> (f) any protected customary right in accordance with the Marine and Coastal Area (Takutai Moana) Act 2011.

[133] Policy B6.5.2(1) requires sites which are of significance to be protected. It does not restrict protection to those sites included in the Schedule 12 (Sites and Places of Significance to Mana Whenua). None of the land is within a Schedule 12 site. However, that does not necessarily matter given policy B6.5.2(1) and the explanation that[121]:

> For reasons such as limited investment, cultural sensitivities and mismanagement of information in the past, very little Mana Whenua cultural heritage has been scheduled despite the large number of Mana Whenua groups with strong associations to Auckland.

On the other hand, an attempt by the Independent Māori Statutory Board to have approximately 2,213 sites included in the AUP was rejected on appeal to the High Court by Wylie J on the grounds of insufficient evidence: *Independent Maori Statutory Board v Auckland Council*[122]. We will carefully consider the evidence on the impacts of the options on Mana Whenua later.

121 AUP, B6/9.

122 *Independent Maori Statutory Board v Auckland Council* [2017] NZHC 356, [2017] NZRMA 195.

[134] In that consideration we will be assisted by policy B6.5.2(2) which requires the Council to "identify and evaluate Mana Whenua cultural and heritage sites and areas" (underlining added) considering a list of six factors[123]:

> (1) Mauri ... the mauri (life force and life-supporting capacity) and mana (integrity) of the place or resource holds special significance to Mana Whenua;
> (2) Wāhi tapu ... the place or resource is a wāhi tapu of special, cultural, historic, metaphysical and or spiritual importance to Mana Whenua;
> (3) Kōrero Tūturu/historical: ... the place has special historical and cultural significance to Mana Whenua;
> (4) Rawa Tūturu/customary resources: ... the place provides important customary resources for Mana Whenua;
> Hiahiatanga Tūturu/customary needs: ... the place or resource is a repository for Mana Whenua cultural and spiritual values; and
> (5) Whakaaronui o te Wa/contemporary esteem: ... the place has special amenity, architectural or educational significance to Mana Whenua.

[135] Policy B6.5.2(7) requires Mana Whenua values and significant sites to be identified – at the time structure planning and plan change processes are undertaken – through a Māori cultural assessment in order to enable Mana Whenua values to be reflected. It is to:

> ...
> (7) Include a Māori cultural assessment in structure planning and plan change process to do all the following:
> (a) identify Mana Whenua values associated with the landscape;
> (b) identify sites, places and areas that are appropriate for inclusion in the Schedule 12 Sites and Places of Significance to Mana Whenua Schedule for their Mana Whenua cultural heritage values as part of a future plan change; and
> (c) reflect Mana Whenua values.

A cultural assessment has been provided in the evidence[124] in this case. It is unchallenged.

B7 Natural resources

[136] At least one SEA is identified on the land as already discussed in relation to the

123 The Te Reo version is omitted for brevity, we hope without offending Te Ākitai.
124 Attached to Mr N H Denny's evidence [Environment Court document 9].

existing environment. Objective B7.2.1(1) is therefore relevant because it seeks to protect areas of significant indigenous biodiversity value from the adverse effects of subdivision, use and development. Policy B7.2.2(5) is relevant because it requires adverse effects to be avoided, meaning that there should be no adverse effects in the identified SEAs.

[137] Pūkaki and Waokauri Creeks are identified[125] as areas of coastal water that have been degraded by human activities. The key policy to implementing Objective B7.4.1(2) is policy B7.4.2(6). That requires progressive improvement of water quality in areas identified to have degraded water quality by managing subdivision, use, development and discharges.

B8 Coastal environment

[138] Because a considerable part of both Pūkaki Peninsula and Crater Hill is within the coastal environment[126], RPS objectives and policies in relation to the coastal environment are relevant, including this objective[127]:

> (1) Areas of the coastal environment with outstanding and high natural character are preserved and protected from inappropriate subdivision, use and development.
> (2) Subdivision, use and development in the coastal environment are designed, located and managed to preserve the characteristics and qualities that contribute to the natural character of the coastal environment.
> (3) Where practicable, in the coastal environment areas with degraded natural character are restored or rehabilitated and areas of high and outstanding natural character are enhanced.

The planners made minimal reference to the implementing policies. We consider them in context at the end of these Reasons.

B9 Rural environment

[139] The land is currently rural and therefore the RPS provisions for the rural environment are relevant. Objectives B9.2.1(1) and (2) recognise the significance of rural areas in terms of economic productivity and food supply for Auckland and New Zealand,

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125 Figure B7.4.2.1 of the RPS.
126 See Attachment "E" (copy of S K Brown's Attachment Ex 3.1).
127 AUP, RPS Objective B8.2.1.

and seek to protect for the purpose of food supply land containing elite soils from inappropriate subdivision, use and development. The key policy is policy B9.2.2(1) which seeks to ensure that rural areas are for rural activities.

[140] A subset of the more general outcomes for rural areas are those for land with high productive potential. Objectives B9.3.1(1) and (2) seek protection of land containing elite soils, and management of land containing prime soils, for primary production. The implementing policy B9.3.2(2) encourages activities that do not depend on using land containing elite and prime soils to locate outside these areas, thereby maintaining the productive capability of rural soils with high productive potential.

[141] Generally the AUP defines land containing elite soils as land classified as Land Use Capability Class 1 (LUC1), and land containing prime soils as LUC2 and LUC3[128]. More precisely, elite soils are[129]:

- LUC1 land as mapped by the New Zealand Land Resource Inventory (NZLRI);
- other lands identified as LUC1 by more detailed site mapping;
- land with other unique location or climatic features, such as the frost-free slopes of Bombay Hill;
- Bombay clay loam;
- Patumahoe clay loam;
- Whatitiri soils.

Land containing elite soils is the most highly versatile and productive land in Auckland because it is well-drained, friable, and has well-structured soils, flat or gently undulating, and capable of continuous cultivation.

[142] Prime soils are those on land identified as land use capability classes two and three (LUC2, LUC3) with slight to moderate physical limitations for arable use. Factors contributing to this classification are readily available water, favourable climate, favourable topography, good drainage and versatile soils easily adapted to a wide range of agricultural uses.

[143] A relevant policy, already referred to, is policy B2.2.2(2)(j) which requires "avoiding elite soils and avoiding where practicable prime soils which are significant for

128 AUP, Chapter J Definitions.
129 AUP, Chapter J Definitions.

their ability to sustain food production". In its report to the Council the IHP wrote that "this is not an absolute but is in the overall context of the soil's significance for its ability to sustain food production across the values for which elite soils are protected"[130]. The IHP was implicitly interpreting the words "which are significant for their ability to sustain food production" as a qualifier attaching to both the requirement to avoid elite soils and the requirement to avoid prime soils where practicable.

[144] The Council submitted that the absence of punctuation in policy B2.2.2(2)(j) makes it unclear. However, we consider the presence of the same verb ("avoid"), twice means that the qualifier only applies to the phrase with the second verb. That is reinforced by the additional subordinate phrase "where practicable". Accordingly we hold that the IHP was incorrect and elite soils must be avoided regardless of whether or not they "are significant for their ability to sustain food production" (subject to a de minimis exception[131] as Ms Trenouth acknowledged). That interpretation is, as Ms Ash pointed out, consistent with Objectives B9.3.1(1) and (2) which respectively seek protection of land containing elite soils and management of land containing prime soils.

3.6 The proposed regional coastal plan

[145] There are "rcp" provisions scattered through the AUP, and we must always bear in mind that at present they are only proposed provisions because, so far as we know, the Minister of Conservation has not yet approved them. Accordingly, these provisions only need to be had regard to[132] as proposed provisions rather than given effect to. In any event all the relevant (proposed) rcp provisions are also "dp" provisions so we apply them automatically.

[146] Pūkaki – Waokauri Creek is one of only two areas in the region identified as a Mana Whenua Management Precinct (a "precinct" in the rcp) for the purpose of recognising and providing for the special relationship that Mana Whenua has with specific parts of the coastal marine area. That relationship is confirmed by the fact that Waokauri Creek was established as a Māori reservation under the Te Ture Whenua Act 1993 to be reserved for the exclusive use of the Pūkaki Marae as a landing place, fishing ground, catchment area, bathing place, and a place of historic spiritual and cultural

130 Common Bundle, Volume 1, Tab 1, p 88.
131 Transcript p 241.
132 Section 74(2)(a)(ii) RMA.

significance[133]. There is only one objective for the precinct. Objective I419.2(1) requires that the special relationship, (including customary use and responsibilities) which Mana Whenua have with the Pūkaki – Waokauri Creek is provided for. To implement this objective the policies seek to (in summary):

(a) maintain access between the precinct and Pūkaki Marae[134];
(b) enable the use and management of the precinct by Pūkaki Marae in accordance with tikanga Māori[135];
(c) avoid direct discharges that may have adverse effect on the values associated with Pūkaki – Waokauri Creek and use by Pūkaki Marae and the associated papakāinga[136];
(d) improve water quality such that food-gathering and swimming is possible[137]; and
(e) maintain and provide for the operational requirements of Auckland International Airport[138].

[147] The precinct has one rule, which prohibits the direct discharge of wastewater into the precinct[139].

[148] We will not need to discuss rcp provisions further except in passing.

3.7 The plan provisions in the AUP

[149] There are relatively few separate objectives and policies in the regional and district plans part of the AUP. Most relevant objectives and policies are in chapter B, being the RPS. However, there are potentially relevant objectives and policies in chapters D10, G and I and rules in chapter H (zoning).

ONF Overlays (Chapter D)

[150] Chapter D10 provides for: "10. Outstanding Natural Features Overlay and

133 AUP, I419 Purpose.
134 AUP, policy I419.3(1).
135 AUP, policy I419.3(2).
136 AUP, policy I419.3(3).
137 Ibid, policy 4.
138 Ibid, policy 5.
139 AUP, Activity Table I419.4.1 Rule(A1).

Outstanding Natural Landscapes Overlay". The background[140] states (relevantly):

> These provisions **give effect to** Policy 15(a) of the New Zealand Coastal Policy 2010, and the Regional Policy Statement objectives and policies in B4.2 Outstanding natural features and landscapes.
> The objectives and policies in this chapter apply to all activities undertaken in areas identified in the Outstanding Natural Features Overlay and Outstanding Natural Landscapes Overlay, **both above and below mean high water springs**.
> The factors in Policy B4.2.2(4) have been used to determine the features that have outstanding natural feature values. Areas with outstanding natural feature values are shown on the Plan maps and identified in Schedule 6: Outstanding Natural Features Overlay Schedule.
>
> ...
> [emphasis added]

[151] Mr Bartlett submits[141] that the announcement that "These provisions give effect to Policy 15(a)" is not under appeal in the PAUP process, and reflects the obligation in section 67(3) RMA that a Regional Plan must "give effect to" any National Policy Statement, any New Zealand Coastal Policy Statement and any Regional Policy Statement. He added that while in a resource consent context an applicant may rely upon such an assertion by the Council, in a plan making situation it is accepted as a contestable presumption. That seems to reverse the orthodox position. However, we have no need to determine whether his assertion about resource consent applications is correct, although we note it seems to fly in the face of the High Court's decision in *Davidson Family Trust v Marlborough District Council*[142]. What we do have to determine later is the weight we should give to giving effect to the NZCPS.

[152] The objectives and policies relevant to ONFs and to be considered in this proceeding are:

> **D10.2 Objectives [rcp/dp]**
>
> (1) Auckland's outstanding natural features and outstanding natural landscapes are protected from inappropriate subdivision, use, and development;
> (2) the ancestral relationships of Mana Whenua with outstanding natural features and outstanding natural landscapes are recognised and provided for;

140 AUP, Chapter D 10.1 Background.
141 Submissions in Reply 23 February 2018 [Environment Court document 34].
142 *Davidson Family Trust v Marlborough District Council* [2017] NZHC 52, [2017] NZRMA 227 at [76].

(3) where practicable the restoration and enhancement of outstanding natural features and outstanding natural landscapes, including in the Waitākere Ranges Heritage Area and the Hauraki Gulf/Te Moana-nui o Toi/Tikapa Moana, is promoted: and

(4) existing rural production activities are recognised as part of landscape values including in outstanding natural features and outstanding natural landscapes.

[153] The relevant implementing policies are:

D10.3 Policies [rcp/dp]

...

(3) Protect the physical and visual integrity of outstanding natural features, including volcanic features that are outstanding natural features, by:

(a) avoiding the adverse effects of inappropriate subdivision, use and development on the natural characteristics and qualities that contribute to an outstanding natural feature's values;

(b) ensuring that the provision for, and upgrading of, public access, recreation and infrastructure is consistent with the protection of the values of an outstanding natural feature; and

(c) avoiding adverse effects on Mana Whenua values associated with an outstanding natural feature.

(4) Protect the physical and visual integrity of outstanding natural features, while taking into account the following matters:

(a) the value of the outstanding natural feature in its wider historic heritage, cultural, landscape, natural character and amenity context;

(b) the educational, scientific, amenity, social or economic value of the outstanding natural feature;

(c) the historical, cultural and spiritual association with the outstanding natural feature held by Mana Whenua;

(d) the extent of anthropogenic changes to the natural characteristics and qualities of the outstanding natural feature;

(e) the presence or absence of structures, buildings or infrastructure;

(f) the temporary or permanent nature of any adverse effects;

(g) the physical and visual integrity and the natural processes of the location;

(h) the physical, visual and experiential values that contribute significantly to the outstanding natural feature's values;

(i) the location, scale and design of any proposed subdivision, use or development; and

(j) the functional or operational need of any proposed infrastructure to be located within the outstanding natural feature.

(5) Enable use and development that maintains or enhances the values or appreciation of an outstanding natural landscape or outstanding natural feature.

(6) Provide for appropriate rural production activities and related production structures as part of working rural and coastal landscapes in outstanding natural landscape and outstanding natural feature areas.

(7) Encourage the restoration and enhancement of outstanding natural landscapes and outstanding natural features where practical, and where this is consistent with the values of the feature or area.

[154] The differing approaches taken by the parties to these provisions raise questions as to their relationship with those in chapter B4 (which is part of the RPS which these objectives and policies are intended to give effect to). The Council and supporting parties consider these are at the core of how to manage ONFs; the Self family largely ignored them.

[155] The landscape architect for the Self family, Mr D J Scott, evaluated the effectiveness of the two options before the court under policy B4.2.2(4) rather than under policy D10.3. Similarly Mr Bartlett QC cross-examined opposing witnesses on the same basis. Despite the suggestion by the court during the hearing that Mr Bartlett might be applying the wrong policy he firmly nailed his colours to the mast in his closing submissions by quoting Mr Scott's B4.2.2(4) analysis[143] in full, and pointing out that Mr Scott was not cross-examined on this at all. The short answer to this last point may be that counsel for other parties did not need to because it was not the most relevant policy. As the Court of Appeal observed in *Man O'War*[144] the application of policies is "conceptually separate" from the initial identification of the ONL (as it was in that case).

[156] Mr Bartlett did not address the relevance of policy D10.3 in his opening or closing submissions. However, when invited by the court[145] to give further submissions on whether various provisions of the AUP including objective D10.2 give effect to the NZCPS he did not submit that the objective was irrelevant, rather that it has to be read in the context of its implementing policies D10.3 and D10.4[146]. He submits: "[D10.3(3)] is a reasonable precis of policy 15(a) NZCPS. Policy D10.3(4) including a taking into account test does not override NZCPS."

[157] We hold that the scheme of the AUP is first that the list in policy B4.2.2(4) is

143 D J Scott evidence-in-chief at para 173 [Environment Court document 29].
144 *Man O'War Station* above n 64 at [75].
145 Minute of 16 February 2018 [Environment Court document 41].
146 R E Bartlett "... Submissions in Reply" para 17 [Environment Court document 34].

principally aimed at identifying and evaluating a feature as (or not) an ONF. That exercise has of course already been carried out by the Council. Second, the question of whether and to what extent it is appropriate to develop an ONF, once identified, is principally managed under the Natural Heritage overlays, objectives and policies. The list in policy D10.3 refers to effects (adverse and beneficial) in policies 3(a) to (c), and to the need to "take into account" both a list of the status quo values [items 4(a) to (e) and (g) and (h)] as well as the counterfactual values [items (f), (i), (j)].

[158] That does not mean that Mr Scott's evidence is irrelevant: some of it does refer to matters raised by policy D10.3(3) and (4) and we will consider that evidence (sometimes implicitly at others explicitly) when we consider policy D10.3(3) and take into account D10.3(4).

[159] We also note the guidance given as to what are appropriate activities in policy D10.3(5) and (6) as referred to by Ms Trenouth[147] and the aspirations for enhancement in policy (7).

Rural Urban Boundary (Chapter G)

[160] Chapter G is very short. Because of its central importance to this proceeding we quoted it in full in section 1.5 (Matters to be considered) of these Reasons. One of the principal points of the chapter is that it contains no particularised objectives and policies of its own, but directs the Council (or on appeal the Environment Court) directly to those in the RPS (i.e. Chapter B of the AUP), thus apparently bypassing the Regional Plan and the Regional Coastal Plan and, in the latter case, the need for approval by the Minister of Conservation.

[161] We approach the AUP as a whole and in the light of our duties under sections 74 and 75 of the RMA, we hold that the scheme of the AUP when read as a whole is that a RUB is to be identified within a feedback loop involving (at least) three levels of the composite AUP.

- policy B2.2.2(2) of the RPS;
- Appendix 1 of the RPS (structure plans);

147 C A Trenouth evidence-in-chief at 6.15 [Environment Court document 11].

- Chapters D10, G and I of the dp.

[162] It is too simplistic to say that Chapters D10, G and I in the dp completely particularise the RPS so there is no need to look at the higher instrument, given the express direction that the RPS is to be considered fully when determining a RUB location. But equally we consider it is wrong to ignore the objectives and policies in the dp since first they give useful detail as to how to implement the higher order objectives and policies of the AUP; and second there seems to be reference to them in Appendix 1 of the AUP.

[163] In theory the rcp adds a fourth (intermediate) level to this but its objectives are of minimal relevance in this case.

Zones (Chapter H)

[164] Chapter H contains the specific zones. Several are relevant in this proceeding. Two zones cover Crater Hill: the Special Purpose Quarry Zone ("SPQZ") and the Rural Production Zone.

The Special Purpose Quarry Zone

[165] The objective of the SPQZ is in Chapter H28.2. It addresses three components of quarrying including exhaustion of the physical resource:

- providing for mineral extraction and appropriate compatible activities;
- avoiding, remedying or mitigating significant adverse effects; and
- rehabilitating quarries with cleanfills and managed fills.

[166] Mr Bartlett observed that the implementing policies do not include creating or preserving views of and through quarry areas. That is not very relevant since most of the important views are from the north, west, and south and from almost all of those points the inside of the crater cannot be seen.

[167] The permitted activities in the SPQZ include:

- (A1) Farming;
- (A2) Forestry;

- (A3) Conservation planting;

...

- (A6) On-site primary produce manufacturing;

...

- (A8) Processing and recycling mineral material, construction waste and demolition waste;

...

- (A10) Rehabilitation of quarries using cleanfill or managed fill; and

...

- (A12) Buildings/additions up to 200 m^2 accessory to mineral extraction.

[168] Mr Bartlett also observed[148] that activities A6 and A8 would necessarily involve importing materials to the site and the erection of utilitarian structures. Recycling would presumably involve a concrete crushing plant and the storage of processed and unprocessed building waste material on-site. There are no planning controls as to the scale of those activities. While Ms Trenouth mentioned[149] farming, forestry and on-site primary produce manufacturing for the SPQZ (as for the Rural Production Zone) she did not explain "why Auckland Council would prefer to establish heavy industrial activities on the site (manufacturing primary produce or recycling waste) rather than the appellant's residential activity proposal"[150].

Rural Production zone

[169] All of Pūkaki Peninsula (except for the pakakainga) and a large part of Crater Hill are zoned Rural Production in the AUP. In the latter case there are restrictions. As explained in Ms Trenouth's evidence-in-chief[151]:

> The ONF overlay [over Crater Hill] provides an additional layer of control and resource consents would be required as a restricted discretionary activity for any buildings or structures within the ONF overlay.

As Mr Bartlett observed, that restricts options for landowners.

148 R E Bartlett submissions para 45 [Environment Court document 34].
149 C A Trenouth evidence-in-chief at 128 [Environment Court document 11].
150 R E Bartlett submissions para 49 [Environment Court document 34].
151 C A Trenouth evidence-in-chief at 12.6 [Environment Court document 11].

Precincts (Chapter I)

[170] Chapter I covers a number of precincts identified on the planning maps. As indicated earlier, the land is included in the Puhinui Precinct which is included as Precinct I432. This precinct has its own objectives and policies for a number of sub-precincts, among them sub-precinct H which includes both Crater Hill and the Pūkaki Peninsula. There is a separate set of sub-precinct H objectives which apply to the land zoned rural. They are:

> (1) The productive capability of the land and soil resource is maintained and protected from inappropriate subdivision and development, in such a way that they retain their productive potential.
> (2) The rural character is maintained.
> (3) Development provides for coastal setbacks, planting and landscaping which protect and enhance the ecological, amenity and Mana Whenua values (including mauri) of the Waokauri Creek and its coastal margins adjoining sub-precinct H.
> (4) Development is located and designed in a manner which reflects the relationship of sub-precinct H within the context of the Puhinui Māori cultural landscape and the Pūkaki Crater Outstanding Natural Feature.
>
> (Underlining added)

The Māori cultural landscape – or at least, that part of it on the Pūkaki Peninsula –was described in section 2.3 of this decision.

[171] If we decide to move the RUB some mechanism for considering whether those objectives should be changed might need to be applied[152].

Observations

[172] Our provisional view is that the AUP is quite uncertain and/or incomplete in several respects:

> (1) the objectives and policies relating to transport efficiency are opaque;
> (2) the relationship between objective D10.2 and its implementing policies in D10.3 and NZCPS Policy 15(a) is also unclear;

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152 Section 293 RMA for example.

(3) it is unclear to us what objectives and policies in the rp, rcp, and dp we should consider (to use a neutral word) when locating the RUB (in addition to the rps purposes which obviously we must consider).

[173] We attempt to answer the issues raised in (1) and (2) in the context of the relevant evidence as we proceed. We deal with issue (3) by considering the factors raised in the rp, rcp and dp, but not the objectives and other policies. The AUP objectives and policies guiding us – and, in places, directing us – are those in the RPS (chapter B).

3.8 The Auckland Plan

[174] As mentioned we must also have regard to[153] a strategy prepared under the Local Government (Auckland Council) Act 2009 which sets out the requirements for Auckland's first combined plan. The "high level growth strategy"[154] for Auckland is described in the Development Strategy of the Auckland Plan, and shown on the Development Strategy Maps D.1 and D.2. The Development Strategy is to integrate social, economic, environmental and cultural objectives[155].

[175] Ms Trenouth summarised[156] "key elements" of the Development Strategy in the Auckland Plan as:

(a) quality first in terms of urban form and good design;
(b) generational change and transition to a quality compact urban form recognising that it will take time to increase the number of dwellings and the degree of intensification that can be achieved;
(c) most growth inside the existing urban area reflected as 60 – 70 percent;
(d) a RUB and staged release of greenfields land;
(e) 20 years forward supply of development capacity, and an average of 7 years (minimum 5 years and maximum 10 years) ready-to-go land supply;
(f) infrastructure in the right place at the right time to facilitate and enable growth; and
(g) decade by decade housing supply.

[176] In Ms Trenouth's opinion[157] the RUB is a core component of the growth strategy in the Auckland Plan because it determines the maximum extent of urban development

153 Section 145(2) Local Government (Auckland Transitional Provisions) Act 2010 and 74(2)(b)(i).
154 In accordance with the requirements of the Local Government (Auckland Council) Act 2009.
155 Local Government (Auckland Council) Amendment Act 2009, section 79(3).
156 C A Trenouth evidence-in-chief at 9.6 [Environment Court document 11].
157 C A Trenouth evidence-in-chief at 9.7 [Environment Court document 11].

to 2040. Its purpose, as identified in the Development Strategy, is to provide a sharp boundary between urban and rural.

[177] The growth strategy is then implemented through the AUP, initially by the objectives and policies within the RPS (particularly urban form and growth) and then through identification of appropriate zones and rules that seek to enable sufficient development capacity and land supply to accommodate growth over the long term. There are few, if any, relevant intermediate regional plan or district plan objectives and policies.

PART B – NGĀ KAPUA KOHUORA (CRATER HILL)

4. The site, its context and the issues under section 32 RMA

4.1 The environmental context of Crater Hill

[178] Crater Hill is surprisingly large. The crater itself is approximately 800 metres from rim to rim and the outside slopes are extensive to the north, west and south. From surrounding land or water, Crater Hill simply looks like an expansive low hill although those with knowledge of the Auckland Isthmus would probably identify it as a volcano. From the western side of the crater rim, broad slopes fall gently towards the tidal estuary of the Waokauri Creek along the western and southern margins of the site. The main features of the inside of Crater Hill (Ngā Kapua Kohuora) are a central freshwater lake, and to the east a quarry which is filled in as part of its decommissioning, and the four-lane motorway (SH20) which cuts a chord across the southeast quadrant of the crater rim. The lake is owned by Auckland Council and vested as "Portage Road Reserve".

[179] To the north of the land is a Light Industry zone which is currently being developed[158]. Manukau Memorial Gardens (a large cemetery) is located to the south of the site on the opposite side of the tributary to Waokauri Creek.

[180] Most of Crater Hill is denoted as an outstanding natural feature under the AUP[159]. We attach as "H" a copy of the relevant map from the AUP. That part of the Self land which is the former quarry (adjacent to SH20) is not within the ONF, nor is SH20 itself. A disconnected part of the Self family's being the outer crater walls east of SH20, is also

158 C A Trenouth evidence-in-chief at 5.8 [Environment Court document 11].

159 C A Trenouth evidence-in-chief Attachment E [Environment Court document 11].

marked as part of the ONF. That area is not subject to this proceeding.

[181] We heard from one geological expert, Dr B W Hayward for the AVCS, whose evidence addressed specifically the geoheritage significance of Crater Hill. In terms of the spatial extent of the underlying geological landform, Dr Hayward referred us to a map[160] of "Crater Hill as a significant geological landform" held in the NZ Geopreservation Inventory at 2017. In terms of extent and boundaries — particularly northern, western and southern boundaries — this geological landform map aligns closely[161] with the identified extent of the Self family farm[162] (west of SH20), with the identified appeal subject area[163], and with the ONF overlay at Crater Hill[164] (ONF22). All these maps clearly include the tuff ring and the lower slopes of the feature going down to the Waokauri Creek tributaries on its western and southern flanks.

[182] Crater Hill is described in the AUP as[165]:

> ... the only remaining explosion crater in the Auckland field where the external slopes of the volcano outside the crater rim are nearly entirely intact and unmodified.

Despite that, from many viewpoints Crater Hill is no more recognisable as a volcano than the Pūkaki Crater to the north. More visible is the trig at 39 metres above sea level. Although SH20 runs through the eastern side of the crater, the remainder of the crater (and its approximately circular form) is barely discernible from the highway due to an intervening low ridge and a formed buffer along the highway.

[183] From inside most of the crater (apart from the eastern area outside SH20) the volcanic origins of Crater Hill are obvious. As described by Mr Brown[166]:

> The ragged slopes and crater rim of the inner tuff ring, intermittently broken by rock outcrops, are clearly volcanic in origin, while the crater lake and its scoria island — albeit topped by willows and a mixture of other vegetation — establish a highly appealing visual focal-point

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160 B W Hayward evidence-in-chief at p 21 [Environment Court document 23].

161 But not identically in every respect. The maps differ in respect of the eastern portion (quarry area) and eastern boundary (SH20 and land to the east of SH20) where some of the lower slopes have already been urbanised.

162 D Gibb, evidence-in-chief, Attachment 1: Archaeological Assessment of Self Farm/Crater Hill Papatoetoe, Auckland (Updated 2017) Figure 1 at p 8.

163 C A Trenouth evidence-in-chief, Attachment C [Environment Court document 11].

164 A R Jamieson evidence-in-chief, Attachment A [Environment Court document 4].

165 Description of ONF 22 in AUP Schedule 6 at p 6.

166 S K Brown evidence-in-chief at 4.17 [Environment Court document 3].

> at the centre of this landscape. Spoonbills, herons and other waterfowl amplify the natural qualities and appeal of most of the crater. Consequently, when viewed as a whole, most of the internal crater and lake still displays a high level of visual coherence, continuity and integrity.

[184] Mr Bartlett tried to diminish the value of Crater Hill describing it as a "pipsqueak in the Auckland landscape"[167]. His own landscape witness Mr Scott did not agree[168] with that description. More significantly, Mr Bartlett raised an issue with the Schedule 6 description of the external slopes of the Crater Hill volcano as "nearly entirely intact"[169]. There is a legal issue as to "how much [the court] can go behind [the AUP]"[170]. For the Council, Ms Ash submitted that the answer is that the description in Schedule 6 is operative and must therefore be taken at face value. We do not accept that. This is a largely factual issue (albeit one of degree) and as indicated earlier the High Court has approved the Environment Court making up its own mind on such issues. Of course if the court does so, it should be careful to give its reasons for differing from the local authority, and should give due consideration to the Council's decision.

[185] Giving further oral evidence-in-chief, Mr Putt produced a plan[171] which is an extrapolation of the Kermode drawing from Dr Hayward's evidence, to support his opinion that only 50% of the volcanic feature is intact and unmodified[172]. Mr Putt's evidence is plainly an incorrect application of the Kermode drawing. Dr Hayward was clear in response to questions from Mr Bartlett that the Kermode drawing shows volcanic ash and not necessarily landform[173]. Dr Hayward explained that some of the areas shown on the Kermode drawing had erupted from the volcano "but they are not part of the volcanic landform as it is now"[174]. In Dr Hayward's view the descriptor of "nearly entirely intact" is warranted relative to other volcanic explosion craters[175]:

> Crater Hill's geoheritage values have been compared with all the other explosion craters and tuff rings/cones in the Auckland Volcanic Field (using the criteria spelt out in the Unitary Plan) and in its present condition Crater Hill is assessed to be the most significant explosion crater/tuff ring in the Auckland Field. It has the best preserved least modified tuff cone

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167 Transcript p 149.
168 Transcript p 454.
169 Transcript p 498.
170 Transcript p 499.
171 Exhibit 31.1.
172 Transcript p 493.
173 Transcript p 344.
174 Transcript p 345.
175 B W Hayward evidence-in-chief at 15.2 [Environment Court document 23].

(equal with the tiny Puhinui Pond Crater) and by far the best example of a lava lake having welled up inside the crater.

We prefer the geologist's direct evidence over the planner's inference.

[186] We also find that the Schedule 6 description is (fortunately) correct because the description of "nearly entirely intact and unmodified" slopes relates to the external slopes of the volcano outside the crater rim. The quarry is excluded from that part of the description because it is within the crater, as Mr Brown explained under questioning from Mr Bartlett[176].

[187] We find that Ngā Kapua Kohuora is substantially intact and certainly intact enough to be recognisable as a whole.

[188] Prior to European arrival, Te Ākitai occupied Ngā Kapua Kohuora (Crater Hill) for centuries. There was (probably) a pā on the now quarried volcanic plug, and there were houses, kūmara pits and gardens on the rim and gentler slopes as evidenced by the photograph[177] attached to Dr Campbell's evidence and described by Mr Denny[178].

[189] The volcano was strategically sited at the southwestern end of a principal portage route across the Auckland isthmus from Waitemata to Manukau. Mr Denny, a spokesman for Te Ākitai and called by the Council described it[179] as a "watchtower sentry" settlement that guarded the portage route. Some urupa and lava caves on Ngā Kapua Kohuora contain[180] the koiwi of Te Ākitai ancestors and other koiwi are scattered on the volcano as a result of battles for control of the portage route. The entire crater is a wāhi tapu[181].

[190] The site was alienated by iwi as part of a multi-iwi gift of land ("tuku whenua") to the Church Missionary Society between 1836 and 1847. This gift involved the 83,000 acre Tamaki Block and transmogrified into a sale of 5,500 acres to the Church Missionary Society with 78,000 acres (including, we infer, Ngā Kapua Kohuora) retained by the Crown as "surplus lands"[182].

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176 Transcript p 28.
177 M L Campbell evidence-in-chief Attachment C [Environment Court document 8].
178 N H Denny evidence-in-chief at 8.3.3 [Environment Court document 9].
179 N H Denny evidence-in-chief at 5.8 [Environment Court document 9].
180 N H Denny evidence-in-chief at 5.9 [Environment Court document 9].
181 N H Denny evidence-in-chief at 8.3.2 [Environment Court document 9].
182 N H Denny evidence-in-chief at 8.3.3 [Environment Court document 9].

[191] At present the site outside the reserve is used by the Self family for grazing and, in part, horticulture (a kiwifruit orchard). The former quarry is now a clean fill operation. The quarry and clean fill area is highly modified from many years of extraction and earthmoving activity from the deposit of material. The quarrying has slightly "improved" the symmetry of the crater by removing a central scoria cone and more recently the scoriaceous rock which formerly occupied its south-eastern side.

[192] An easement, 12 metres wide, containing the Marsden Point to Wiri Liquid Fuels Pipeline (underground) crosses the southwestern part of Crater Hill.

[193] There is very limited public access to the site at present: an unformed legal road runs across the northern flanks of Crater Hill and down to Waokauri Creek. There is no legal access to the lake reserve in the centre of the crater.

4.2 The issues under section 32: the status quo and the counterfactual

[194] Since on appeal we have the same duties[183] as the Auckland Council we must prepare an evaluation report under section 32 RMA. Section 32(1) and (2) RMA in its 2013 form states (relevantly):

> **32 Requirements for preparing and publishing evaluation reports**
>
> (1) An evaluation report required under this Act must—
>
> (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
>
> (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by —
>
> (i) identifying other reasonably practicable options for achieving the objectives; and
>
> (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
>
> (iii) summarising the reasons for deciding on the provisions; and
>
> (c) contain 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.
>
> (2) An assessment under subsection (1)(b)(ii) must —

183 Section 290 RMA.

(a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—

(i) economic growth that are anticipated to be provided or reduced; and

(ii) employment that are anticipated to be provided or reduced; and

(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and

(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

...

(6) In this section, — **objectives** means, —

(a) for a proposal that contains or states objectives, those objectives:

(b) for all other proposals, the purpose of the proposal

proposal means a proposed standard, statement, regulation, plan, or change for which an evaluation report must be prepared under this Act

provisions means, —

(a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change:

(b) for all other proposals, the policies or provisions of the proposal that implement, or give effect to, the objectives of the proposal.

[195] Under section 32, the statutory test for the RUB location is now whether it is the most appropriate way to achieve the objectives[184]. That is to be assessed by examining the effectiveness and efficiency of the proposal compared with "other reasonably practical options". Section 32(2) then provides some further detail as to how that assessment is to be carried out. There is no longer any express reference to rules and other methods implementing policies, although that is probably implicit if the exercise is to be meaningful. That is because objectives are usually so widely expressed — and the AUP is no exception to this — that evaluating the efficiency of methods to achieve them is very difficult. In contrast policies which implement objectives are more frequently sufficiently particularised so that tests for efficiency can be more readily answered.

[196] A section 32 evaluation of the RUB — because it is a provision other than an objective — requires us to answer the question: "which location of the RUB is the most appropriate way to achieve the objectives in the AUP"? That requires an assessment of the efficiency and effectiveness of each of the options by:

(a) identifying and assessing[185] and, if practicable, quantifying[186] the benefits

184 Section 32(1)(b) RMA.

185 Section 32(2)(a), RMA.

186 Section 32(2)(b), RMA.

and costs of the environmental, economic, social and cultural effects that are anticipated; and

(b) assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions[187].

[197] The reasonably practicable options for achieving the relevant objectives and policies in relation to the location of the RUB are:

(1) the Council's decision ("the status quo"); and
(2) the relief sought by the appellant ("the counterfactual").

There is of course no presumption that either of these is a better outcome under the RMA than the other.

[198] The Council's decision on the RUB at Ngā Kapua Kohuora (Crater Hill) was to reject the IHP's recommendation and exclude the site from the RUB as the site was considered unsuitable for urban development. As a consequence, urban zoning was not applied to Crater Hill (Ngā Kapua Kohuora), and the site was zoned:

- "Open Space — Conservation" on the crater lake;
- "Special Purpose — Quarry", on the site of the former quarry; and
- "Rural Production" on the remainder of the site.

The area identified as Rural Production zone is also the area identified as part of Sub-Precinct H in the Puhinui Precinct which provides for rural production activities and has provisions relating to the ONF and to the Māori cultural landscape, as described earlier.

[199] The counterfactual sought by the appellant would relocate the RUB at Ngā Kapua Kohuora (Crater Hill) to the coastal edge, enabling urbanisation. If the land is identified as suitable for urbanisation in this way, the appellant seeks:

- A "Mixed Housing Suburban" zoning on the site of the quarry and the outer slopes adjacent to SH20;
- A "Single House" zone on the northern and southern sides of the outer

187 Section 32(2)(c), RMA.

crater slopes; and

- Open Space — Conservation across the remaining site.

[200] The purpose of the next section of these Reasons is to examine the effectiveness of the appellant's proposal for achieving the objectives and the most relevant policies in the statutory instruments, especially policy B2.2.2(2) of the AUP. We will consider the effectiveness of the appellant's proposal and compare that with the effectiveness of the status quo policy-by-policy, while referring[188] to the additional structural planning matters (referred to in policy B2.2.2(2)(f)) set out in Appendix 1 of the AUP where they require an extra level of detail to be considered.

[201] We consider the efficiency of the options in section 6. Further, because the criteria under B2.2.2(2)(b) and (d) expressly raise efficiency issues, and (c) does so implicitly we consider their effectiveness in the context of our efficiency analysis in section 6 of these Reasons.

5. Assessing the effectiveness of the options of Crater Hill

5.1 Achieving a quality compact urban form[189]

[202] In part 3.4 of these Reasons we referred to the complex and somewhat vague nature of the RPS objective seeking a quality compact urban form. Perhaps because of those difficulties, compactness does not appear to be a value for which detailed assessment and criteria have been provided in the AUP to inform decisions. A "quality compact form" appears to be an aspirational outcome of having a RUB. Certainly, neither the decision of the IHP nor that of the Council makes explicit reference to Ngā Kapua Kohuora's contribution to the future compactness of the city.

[203] An associated Development Strategy[190] in the Auckland Plan refers to the benefits to Auckland arising because —

- denser cities have greater productivity and economic growth;
- it makes better use of existing infrastructure;
- improved public transport is more viable;

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188 For the reasons given in part 3.4 of these Reasons.

189 AUP, policy B2.2.2(2)(a).

190 Chapter D p 42 Auckland Plan [Common Bundle, Vol 2, Tab 52] (Auckland Plan).

- rural character and productivity can be maintained;
- negative environmental effects can be reduced; and
- it creates greater social and cultural vitality.

[204] There was little detail in the expert evidence presented on some of those points, with the exception of rural production effects (soils) and environmental protection (ONF and coastal environment) which related to the fourth and fifth bullet points respectively.

[205] Ms Trenouth concluded[191] that criterion B2.2.2(2)(a) of the RPS is one of several criteria that "do not distinguish the options from each other because generally they are achievable by both options. This is because the subject area is adjacent to the existing urban area and therefore can achieve outcomes that seek to promote the quality compact urban form, enable efficient supply of land and infrastructure provision, and provide housing choice." However, this conclusion does not appear to be supported by any comparative analysis in terms of urban density and proximity[192] which are considerations that might be expected to inform the concept of compactness.

[206] Indeed, the structure plan factors suggest more information should have been supplied in relation to how to achieve:

- a desirable urban form at a neighbourhood scale including pedestrian connectivity, diversity of lot sizes within blocks, provision of open spaces, integrated stormwater management approach[193].

[207] We accept that Mr Scott provided a map of walking tracks – but to provide real connectivity these appear to propose long bridges over various arms of Waokauri Creek, and we expect obtaining consents (and finance) for those would be quite a significant exercise in itself. Further, pedestrian connectivity for everyday walkers (to work, school and neighbours) is quite a different concept than Mr Scott's proposed Te Araroa[194] alternative. Connectivity beyond 400 metres walking distance usually requires other modes of transport. At this point the connectivity issue becomes part of the land

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191 C A Trenouth evidence-in-chief at 12.71 [Environment Court document 11].

192 Transcript, p 417 Mr Thompson stated *"It's not just having it compact in terms of density but also compact in terms of proximity and I believe the IHP had the same view in terms of how a compact city should be defined"*.

193 C A Trenouth summary – given in section 3.4 of these Reasons – of AUP, Appendix 1, 1.4.5.

194 "The long pathway": the walking track from Cape Reinga to Bluff.

use/transport integration issue[195].

[208] This issue is by no means fatal to the Self family concept but it does suggest a FUZ rather than specific housing areas might be a preferable way forward. We note that in the southern Puhinui Precinct (either side of SH20B) a FUZ is proposed "... to defer development until appropriately planned for and funded transportation infrastructure is available ..."[196].

[209] We draw similar conclusions in respect to the dearth of information on:

- the location, scale and capacity of existing and new infrastructure to serve the structure plan area[197];
- feedback from consultation with landowners, infrastructure providers, council controlled organisations and communities[198]; and
- a range of specialist documents to support the structure plan and plan change: including infrastructure assessments for stormwater, transport, water and wastewater; assessments of impacts on natural and cultural values; assessment of environmental risk; and implementation plans[199].

This suggests a FUZ would be a preferable way for the Self family to proceed if the RUB is to be moved.

[210] Mr Putt considered that[200]:

> The concepts of urban growth and form, a quality built environment, residential growth, commercial and industrial growth, open space and recreational facilities and social facilities are promoted in Chapter B2. In all respects the proposed three areas of residential development on Crater Hill can readily meet the relevant objectives and policies in Chapter B2.

The witness did not provide any detailed analysis or explanation — in terms of urban density and proximity considerations — as to how the three areas of residential

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195 AUP, Appendix 1, 1.4.6(1).
196 AUP, Chapter I – sub-chapter I432.1 Precinct Description.
197 AUP, Appendix 1, 1.4.7(2).
198 AUP, Appendix 1, 1.4.8.
199 AUP, Appendix 1, 1.5.
200 B W Putt evidence-in-chief at 10.3 [Environment Court document 31].

development contribute specifically to compact urban form. While the three areas separately can be expected to have similar housing densities to those provided for elsewhere across the city, little information was forthcoming in the expert evidence on comparative distances between the proposed residential areas and a range of common community facilities and services. In many ways these three areas of housing look like old-fashioned sporadic development to us.

[211] The Self family's economist Mr A J Thompson did not provide a quantitative estimate of proximity to employment opportunities for Ngā Kapua Kohuora/Crater Hill[201].

[212] Without carrying out any detailed assessment of the compactness of urban form under the Self family proposal for Ngā Kapua Kohuora, Dr Fairgray provided[202] a helpful and logical explanation which reinforces Ms Trenouth's conclusion (stated above) that the criterion of compactness is a criterion that is unlikely to differentiate significantly between the effectiveness of the Self family proposal and that of the status quo in achieving such an outcome.

[213] Similar evidential constraints were encountered in relation to assessing the two options' contributions to "quality built environment", as defined in Objective B2.3.1(1). Reviewing the evidence specific to a discussion of "quality built environment", as distinct from "compact urban form", reveals little further guidance on this matter. None of the experts appear to have carried out a detailed analysis against the factors listed in Objective B2.3.1(1).

[214] We conclude that the factors listed in Objective B2.3.1(1) do not differentiate significantly between the effectiveness of the Self family proposal and that of the status quo in achieving a quality built environment – with two exceptions (one going each way).

[215] First, we record the distinctive and attractive natural character qualities of the coastal environment that forms part of Ngā Kapua Kohuora where two areas of "Single House" residential development are proposed by the Self family. We accept that this setting would provide a particular benefit[203] to any resultant residential development, so long as such development did not contravene other planning objectives (referred to later

201 He gave slightly more for Pūkaki Peninsula as discussed later.
202 J D M Fairgray evidence-in-chief at 4.50-4.54 [Environment Court document 10].
203 In terms of meeting Objective B2.3.1(1)(a).

in the discussion of protection of coastal resources).

[216] Second, one particular issue relevant to the quality of urban residential development that did receive considerable attention is the effect of noise from over-flying aircraft. A portion[204] of one of the "Single House" residential areas proposed by the Self family lies within the Moderate Noise Management Area. In respect of this area of the Self family proposal, that consideration does discriminate against the realisation of a quality built environment when compared to new residential developments elsewhere in the City.

5.2 Provisions of choices in housing types and working environments[205]

[217] An important issue in policy B2.2.2(2)(e) focuses on housing choice and affordability. Bearing in mind that choice and affordability of housing are affected by the quantity supplied at different prices and by demand for different locations and housing types (amongst other often very personal factors) the key questions that arise are:

- will allowing residential development on Ngā Kapua Kohuora give significant choice to consumers? and
- will the status quo provide a sufficient quantity of housing and sufficient choice to meet expected demand?

[218] Addressing the issue of housing choice, the Self family's planner Mr Putt described[206] how the Self family proposal for Ngā Kapua Kohuora will deliver different housing typologies – the mix is between single house subdivision and multi-unit development in the Mixed Housing Suburban proposed zone, parallel to the southwest motorway. Housing choice will be available through different housing typologies at both locations." He made no comment about pricing/affordability, and asserted simply that "Working environments are available in close proximity to the proposed residential development at Crater Hill"[207].

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204 Legal submissions on behalf of BARNZ, para 3.4 [Environment Court document 14] refers to "approximately 2.4 hectares of land with a proposed Single House Zone to the north of Crater Hill that the Aircraft Noise overlay identifies as within the Moderate Aircraft Noise Area ("MANA"). This land is illustrated at Appendix B, p 38 of Mr A Scott's evidence.

205 AUP, policy B2.2.2(2)(e).

206 B W Putt evidence-in-chief at 4.14 [Environment Court document 31].

207 Ibid.

[219] The economist called by the Council, Dr Fairgray acknowledged the importance of policy B2.4.2(11) regarding housing affordability[208] and the inclusion of such consideration as part of the framework for assessing options[209]. Referring to the decisions of both the IHP and subsequently the Council, which result in assessed capacity of some 422,000 dwellings to 2041 as "broadly sufficient for Auckland's housing needs out to the early 2040s"[210], he acknowledged the uncertainties[211] as well as the flexibility for further future changes if required[212] and noted also the conservative nature of the IHP estimates[213].

[220] In assessing the potential significance of the Self family proposal for residential development at Ngā Kapua Kohuora, Dr Fairgray referred to the evidence provided to the IHP by Mr Scott[214] and compared this with "Auckland's total capacity over the likely development period"[215], estimating it to be between 0.17% and 0.19% of the total capacity.

[221] In order to assess the likely impact of the status quo (i.e. not allowing residential development on Ngā Kapua Kohuora), Dr Fairgray acknowledged the potential for upward pressure on land prices[216] of such a decision. He referred to independent research[217] into "the likely effects on housing prices of land supply, dwelling supply, lower construction costs, and development contributions"[218] which concluded "very low elasticity" of housing costs to changes in land price[219]. Dr Fairgray also pointed out that "any effects from there being less capacity at Ngā Kapua Kohuora during this period would arise during a period where indicated available capacity for housing is substantially greater than projected demand for dwellings"[220]. Finally, reflecting on the current "constrained dwelling supply situation — in a period of very strong population growth — indicates that any housing price premium for scarcity is driven predominantly by dwelling

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208 J D M Fairgray, evidence-in-chief at 4.46 [Environment Court document 10].
209 Ibid para 4.47.
210 Ibid para 5.5.
211 Ibid para 5.9.
212 Ibid para 5.10.
213 Ibid para 5.11.
214 Ibid para 5.6.
215 Ibid para 5.15.
216 Ibid para 5.17.
217 Funded by the Ministry of Business, Innovation and Employment.
218 Ibid para 5.22.
219 Ibid para 5.23.
220 Ibid para 5.30.

supply, rather than land supply"[221], he concluded[222]:

> ... if the Ngā Kapua Kohuora land were not urbanised, then there would still be substantial capacity for residential development in other locations throughout Auckland. Diversity of alternative development throughout Auckland also means there would be capacity in a wide range of price bands. This diversity is apparent in the wide range of locations in which redevelopment of existing properties is currently feasible, and where provision is made for new live zoning, and where there is planned capacity through the [Future Urban Zoning].

None of those conclusions were substantially undermined in cross-examination.

[222] Mr Thompson stated that "a central question for the appeal is whether there is sufficient housing capacity under the AUP"[223]. He went on to state that "If there is sufficient capacity then houses will become increasingly affordable over time, and conversely if there isn't sufficient capacity then houses will become increasingly unaffordable over time." In this context he asserts, on the basis of data for current land prices for FUZ land[224], "a severe shortage of development land, and that this is the fundamental reason for unaffordable house prices." Similarly, on the basis of current house prices, Mr Thompson asserted[225] "that there is insufficient capacity under the AUP because the new dwelling prices are not aligned with demand. It also indicates that the price of dwellings will become increasingly unaffordable under the AUP, as the new housing is increasing the average price." We analyse this in more detail in section 6.2 below.

[223] For the moment it is sufficient to record that having read Mr Thompson's statements of evidence, we find little that is directly applicable to the two questions posed above[226]. Further, much of his argument relies on acceptance of his "first principle of urban economics". We consider this in section 6 of these Reasons, but record here that due to its bold assertion, unsupported in his evidence by any research by others, we have serious doubts as to whether we should rely on it. Nor are we persuaded by Mr Thompson's argument that current land price data or current house price data are useful indicators of the (in)adequacy of future housing provision over the next several decades.

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221 Ibid para 5.36.
222 Ibid para 5.16.
223 A J Thompson evidence-in-chief at 19 [Environment Court document 27].
224 A J Thompson Ibid, paras 25-26.
225 A J Thompson Ibid, para 28, 5th bullet point.
226 At the beginning of this section of our Reasons.

[224] In summary, we find the evidence of Dr Fairgray on the questions of future housing capacity and future housing affordability more coherent and compelling than Mr Thompson's evidence.

[225] The planners also differed on the issues of housing choice and affordability. Ms Trenouth simply deferred[227] to the expertise of Dr Fairgray. Mr Putt, on the other hand, quoted from the IHP decision on Hearing Topic 013 — Urban Growth highlighting[228] that:

> The Panel considers the Unitary Plan should err towards over-enabling as there is a high level of uncertainty in the estimates of demand supply over the long term, and the cost to individuals and the community of under-enabling capacity are much more severe than those arising from over-enabling capacity.

That may be correct, but the status quo hardly undermines the IHP's oversupply. Even if we were inclined to accept Mr Thompson's claim that houses will become increasingly unaffordable under the AUP, he provided us with minimal evidence that removing 32 hectares from the total land area expected to be developed for residential purposes across the city under the AUP will have a significant effect on future housing affordability and choice.

[226] The evidence on this topic is primarily in the domain of the economists. Having stated our clear preference for the evidence of Dr Fairgray, we conclude that there is little to distinguish between the effectiveness of the two options before us in achieving a range of housing types and working environments over the city as a whole. We received insufficient evidence to determine the sufficiency of the sub-regional distribution.

5.3 Protecting scheduled resources[229]

[227] Ngā Kapua Kohuora (Crater Hill) is recognised as an outstanding natural feature (ONF22) in Schedule 6 of the Outstanding Natural Features Overlay of the AUP. Schedule 6 explains that the ONF status of Ngā Kapua Kohuora resulted from it having, presumably positive, attributes under consideration of seven of the criteria listed under AUP policy B4.2.2(4). Because considerable emphasis was placed on them, we now list

227 C A Trenouth rebuttal at 4.10 [Environment Court document 11A].
228 B W Putt evidence-in-chief at 4.1 [Environment Court document 31].
229 AUP, policy B2.2.2(2)(g).

the relevant seven criteria:

> (a) The extent to which the landform, feature or geological site contributes to the understanding of the geology or evolution of the biota in the region, New Zealand or the earth, including types localities of rock formations, minerals and fossils;
> (b) The rarity or unusual nature of the site or feature;
> (c) The extent to which the feature is an outstanding representative example of the diversity of Auckland's natural landforms and geological features;
> (d) The extent to which the landform, geological feature or site is part of a recognisable group of features;
> (e) The extent to which the landform, geological feature or site contributes to the value of the wider landscape;
> (f) ...
> (g) The potential value of the feature or site for public education;
> (h) ...
> (i) The state of preservation of the feature or site
> ...

[228] As we have explained, that list does not provide the criteria for assessing the effects of proposed development scenarios on Ngā Kapua Kohuora and should not be substituted for the list in Chapter D10 – specifically policies D10.3(3) and (4) – although it may be useful in informing judgements under the latter.

[229] We now consider the effectiveness with which the status quo and the Self family proposal protect the values[230] for which Ngā Kapua Kohuora/Crater Hill was scheduled as ONF22. Reflecting the ambit of the B4.2.2(4) criteria, we heard primary evidence from experts in geology (supplemented by archaeology and anthropology), biodiversity and landscape assessment as to the values they identify.

The value of the outstanding natural feature in its wider[231] context

[230] Mr Scott gave a comparative analysis of Auckland ONFs[232]. His conclusion was[233]:

> (i) The greatest proportion of the individual identified ONF overlay is publicly owned land and generally and substantially located within an Open Space Zone.

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230 AUP, Appendix 1 para 1.4.2(1).
231 AUP, policy D10.3(4)(a).
232 D J Scott amended evidence-in-chief at 23-32 [Environment Court document 29A].
233 D J Scott amended evidence-in-chief at 26 [Environment Court document 29, 29A].

(ii) Where the ONF extent obviously extends to capture existing and/or some future development zones these, on an overall rating, represent only a limited range of development zoning over a moderate portion of the identified overlay of the specific feature.

(iii) Significantly, in most situations the development zones, on an overall rating, more often than not are only slightly captured by the identified extent of the ONF overlay.

[231] Mr Scott acknowledged anomalies in the above general analysis, and then stated[234]:

> Ngā Kapua Kohuora/Crater Hill is an obvious anomaly. The ONF extends significantly beyond the existing AC Open Space reserve and zone and captures the balance of the feature almost entirely within an area of private land holding – the Self family land.

Mr Scott subsequently[235] used this 'anomaly' proposition to support his arguments in favour of allowing urban development on portions of ONF22.

[232] The relevance of Mr Scott's extensive analysis was challenged by the Council. It submitted that a comparative analysis is not required. Policy B4.2.2(4) invites us to treat scheduled sites such as ONF22 as discrete and self-contained. We accept that. Further, we note that Mr Scott's comparative analysis appears to lack any acknowledgment of the time factor – the temporal sequencing of urbanisation since European settlement and (later) scheduling events which several other witnesses referred to[236]. Mr Brown stated explicitly that "Most Open Space zones applied to other ONFs have been retrofitted to what remains of those other original features – typically reserves and parks covering a proportion, but far from all, of those features.". This distinguishes Ngā Kapua Kohuora/Crater Hill from most of Mr Scott's sampled ONFs. Mr Scott acknowledged in answers to questions from the court that the formal scheduling of ONFs occurred some ten years ago which in many cases was long after urbanisation had taken place[237].

[233] Most other volcanic features in Auckland were urbanised before the statutory protections currently available came into existence[238]. The purpose of scheduling ONFs is to provide protection against further inappropriate subdivision, use and development.

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234 D J Scott amended evidence-in-chief at 28 [Environment Court document 29A].

235 Ibid paras 30-32.

236 S K Brown rebuttal at 39 [Environment Court document 3A]; A R Jamieson rebuttal at 4.2 [Environment Court document 4A].

237 Transcript at pp 472-473.

238 B W Hayward evidence-in-chief at 14.3 [Environment Court document 23].

Therefore, we do not accept Mr Scott's inference that the historical pattern of urban encroachment onto Auckland's volcanic features can be used to justify similar development outcomes in the case of ONF22. Ngā Kapua Kohuora/Crater Hill is a case where the feature is largely outside the present reach of urban development, albeit on the very edge of such development as manifest by the current development on the Sleepyhead site immediately to the northwest (at the end of Portage Road). We see little reason to discount the importance of providing effective protection to the values of ONF22 if that is required by rp policy B2.2.2(2)(g), Appendix 1 paragraph 1.4.2(1) and by dp policy D10.3 (and by RMA section 6(b) as we discuss later).

[234] We find that the geoheritage significance of Crater Hill is high.

The educational, scientific, amenity, social or economic value of the ONF[239]

[235] These values are discussed in section 6 of these Reasons.

The historical, cultural and spiritual association with the ONF held by Mana Whenua[240]

[236] The two experts in related fields, archaeology (Mr R D Gibb for Self family) and anthropology (Dr Campbell for the Council), adopted fundamentally different approaches to their assessments of the heritage significance of Crater Hill/Ngā Kapua Kohuora. The approach adopted by Mr Gibb focuses on the representativeness and significance of the individual parts within the landform feature. As he stated in his evidence[241]:

> The specific types of archaeological features found at Crater Hill/Ngā Kapua Kohuora are not rare at a local or national level and are commonly found throughout Auckland and on other volcanic landforms.

[237] The approach adopted by Dr Campbell focuses on the integrity and significance of the whole landform feature – "Another approach, which I prefer, would have been to record a single site for all of Ngā Kapua Kohu Ora/Crater Hill. This is the approach taken for the other volcanic cone sites of Tamaki Makaurau"[242]. Under cross-examination[243],

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239 AUP, policy D10.3(4)(b).
240 AUP, policy D10.3(4)(c).
241 R D Gibb evidence-in-chief at 4.14 [Environment Court document 28].
242 M L Campbell evidence-in-chief at 6.14 [Environment Court document 8].
243 Transcript at p 161.

Dr Campbell explained:

> Each of those individual features and sets of features that are recorded there as dots in the landscape do have their own values and significance but the values and significance of the whole landscape is what's important here. The whole was greater than some of the parts.

[238] Both experts offered significance assessments in terms of the criteria in policy B5.2.2 of the RPS for assessing Historic Heritage Significance. However a second difference in approach was evident in respect of the 'extent of place' considered. Dr Campbell[244] included the ONF area and the adjacent quarry site in his assessment, while Mr Gibb's evidence[245] implies that he also included "the former Tam property" and "the Self family land to the north of SH20" in his assessment. It is not surprising that these differences of approach resulted in different levels of significance assessed. However, a comparison of the two assessments[246] reveals a very similar pattern of relativities between criteria set out in B5.2.2 of the rps. For example, the two criteria (d) Knowledge and (h) Context are the most highly rated criteria in both experts' assessments. Similarly, the two criteria (a) Historical and (g) Aesthetic are the next most highly rated criteria in both experts' assessments.

[239] Reflecting his focus on the integrity and significance of the whole landform feature, Dr Campbell concluded[247]:

> Any development across this landscape diminishes the values and significance outlined above, while the proposed zoning would effectively split this landscape in two: a significant proportion of the gardening and occupation evidence on the outer slopes would be destroyed; any potential social and amenity values would be diminished; and the context values would be decimated. In short, the proposal would leave a diminished site on the tuff ring isolated from a series of middens along the banks of the Waokauri Creek, and Ngā Kapua Kohu Ora/Crater Hill archaeological landscape, as a landscape, would be destroyed.

[240] Reflecting his focus on the representativeness and significance of the parts within the landform feature, Mr Gibb concluded[248]:

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244 M L Campbell evidence-in-chief Attachment C [Environment Court document 8].

245 R D Gibb evidence-in-chief at 6.69 [Environment Court document 28].

246 R D Gibb evidence-in-chief at 6.49-6.65 [Environment Court document 28] and M L Campbell evidence-in-chief at 6.40-6.56 [Environment Court document 8].

247 M L Campbell evidence-in-chief at 6.63 [Environment Court document 8].

248 R D Gibb evidence-in-chief at 3.2 [Environment Court document 28].

> The resultant reserves proposed to be vested by the Self family would become a significant addition to Auckland's reserve network where the geologic and archaeological values are protected, whilst at the same time creating a distinct new park with high public amenity and educational values.

While we accept that, we are concerned by Mr Gibb's assertion there is "protection of 100% of the recorded archaeology"[249] in light of his earlier assertion that "In general, there is a paucity of knowledge about the Crater Hill/Ngā Kapua Kohuora archaeological sites"[250]. There seems insufficient justification for the first statement.

[241] Having considered all the evidence presented to us, we prefer the assessment of Dr Campbell as being more consistent with the intent of B2.2.2(2)(g) in that we accept the heritage value of the site should be assessed as a whole. That should not be taken as an endorsement of a heritage landscape concept for the reasons given in *Gavin H Wallace Ltd v Auckland Council*[251] ("*Wallace*"). Landscape is a cultural construct and the heritage components are a part of that construct. On the other hand the AUP does recognise the concept of a "Māori cultural landscape"[252], for example the "Puhinui Māori cultural landscape" in Chapter I of the AUP and Dr Campbell's "heritage landscape" is nearly the same. The concept of a "Maori cultural landscape" – the landscape of Mana Whenua – has some utility as an English-language compendium of the values which sub-chapter B6 of the RPS lists (recorded above) as being of importance to Mana Whenua.

[242] Expert caucusing revealed few areas of express agreement. However, it is pertinent to note in relation to the extent to which the status quo gives effect to policy B2.2.2(2)(g), that the one area of agreement[253] was:

> With the exception of areas modified by the development of the SH20 and within the quarried zone, the archaeological features of the rim and crater are generally in good condition.

[243] There were various estimates of the degree of intactness of the underlying geological feature associated with ONF22. It was argued in evidence[254] and cross-

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249 R D Gibb evidence-in-chief at 6.74 [Environment Court document 28.

250 R D Gibb evidence-in-chief at 4.10 [Environment Court document 28].

251 *Gavin H Wallace Ltd v Auckland Council* [2012] NZEnvC 120 at [65] to [67].

252 AUP, I432 Objective (4) (and this is consistent with the NZCPS use of the term).

253 Exhibit 8.1 at para 1.

254 R D Gibb evidence-in-chief at 6.37-6.38 and 6.43 [Environment Court document 28].

examination[255] that Ngā Kapua Kohuora/Crater Hill is not in fact as intact as some experts claim, with reference to quantitative estimates of intactness. Mr Putt gave further evidence-in-chief that perhaps one-third of the volcano was not intact. We find that is an exaggeration in that the rehabilitation of the quarry has effectively restored a good part of the south-eastern quadrant of the crater. The presence of the motorway detracts from the intactness but it is set down into the feature so the sense of overall intactness remains.

[244] Drawing on his involvement with developing the ONF overlay for the AUP[256], the Council's Biodiversity Team Manager (Mr A R Jamieson) highlighted an important difference between the status quo and the appellant's proposal, citing as a key attribute of ONF22[257] that:

> It is also the only remaining explosion crater in the Auckland field where the external slopes of the volcano outside the crater rim are nearly entirely intact and unmodified.

That passage correctly refers to those areas of the outer slopes that are contained within the ONF overlay[258] and reflects the degree of modification associated with the existing pattern of rural land uses on the Self family property. The important extra element that Mr Jamieson highlights is that "the existing range of rural production activities on the land, including grazing and horticulture, are generally consistent with maintaining the values of the large landform features within the ONF including the broad crater, tuff ring and gentle outer slopes of the cone[259] while "the appellant's open space neglects to protect the physical characteristics for which Crater Hill is scheduled, and ignores the importance of preserving its physical integrity and intactness."[260].

The extent of anthropogenic changes to the ONF and the presence or absence of buildings[261]

[245] The different approaches to assessment is perhaps most starkly evident in the landscape evidence. Mr Brown focuses on protecting the integrity of Crater Hill "as both

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255 Transcript at p 347.
256 A R Jamieson evidence-in-chief at 1.3-1.5 and 3.1(a) [Environment Court document 4].
257 Common Bundle, Vol 2, Tab 43 at p 6.
258 A R Jamieson evidence-in-chief Attachment A [Environment Court document 4].
259 A R Jamieson evidence-in-chief at 7.29 [Environment Court document 4].
260 A R Jamieson rebuttal at 3.5 [Environment Court document 4A].
261 AUP, policy D10.3(4)(d) and (e).

a relatively complete and intact, volcanic feature and as a key component of South Auckland's wider volcanic landscape."[262] In contrast, Mr Scott adopts "essentially a representative approach"[263] by aiming to preserve a representative portion of the outer slopes of Crater Hill. We hold that the use of the word "representative" in B4.2.2(4)(c) refers to the entire feature that is intended to be protected. In other words, ONF22 is an outstanding representative example of a particular class of Auckland natural landforms and geological features — notably, its volcanic cones. The wording is not intended to enable protection of parts of an individual, scheduled feature as being representative of that single feature alone.

[246] Hence, we accept Mr Brown's findings[264] that "all of Crater Hill quarrying remains important as an ONF because it appears intact despite past quarrying, and that there are no parts of Crater Hill that might be readily 'sacrificed' or 'carved off' to accommodate development in exchange for enhanced public access, facilities and/or passive recreational space." Indeed, Mr Scott confirmed this under cross-examination when he agreed with Mr Enright's proposition[265] that "if we were to protect the ONF in its entirety we could not have the two SHZ zones on the external slopes of the volcano."

The temporary or permanent nature of any adverse effects[266]

[247] We accept the evidence of Dr Hayward[267] that the presence of housing will be a permanent adverse effect under the counterfactual.

The physical and visual integrity and the natural processes of the location[268]

[248] Dr Hayward made categorical findings, which we accept, that "Crater Hill provides the last chance to protect the best remaining example of the gentle outer slopes of a small tuff cone"[269] and that "volcanic landform ONFs containing housing do not have the same level of geoheritage value as those that have not been compromised by

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262 S K Brown evidence-in-chief at 6.2 [Environment Court document 3].
263 Transcript p 459.
264 S K Brown evidence-in-chief at 8.5 [Environment Court document 3].
265 Transcript p 459.
266 AUP, policy D10.3(4)(f).
267 B W Hayward evidence-in-chief at 14.4 [Environment Court document 23].
268 AUP, policy D10.3(g).
269 B W Hayward evidence-in-chief at 14.6 [Environment Court document 23]. Tuff is a solidified volcanic ash embedded with clasts (pieces of lava and other rock).

development"[270]. We do not consider those views were undermined by his concession under cross-examination[271] that the Self family proposal will still allow future opportunities to gather geological knowledge from the outer slopes of Ngā Kapua Kohuora/Crater Hill. We accept his opinions.

The physical, visual and experiential values that contribute significantly to the outstanding natural feature's values[272]

[249] This issue concerns the significance of Ngā Kapua Kohuora/Crater Hill as an ONF in the Auckland City landscape and the relevance of public access to and public awareness of the feature. Several witnesses commented on the relative invisibility of Ngā Kapua Kohuora/Crater Hill from offsite locations[273] or the lack of effective public access to the public reserve around the crater lake[274] restricting the level of public awareness of the feature and its associated values. Indeed, the Joint Landscape Witness Statement states in section 4 –

> It is agreed that Crater Hill's significance as part of the wider Auckland volcanic field has historically been limited because it lacks the visual profile and presence of Auckland's major cones.

[250] We also heard uncertainties expressed by several witnesses[275] as to the likely extent of public access that would be achieved under either scenario. Public access under the status quo relies on giving future practical effect to the informed existing legal road — a 'paper' road — and public reserve, while the appellant's proposal appears to offer the prospect of access to a much more extensive area. In the latter case questions remain over the detail and the consequential impact of intensive urban development blocks on the quality of the public access experience. These might have been answered if the appellant had carried out a fuller structure planning exercise.

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270 B W Hayward evidence-in-chief at 14.4 [Environment Court document 23].

271 Transcript at p 357.

272 AUP, policy D10.3(h).

273 S K Brown, evidence-in-chief at 4.15 [Environment Court document 3] and Transcript p 14; D J Scott, amended evidence-in-chief at 99 and at 130 [Environment Court document 29A] and Transcript p 457.

274 S K Brown, evidence-in-chief at 4.15 [Environment Court document 3]; M L Campbell, evidence-in-chief at 6.43 [Environment Court document 8]; Scott under cross-examination – Transcript p 467.

275 Brown evidence-in-chief at 4.18 [Environment Court document 3] and under cross-examination – Transcript p 16; C A Trenouth evidence-in-chief at 12.14 [Environment Court document 11]; G J Lawrence, Transcript p 386.

[251] Nevertheless, when it came to identifying the significance of natural features, the critical threshold of significance associated with ONFs was determined through a process of expert assessment[276] in which consideration of "(f) the extent of community association with, or public appreciation of, the values of the feature or site" is but one of eleven factors to be considered under policy D10.3(4).

The location, scale and design of any proposed subdivision, use or development[277]

[252] Mr Scott produced plans showing the location of the three proposed housing areas. Their footprints are shown by the zonings on the IHP's Puhinui Precinct Map – attached as "B" to these Reasons. However, there is a difficulty with the boundaries of the south-eastern block. Mr Scott's intention was that they would be determined by where 5 metre high buildings' location would not break the skyline when viewed from various viewpoints outside the land. It became clear from cross-examination (and our site inspection) that Mr Scott's initial plans were quite wrong and his amended plans may not fit the footprint.

[253] Before he was aware of that difficulty, Mr Scott wrote of the counterfactual "...My design outcome ... speaks for itself in that my proposal provides for 36% development of the Crater Hill area and 64% preservation as future public open space"[278]. However, he did not show any suggested design of the housing areas or of the "transitions" between residential zones and open spaces as directed[279] beyond his diffuse statement of intention that:

> ... Within my Crater Hill development nodes I envisage that landscape design influences will move through the residential areas to give connectivity for open space and vegetation purposes across the entire Crater Hill property. These in turn connect to all of the adjacent land uses. In this regard I have made the point earlier in my evidence about the connection available to be achieved with the sub-regional landscape opportunities that exist through the Southern Initiative corridor[280].

We treat that with considerable caution for two sets of reasons: first the landscape connectivity is not as he understood it, and second his walking connections are for

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276 Prescribed in policy B4.2.2(4) of the AUP.
277 AUP, policy D10.3(4)(i).
278 Responding to the criteria in B4.2.2(4)(i).
279 AUP, Appendix 1, 1.4.1(3).
280 D J Scott evidence-in-chief at 73 [Environment Court document 29A].

serious walkers which is laudable but incomplete. There also needs to be connectivity to shops, train and bus stops, schools (with one exception) and businesses, because of the distances involved (more than easy walking distance of 400m).

The functional or operational need of any proposed infrastructure to be located within the outstanding natural feature[281]

[254] Mr Scott and Mr Putt gave evidence that apart from roads, any other necessary infrastructure could be buried (just as the Wiri pipeline across the western external slopes has been) so that effects on the visual integrity of the volcano and on visual amenity are minimised. Of course the presence of vehicles on the roads of the outer slopes will itself have an effect on amenity. Little attempt was made to assess this or the other indicia of domestication that came with housing development.

[255] We observe elsewhere that the lack of information on these issues – information which Appendix 1 AUP requires – means that at best for the Self family a FUZ rather than specific housing zonings might be the appropriate outcome.

Will the proposed development and use protect and maintain the values of the ONF?[282]

[256] Dr Hayward, the only geologist called in the proceeding wrote[283]:

> It is my belief that any housing subdivision within the Crater Hill ONF, including in the smooth outer slopes of the tuff cone, will have an unacceptable adverse effect on the geoheritage values of this nationally important volcano".

Cross-examination by counsel for the appellant did not affect his opinion. He also gave us the context for that view, referring to the fact that many of Auckland's volcanos have been damaged or destroyed by quarrying, bulldozing or subdivision[284] and that in his view Auckland has reached a phase where remaining volcanic features should be protected from further damage[285].

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281 AUP, policy D10.3(4)(j).
282 AUP, Appendix 1, para 1.4.2(2).
283 B W Hayward evidence-in-chief at 14.7 (also see his 8.5) [Environment Court document 23].
284 B W Hayward evidence-in-chief at 7.1 [Environment Court document 23].
285 B W Hayward evidence-in-chief at 7.5 [Environment Court document 23].

[257] In the opinion of Mr G J Lawrence, the planning expert called by the AVCS: "The site does not have the characteristics appropriate for it to be brought within the urban area. Extension of urban limits to provide for housing would be contrary to policy 2.2.2(2) because it would not be achieving urban growth at the same time as protecting the values and attributes of scheduled ONF 22."[286] Under cross-examination on this point, Mr Lawrence referred to the need for structure planning. That reinforces for us that a FUZ might (subject to consideration of the bigger picture elements) be the appropriate outcome.

[258] Mr Scott covered this issue in evidence-in-chief under the seven headings in schedule 6 notation for ONF22 (Crater Hill). He wrote[287] (our numbering inserted):

> (1) The Self family proposal does not disturb or interfere with the manner in which the landform, feature or geological Ngā [Kapua] Kohuora/Crater Hill site contributes to the understanding of the geology or evolution of the biota in the region, New Zealand or the earth, including type localities of rock formations, minerals and fossils[288].
>
> ...
>
> (2) The rarity of Ngā Kopua Kohuora/Crater Hill is defined in the Crater Hill notation in schedule 6. Each of the features identified in that notation is located in the proposed open space on my development plan. Accordingly, it is considered that the Self family proposal actually celebrates the rarity and unusual nature of the site, making sure that it will remain a scientific and educational focus in perpetuity[289].
>
> ...
>
> (3) The land uses allocations I have provided in my development plan ensures that the outstanding representative nature of Crater Hill is maintained as a rare example of explosion crater and ... ... (what remains of it) within the Auckland volcanic field[290].
>
> ...
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> (4) The relationship presented at present by Crater Hill will not change. The protection of the crater and the upper slopes through public open space ensures that this will be a long term physical and visual outcome[291].
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> ...
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> (5) In my opinion the proposals I have presented for the enhancement of landscape character, particularly at the coastal edge of Crater Hill, will not only secure the value of Crater Hill within the wider landscape but will assist in the enhancement of the

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286 G J Lawrence evidence-in-chief at 5.1 [Environment Court document 24].
287 D J Scott evidence-in-chief at 173 [Environment Court document 29A].
288 Ibid responding to the criterion in B4.2.2(4)(a).
289 Ibid responding to the criterion in B4.2.2(4)(b).
290 Ibid responding to the criterion in B4.2.2(4)(c).
291 Ibid responding to the criterion in B4.2.2(4)(d).

SEA — Marine notation over the adjoining waterways[292].

...

(6) Future public education will be a key feature of gaining easy public access to the future Crater Hill open space network. This is a positive public outcome[293].

...

(7) Crater Hill in its present land use regime has run its course and requires a sustainable management outcome for the future given its location completely surrounded by the urban form of Auckland. The proposal I put forward ensures that the site can be preserved and enhanced in a manner that accepts and appropriate development regime balanced with a very large proportion of public open space.

[259] We have quoted this passage in full because of Mr Bartlett's reliance on it. However, we remained troubled by it for several reasons. First it is not focused on the relevant objectives and policies relating to the protection of the ONF. Second (this is the obverse of the first point), as we observed in section 3.5 of these Reasons, policy B4.2.2(4) AUP provides a list of the factors for identifying whether a place is an ONF and should be scheduled under policy B4.2.2(5) – as Crater Hill has been. It does not provide a list of matters to be considered when the question of development of an ONF arises. That list is expressly provided elsewhere – in chapter D10[294].

Summary

[260] The more detailed policies in the RPS for setting the level of protection for a volcano in Auckland which has been scheduled as an ONF are[295] policies B4.2.2(6), (7) and (8). We discuss the inter-relationship of these policies in more detail later. Since at present we are merely trying to assess the effectiveness with which they are being achieved we simply note that, while policy (6) provides for protection of ONFs generally from inappropriate subdivision, use and development, policy (7) directs that regionally significant volcanoes – and regional significance (or national significance) is what makes a natural feature outstanding – are to be protected completely from subdivision, use and development. Questions of inappropriateness do not arise because all subdivision, use and development is inappropriate.

[261] Our overall findings on protecting ONF22 is that the protection of Ngā Kapua

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292 Ibid responding to the criterion in B4.2.2(4)(e).
293 Ibid responding to the criterion in B4.2.2(4)(g).
294 AUP D10.3(4).
295 As discussed in section 3.5 of these Reasons.

Kohuora (Crater Hill) is unlikely to be achieved by the appellant's proposal[296].

5.4 Elite and prime soils[297]

[262] We heard evidence on the soils from experts and from the farmers. Dr Hicks, the soil scientist called by the Council had carried out careful fieldwork and his analysis[298] was uncontested. The response for the Self family was Mr Bartlett's submission that "No party has contended that Crater Hill has positive soil attributes that place it above the generality of land in South Auckland"[299]. The Council submitted that is irrelevant under the RPS' policies.

Mr J Self, the head of the family, gave evidence that the Crater Hill site is no longer financially viable. The court has sympathy for the opinions of the farmers in relation to the viability of their farms. However, viability is related to efficiency (which we consider in section 6 of these Reasons) and the correct approach when assessing efficiency is, Ms Ash submits, as stated in *Federated Farmers of New Zealand (Inc) Mackenzie Branch v Mackenzie District Council*[300] – that "The viability of a farm should be assessed objectively rather than on a landowner's subjective view".

[263] That is reinforced in this case by the resource economist Mr Ford, called by the Council. He said[301]:

> No, I don't disagree [with Mr Self]. He stated his personal view of things and, as I said in my evidence, I think we should be looking at it, not what the Selfs could do but what is available generally.

[264] The self-interested[302] character of the evidence for the Self family is borne out by the inconsistent evidence of Mr Self. In his evidence-in-chief Mr Self suggested that the set up cost for gold kiwifruit was approximately $30,000 per hectare[303]. When giving

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296 C A Trenouth rebuttal evidence at 2.6 [Environment Court document 11A].
297 C A Trenouth rebuttal evidence at 2.6 (2)(j) [Environment Court document 11A].
298 D L Hicks evidence-in-chief at 7.7 [Environment Court document 5].
299 Mr Bartlett's submissions 105 [Environment Court document 34].
300 *Federated Farmers of New Zealand (Inc) Mackenzie Branch v Mackenzie District Council* [2017] NZEnvC 53 at [520].
301 Transcript p 125.
302 With apologies for the unavoidable pun.
303 J Self evidence-in-chief at 21 [Environment Court document 25].

further oral evidence, Mr Self increased that cost significantly to $80,000 per hectare[304] without noting the discrepancy or attempting to explain it. We prefer the independent evidence of Mr Ford. While he does not quantify set up costs, he gave uncontested evidence that gold kiwifruit will return approximately $90,000 per hectare per annum[305]. As Ms Ash submitted, one-off development costs should be offset against the lifetime earnings from growing gold kiwifruit on the property.

[265] There was considerable discussion about the importance of avoiding elite and prime soils, with a particular focus on the issue of the degree of directiveness associated with the wording in the relevant statutory instruments[306]. Ms Trenouth, under cross-examination[307], agreed that the wording is not to be interpreted in a "purist and absolute" manner. Implementation must have regard to context.

[266] In the case of Ngā Kapua Kohuora, Dr Hick's analysis[308] and mapping reveals that 5.6% of the land in the appeal area contains elite soils and 39.3% of the land contains prime soils, leading to a total of 45% of the land area. Furthermore, while the elite and prime soils are not contiguous, they are *"more prominent on the lower reaches of the outer slopes of the crater"*[309]. And this is precisely where two blocks of residential development are proposed, with their attendant foundation earthworks and associated infrastructure.

[267] Issues were raised in cross-examination of commercial viability for the current owners, comparison of the Self family land with other areas of land in terms of the proportions of elite and prime soils, and the suitability of these soils for a range of crops. This is probably better addressed as a matter of efficiency, since there is little doubt about the difference in outcomes on the grounds of giving effect to AUP policy B2.2.2(2)(j).

[268] The evidence of Dr Hicks (and Mr S J Ford) is that half (approximately) of the land on Crater Hill and almost all of the land on Pūkaki Peninsula is "significant for their ability to sustain food production". We accept Ms Ash's submissions that the Council's evidence shows that Crater Hill is capable of meeting the relevant RPS objectives and policies by

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304 Transcript p 394.

305 S J Ford evidence-in-chief at 6.13 [Environment Court document 6].

306 For example, policy B2.2.2(2) states "while (j) avoiding elite soils and avoiding where practicable prime soils which are significant for their ability to sustain food production".

307 Transcript, p 241.

308 D L Hicks evidence-in-chief at 7.9 [Environment Court document 5].

309 S J Ford evidence-in-chief at 6.5 [Environment Court document 6], with reference to Dr Hicks' report.

contributing to the wider economic productivity of and food supply for Auckland and New Zealand (Objective B9.2.1). The Crater Hill land has productive potential and should be retained for productive purposes in order to give effect to the RPS[310], irrespective of any possible comparisons with other soils elsewhere in South Auckland.

5.5 Natural hazards

[269] Of all the topics, this attracted the least attention in evidence. Ms Trenouth observed[311] that *"no significant natural hazards are identified in the [Crater Hill]"* while Mr Putt wrote[312]:

> There is no evidence that development on the subject land will create natural hazards at this scale. The sites are of low slope on easily managed land capable of development. There is no topography or risk that suggests a natural hazard at the coastal environment will occur.

[270] Mr Lawrence, the planner representing the AVCS, made no reference at all to natural hazards. Indeed, the only other reference to natural hazard in all the expert evidence occurs in Dr Hayward's statement[313] when discussing Crater Hill as a site for public and school education when he stated "There are exposures of the base surge deposits on the coastal fringe that could be visited to better envisage the style of explosive eruptions and their hazard in future eruptions."

[271] Consequently we conclude that this is not a criterion that will distinguish the Self family proposal from the status quo on the basis of effectiveness.

5.6 Aligning the RUB with strong natural boundaries or alternatives[314]

[272] For Ngā Kapua Kohuora, the appellant's case is that the RUB should be aligned with the coastal margin so that the subject land is located on the urban side of the boundary and is associated with live zoning three areas of residential development and the remainder as Open Space – Conservation.

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310 AUP, B9.3.2(1) to (3).
311 C A Trenouth evidence-in-chief at 10.29 [Environment Court document 11].
312 B W Putt evidence-in-chief at 4.19 [Environment Court document 31].
313 B W Hayward evidence-in-chief at p 27 [Environment Court document 23].
314 C A Trenouth rebuttal evidence at 2.6 (2)(m) [Environment Court document 11A].

[273] In rejecting the IHP's recommendation, the Council's decision aligns the RUB with the northern edge of ONF22 and the southwestern motorway (SH20) so that the subject land is located on the rural side of the boundary. As a consequence, urban zoning was not applied to Crater Hill (Ngā Kapua Kohuora), and the site was zoned Open Space — Conservation on the crater lake, Special Purpose — Quarry, on the site of the former quarry, and Rural Production on the remainder of the site.

[274] Before reviewing the evidence presented by individual experts, it is helpful to note the extent of agreement amongst the planners regarding the appropriate interpretation of policy B2.2.2(2), as expressed in their Joint Witness Statement[315]. The planners agreed –

> (a) that Policy B2.2.2(2) is key in determining the location of the RUB;
> (b) that (a) to (f) are all important and that all relevant criteria need to be met to meet this policy, with no ranking implied and noting that criteria (h) and (k) are not relevant in this case;
> (c) that criterion (l) can be adequately addressed and is not an issue in this case;
> (d) that the challenge at Crater Hill is whether (a) and (b) can be achieved while meeting (g), (i), (j) and (m)
> (g) in relation to criterion (g) that B4.2 provides the directive to identify and protect ONFs.
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> [Footnotes are omitted since they refer to (a) to (m) in policy B2.2.2(2) quoted in section 3.4 of these Reasons].

[275] The Joint Witness Statement summarises a key point of disagreement in relation to Crater Hill. Ms Trenouth and Mr Lawrence consider that the RUB determination (m) is part of the criteria (a) to (m) to be considered, while Mr Putt considers that the RUB determination (m) precedes the other considerations at a macro planning level.

[276] The evidence on this topic traversed a range of issues: clarifying the purpose of the RUB and whether the RUB location is intended to be permanent or transitional; whether the B2.2.2(2)(m) criterion on location of the RUB has primacy over the other criteria in B2.2.2(2); the reasons given in support of the Status Quo location of the RUB and in support of the Appellant's proposal for the RUB; the relevance of the *Wallace* case; and the significance – for determining the location of the RUB – of criterion B2.2.2(2)(f) regarding following the structure plan guidelines. We now review the

315 C A Trenouth Exhibit 11.1 signed by Ms Trenouth, Mr Putt and Mr Lawrence: Section 2 on policy B2.2.2(2).

evidence on each of these issues in turn.

[277] Ms Trenouth[316] told us that:

> The RUB is a core component of the growth strategy as it determines the maximum extent of urban development to 2040 and helps to achieve well planned, efficient urban development. The purpose of the RUB, as identified in the Development Strategy, is to provide a **clear delineation between urban and rura**l, conserving the countryside by encouraging urban development within the existing urban area."
> (emphasis added)

This was not challenged.

[278] Ms Trenouth's argument[317] was that if the subject land is deemed suitable for urban development (having considered criteria (a) to (l)), then the coastal edge would be the most appropriate location for the RUB. Alternatively, if the subject land is deemed not suitable for urban development (having considered (a) to (l)), then the RUB would have to be aligned with some other boundary – in this case defined as the northern edge of ONF22 and the Southwestern motorway. Both are potentially legitimate boundary locations, depending on the outcome of the assessment of suitability for urban development. There is little dispute that, of the two boundary descriptions, the coastal edge is the stronger natural boundary (i.e. the boundary that is most purely defined in terms of natural elements). However, it is not a boundary that necessarily assists in discriminating urban from rural land uses, since there simply cannot be rural land use 'outside' the coastal edge. Thus the defensibility in either case depends on the assessment of land-use suitability within the proposed boundary.

[279] Mr Putt focused on the RUB as a 'flexible planning tool'. With reference to the IHP decision he noted[318] "The IHP reports properly, in my opinion, move towards presenting the RUB as a flexible planning tool erring on the side of having more expansive urban land available than less." However, in our view, flexibility should not be a reason to compromise logical defensibility in the selection of a boundary.

[280] Mr Scott argued[319] for a long-term perspective: "In my opinion, the delineation of

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316 C A Trenouth evidence-in-chief at 9.7 [Environment Court document 11].
317 C A Trenouth evidence-in-chief at 12.79 [Environment Court document 11].
318 B W Putt evidence-in-chief at 4.2 [Environment Court document 31].
319 D J Scott evidence-in-chief at 78 [Environment Court document 29].

an urban limit conceptually as a planning method and physically 'as a line on the ground' has to be considered with a long-term vision in mind", a theme which Mr Bartlett picks up in his closing submissions[320]. In the case of Ngā Kapua Kohuora, just because the Council identified the RUB in this location as not following the coastal edge, should not be taken to imply that it is somehow necessarily a transitional position. In our view, there exists no expectation that protection of ONF22 will become less important with the passage of time - barring a change in its statutory protection status. Therefore the status quo location of the RUB in relation to Ngā Kapua Kohuora is also likely to be a long-term proposition rather than deliberately transitional.

[281] On the question of whether or not criterion B2.2.2(2)(m) has primacy over the other criteria in B2.2.2(2), Ms Trenouth was cross-examined[321] at length. She did not accede to the proposition that (m) has primacy over the other requirements. Instead she opined that (m) should be read in the context of the other criteria which are aimed at ensuring that any land inside the RUB is suitable for urban development.

[282] Mr Putt emphasised the importance of "a defensible boundary". He relied on the decision of the Environment Court in *Gavin H Wallace Ltd v Auckland Council*[322] ("*Wallace*"). That decision concerned land to the north-west of Auckland International Airport, close to but not adjacent to Manukau Harbour (south of Puketutu Island). The Environment Court wrote[323]:

> The most defensible line for the MUL [Metropolitan Urban Limit] in this area is the coastal edge. The Stonefields would be protected by its reserve designation. The landscape and heritage characteristics of the subject land could be protected by an appropriate zoning of the land.

Ms Trenouth observed[324] that in fact the Environment Court was not completely accurate in that passage. Figure 2 of her rebuttal statement illustrates the Mangere RUB location "where it does not follow the coastline for its entirety, specifically excluding Otuataua Stonefields, Puketutu Island and Ambury Park." That entails that Mr Putt's inference from the *Wallace* decision that the coastal edge is the most defensible RUB location in the Mangere east is not accurate either.

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320 Mr Bartlett QC closing at 58 [Environment Court document 34].
321 Transcript pp 265-266.
322 *Wallace* above n 251.
323 *Wallace* above at [114].
324 C A Trenouth rebuttal statement at 5.60 [Environment Court document 11A].

[283] Finally on this point, we reiterate that nothing in the wording of policy B2.2.2(2) suggests that criterion (m) should be accorded any primacy over the other criteria. Its position as the last item in the list of criteria – rather than the first – indicates to us that its intention is to assist in (provide options for) describing the RUB in the most relevant manner.

[284] We now turn to the reasons advanced by the parties for their defensible RUB location. As noted previously, the reasons given for the Council's decision at Ngā Kapua Kohuora (Crater Hill) relate to the fact that the site is within the ONF Overlay, is a significant geological feature and has significant cultural heritage and landscape value to Mana Whenua as well as containing prime soils. The evidence before us in this case supports this reasoning.

[285] Mr Lawrence stated[325] that Ngā Kapua Kohuora "has natural (landform, geo-heritage, geomorphology, elite and prime soils), cultural and historic heritage values that warrant the site being retained within the rural area outside the Rural Urban Boundary".

[286] Mr Putt provided several arguments in support of the appellant's proposed location of the RUB along the coastal edge: the de facto structure planning approach accepted by the IHP; consistency with the Southern Initiative; that retaining the Rural Production zoning leaves the current owners with limited opportunities for developing or using the land; and an assertion of the primacy of (m)(i) in B2.2.2(2). As we have commented before, Mr Putt's references[326] to the structure planning process "followed by the design team preparing the development proposals for Crater Hill" were not supported by details addressing all the important matters in Appendix 1 of the AUP.

[287] Mr Putt also expressed his concern[327] that "The Council decision has placed the Pukaki and Crater Hill land outside of the RUB and left it within the Rural Production Zone with limited development or use opportunities." However, Mr Ford made the point unchallenged[328], which we accept, that "the question must be considered .... from an overall perspective, not just whether the Self family are able to run a financially viable

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325 G J Lawrence evidence-in-chief at 2.4(a) [Environment Court document 24].
326 B W Putt evidence-in-chief at 1.6 and 4.15 [Environment Court document 31].
327 B W Putt evidence-in-chief at 1.6 [Environment Court document 31].
328 S J Ford evidence-in-chief at 6.12 [Environment Court document 6].

operation." We have already held that is the correct legal test. Both Dr Hicks[329] and Mr Ford[330] confirmed the capability and suitability of the land at Ngā Kapua Kohuora to support productive land uses, a potential that is irrevocably lost forever if the land is converted to residential development.

[288] In respect of policy B2.2.2(2)(m) Mr Putt claimed[331] "The RUB should by definition be located at the coastal edge. The coastline is the only strong natural boundary available in this setting that provides a sensible and logical outcome that matches the consistent manner of RUB locations throughout the AUPOiP." Recourse to the phrase "by definition" relates to the proposition that the wording of policy B2.2.2(2)(m) axiomatically accords primacy to "a strong natural boundary". We do not accept this proposition. Nor does the fact that the court in the *Wallace* case adopted the coastal edge as the appropriate location for part of the RUB give any extra credibility to doing so in this case – each case needs to be judged on its own particular merits.

[289] We note that the contrasting views summarised above appear to be the result of the appellant's focus on the enabling aspects of B2.2.2(2) while the Council focus is on the protecting aspects. As recorded previously, the expert planners agree that the challenge at Ngā Kapua Kohuora is whether the enabling aspects can be achieved while also achieving the required protections.

[290] We have observed at several points the lack of detailed assessment required to demonstrate suitability for urban development, particularly in relation to transport networks[332] and infrastructure[333].

[291] In conclusion, we note that criteria (a) to (m) of policy B2.2.2(2) are all requirements and they are inter-related. Since some requirements (a) to (l) are not satisfied by the Self family proposal — particularly (g) and (j) — and since there is a considerable degree of uncertainty over whether other requirements are met by the Self family proposal — particularly (a), (c), (d), (e) and (f) — then requirement (m) is best achieved by moving the RUB inland as proposed by Council.

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329 D L Hicks evidence-in-chief at 8.3-8.5 [Environment Court document 5]. We note that Ms Hawes did not provide appellant evidence in relation to Ngā Kapua Kohuora.

330 S J Ford evidence-in-chief at 6.13-6.17 [Environment Court document 6].

331 B W Putt evidence-in-chief at 16.1, 1st bullet point [Environment Court document 31].

332 As in Appendix 1, section 1.4.6.

333 As in Appendix 1, section 1.4.7.

5.7 Significance to Mana Whenua

[292] In relation to the protection of natural and physical resources with respect to Mana Whenua, we heard from Ms K A Wilson and Mr N H Denny, both of Te Ākitai Waiohua Iwi Authority, but called by Auckland Council. We also heard from Mr Kapea, a practicing kaitiaki, called by the Self family. As a result of their involvement carrying out archaeological investigations, the evidence of Dr Campbell and Mr Gibb is also of particular relevance here.

[293] The question of Te Ākitai Waiohua interest in Ngā Kapua Kohuora is not in dispute although the degree of it is despite the acknowledgement in the AUP quoted earlier. While the evidence of Ms Wilson focuses on the Mana Whenua holistic world view[334], it provides only a very generalised description of the relationship with Ngā Kapua Kohuora[335]. Mr Denny's evidence[336] provided a little more detail of a descriptive nature relating to "a former hilltop pā site ... human occupation with soils suitable for cultivating food and a nearby creek system and waka (canoe) portage route ... Ngā Kapua Kohuora was used as a 'watchtower' post ... rather than a fully defended settlement". Rather more detail is given in the Cultural Assessment attached to Mr Denny's evidence.

[294] Mr Kapea challenged[337] the authenticity and consistency of some of Ms Wilson's claims of cultural significance. However her points are reinforced by the evidence of the archaeologists. Dr Campbell provided extensive detail of some 60 sites and places of tangible and intangible value to Mana Whenua[338] though Mr Gibb pointed out that 16 of these sites have been deleted since they do not fit the criteria for listing[339]. Further, with reference to the Pūhinui Precinct, Ms Trenouth referred to the Puhinui structure plan's map[340] of Māori cultural landscape values showing the entire Ngā Kapua Kohuora feature as an important site or place, including a (slightly contentious) pā site located within the crater rim.

[295] There are no Sites and Places of Significance to Mana Whenua listed in Schedule

334 K A Wilson evidence-in-chief at 5.1-5.7 [Environment Court document 7].
335 K A Wilson evidence-in-chief at 6.4 [Environment Court document 7].
336 N H Denny evidence-in-chief at 8.3.1-8.3.6 [Environment Court document 9].
337 N H Denny evidence-in-chief at 4.21, 4.25, 4.31 and 4.35 [Environment Court document 9].
338 M L Campbell, as mapped in Attachment C to his evidence-in-chief [Environment Court document 8].
339 R D Gibb evidence-in-chief Attachment 1 at p 84 [Environment Court document 28].
340 C A Trenouth evidence-in-chief Attachment F [Environment Court document 11].

12 of the AUP[341] for Ngā Kapua Kohuora, nor does the Mana Whenua overlay in the AUP[342] indicate any particular sites or places of significance to Mana Whenua on Ngā Kapua Kohuora. This may reflect the fact that the Self family property has been in private ownership for several generations — since the mid-nineteenth century. Indeed, the Joint Witness Statement of Cultural Experts noted agreement[343] that archaeological investigations on the Self family property are by no means complete.

[296] An important issue for Te Ākitai Waiohua relates to their exercise of kaitiakitanga over Ngā Kapua Kohuora. It was agreed that the exercise of kaitiakitanga does not require ownership[344] (presumably this means in the legal sense) but it does require relationship building[345].

[297] Distinguishing the possibilities for giving effect to kaitiakitanga between the two scenarios is a challenging exercise. On the one hand, given the influence of ownership on the exercise of kaitiakitanga, we have the prospect of Te Ākitai Waiohua regaining enhanced authority through the change from private to public ownership of a significant portion of Ngā Kapua Kohuora land via the Self family proposal set against the possible diminution of mana whenua associated with urban development destroying elements of that cultural heritage when viewed holistically. On the other hand, the status quo gives the less certain prospect of enhancing the exercise of kaitiakitanga through ongoing private ownership by the Self family (or some future owner) and possible expanded public ownership in the remoter future, linked in the latter case to the preservation of a more extensive "natural" cultural landscape.

[298] Ms Wilson[346] pointed to the acknowledgment in cultural conferencing of the cultural significance of Ngā Kapua Kohuora to Te Ākitai Waiohua but concluded that the Self family proposal does not adequately address these values. Mr Denny[347] opined that the Self family proposal leads to a permanent and irreversible change to the cultural landscape and loss of mauri. In contrast Mr Kapea came to the conclusion[348] that the Self family proposal provides "an excellent opportunity for Te Ākitai Waiohua to take a

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341 Common Bundle, Vol 2, Tab 44.
342 C A Trenouth evidence-in-chief Attachment D [Environment Court document 11].
343 JWS at paras 9.2 and 9.4 [Exhibit 8.1].
344 JWS at para 14.6 [Exhibit 8.1].
345 JWS at para 11.1 [Exhibit 8.1].
346 K A Wilson evidence-in-chief at 3.6 [Environment Court document 7].
347 N H Denny evidence-in-chief at 9.2 and 9.5 [Environment Court document 9].
348 W A H Kapea evidence-in-chief at 5.25 [Environment Court document 30].

positive stand that supports the development proposal of the Appellant and secures in public ownership all identified mana whenua values."

[299] The Council's witness, Mr Denny, was asked in cross-examination[349]:

> At what point do we say in respect of this piece of the property or a piece of property, the appropriate and respectful way of recognising and providing for as saying it should be kept as farmland and not in future inhabited with modern housing?

He responded:

> I'm not sure I could answer that question, I can't imagine the threshold to advise the court on that point.

We remain puzzled by that. It could have been the appropriate answer for an expert refusing to express a view on the "ultimate issue". In fact, it came across as slightly defensive.

[300] We also have concerns about aspects of Mr Kapea's evidence. First he claimed in extra oral evidence-in-chief[350] to "... whakapapa to the area through (inaudible) Ngā hohou, through Te Tāhuhu, through the Tainui waka. I can whakapapa back a number of ways. ...". That statement is of concern in itself because it should have been (if he wished) given orally at the beginning of his evidence in accordance with tikanga and preferably stated in writing either in his written evidence-in-chief or in a Schedule to that so it could be checked in advance. Further, Mr Denny, who is undisputed as Te Ākitai (and a member of the Te Ākitai Waiohua Iwi Authority), said flatly that Mr Kapea is "not Te Ākitai"[351].

[301] Second, Mr Kapea made the subjective claim that the Te Ākitai witnesses have "newly orchestrated"[352] and "deliberately orchestrated"[353] their expression of Maori cultural values associated with Ngā Kapua Kohuora. We accept that some of the evidence on behalf of Te Ākitai was rather vague. That can be explained in part by the difficult times that the iwi has experienced since the early 1800s as described in the

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349 Transcript (p 176, line 17 onwards).
350 Transcript p 478.
351 Transcript p 189.
352 W A H Kapea evidence-in-chief at 4.40 [Environment Court document 30].
353 W A H Kapea evidence-in-chief at 6.18 [Environment Court document 30].

Cultural Assessment. Further, as noted earlier there is substantial independent archaeological evidence of the importance of this area to iwi. Finally, "orchestrate" has derogatory implications in this context suggesting that the evidence was perhaps invented. The reasons for the allegation should have been explained carefully. They were not.

[302] Against that evidential background, the question for us under section 32 RMA is how effective each of the options is in achieving the objectives in sub-chapter B6 of the RPS. As noted earlier, policy B6.5.2(1) requires sites to be protected and does not specifically refer to protection being limited to those included in the Schedule 12 (Sites and Places of Significance to Mana Whenua).

[303] Relevant to this issue, Mr Kapea's advice[354] to the court was:

> What is important, is that all the known cultural waahi tapu sites are protected and any discoveries will be dealt with as per the tikanga (protocols) set out in statute, this is also supported in Mr Gibbs' evidence covering archaeological sites on the Self Family Trust farm.

Given the strong directives in the RPS, we do not accept Mr Kapea's conclusion for three reasons. First, neither the Act nor the Plan oblige Te Ākitai Waiohua to make their pursuit of cultural values conditional upon supporting an appellant's proposal. Second, by focussing on "identified mana whenua values", Mr Kapea appears to adopt, as adequate, the representative approach to protection which we have already rejected. Finally, we have already expressed our doubts about the appropriateness and objectivity of Mr Kapea's evidence. It is difficult enough to assess the evidence of two self-interested iwi witnesses without also having to assess the objectivity of an independent witness.

[304] We conclude that the protection of natural and physical resources in relation to Mana Whenua is unlikely to be as effectively achieved by the appellant's proposal as it is by the status quo.

5.8 Coastal resources

[305] Consideration of the effects of development on coastal resources focuses attention on significant ecological areas in the marine environment, coastal water quality

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354 W A H Kapea evidence-in-chief at 4.47 [Environment Court document 30].

and the natural character of the coastal environment. However, in respect of Ngā Kapua Kohuora, little evidence was presented on the first two of these. The only expert relevant to marine ecological matters (Mr A R Jamieson, biodiversity expert appearing for the Council) made several references to statutory instruments supporting coastal protection[355] and expressed a general observation[356] in relation to Ngā Kapua Kohuora that:

> construction of houses, roads and the associated impervious areas would lead to the intensification of stormwater runoff and potential erosion issues. Avoidance of these would require further earthworks and disturbance to the landform for the construction of stormwater infrastructure, such as pipes, stormwater treatment ponds and coastal discharge structures on the margins of the Manukau Harbour at Waokauri Creek.

[306] The primary focus was on the effects of development on natural character, and the primary evidence on this matter comes from the two landscape architects and the contextualising of their evidence by the respective planners.

[307] The AUP's Objective B8.2.1(2) and policy B8.2.2(4) incorporates elements that enable subdivision, use and development and also require protections. We must therefore consider the effectiveness of the residential development that is proposed in the coastal environment.

[308] 24 hectares of Single House live zoning is proposed within the coastal environment and connecting roads would increase this developed area somewhat. By any measure[357], we find this a very substantial proportion of the coastal environment associated with Ngā Kapua Kohuora for which the existing natural character will be highly modified under the appellant's proposal, while remaining "relatively unfettered by residential or other forms of urban development"[358] under the status quo.

[309] The exchange under cross-examination of Mr Scott[359] on the influence of residential development on the natural character of the coastal environment reveals an ambiguity of language and interpretation similar to that we identified previously in respect

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355 A R Jamieson evidence-in-chief at 4.4 and 5.4 [Environment Court document 4].
356 A R Jamieson evidence-in-chief at 7.49 [Environment Court document 4].
357 Mr Brown estimates it would *"in-fill nearly one third of the existing tuff ring"*: evidence-in-chief at 10.9 [Environment Court document 3].
358 Mr Brown – evidence-in-chief at 6.2.
359 Transcript pp 462-471.

of Mr Scott's application of the term "representative". At several points in the cross examination, Mr Scott chose to focus explicitly on particular elements, parts or items within the natural environment (rather than the natural environment as a whole) when explaining his interpretation of the influence of his proposed residential development on the existing natural character of the coastal environment.

> I see this proposal as being re-imagining the development, and remembering that the development just isn't the housing, it's also the open space. ... So I'm expecting a change of philosophy about how you might go about accommodating buildings on this site in a much more sensitive way[360].
>
> ... There are parts of this landscape, because that's what it is, it's a geological feature in terms of the ONF but as a landscape there are several parts of that landscape which need some serious management attention[361].
>
> ...
>
> Q: So in summary you say that you can enhance naturalness by introducing housing, that's your proposition?
>
> A: Yes, because it's not the houses themselves, it's the activities and the management that goes with that development, because the development's not just the houses, the development is all the accessory green infrastructure and so on that goes with the development, and that certainly can enhance. It enhances public access, it enhances aesthetics, it enhances the way people appreciate the landscape, and all sort of positive aspects. Everything is not negative when it comes to housing.
>
> Q: But it doesn't, in terms of the list in Policy 13 for example, we have, again, natural elements, processes and patterns, you're introducing the man-made structures, housing infrastructure et cetera —.
>
> A: Yes, no, no, what I'm introducing is the enhancement of natural elements, patterns and processes, exactly what I'm talking about. That's what we will be doing with this development. We will be enhancing all of those exact, exact items, natural elements, natural patterns and natural processes. That is what I've identified on here and those are to be protected, more than that, they are going to be re-managed, re-imagined, and identified for quite a specifically different management regime which is going to assist in enhancing biotic relationships in that creek[362].

In the end, we are quite uncertain what he was trying to say.

[310] We have no doubt that the status quo is more "natural". As noted by Mr Enright in his closing submission for the AVCS[363], the Planning Tribunal stated in *Harrison v*

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360 Transcript p 462.
361 Transcript p 467.
362 Transcript pp 470-471.
363 AVCS closing submission, footnote 10.

Tasman District Council[364]:

> the word "natural" does not necessarily equate with "pristine", and can include ... pasture, exotic tree species ... wildlife ... as opposed to man-made structures, roads, machinery" et cetera .

The Environment Court approved that in *WESI v Queenstown Lakes District Council*[365] adding that the "criteria of naturalness include the landscape being uncluttered by structures or obvious human influence" and concluding that "naturalness is on a spectrum from pristine to city space; absence or presence of structures and urban form is relevant to the spectrum". We conclude that the status quo better[366] achieves the objective.

6. Evaluating the efficiency of the options

6.1 Sustaining the potential of natural and physical resources

[311] In *Federated Farmers of New Zealand Inc (Mackenzie Branch) v Mackenzie District Council*[367] the Environment Court stated:

> Section 32 approaches the question of efficiency by requiring analysis of three components of efficiency:
>
> (a) the benefits and costs of the proposed provisions[368];
> (b) the benefits and costs of the alternative[369] (in this case the status quo);
> (c) the risks of acting or not acting[370].

We should add that the third is perhaps controversial as a component of efficiency: it is really a backstop where there is insufficient information on (a) and (b).

[312] We adopt the analysis in that decision[371] as to why consideration of alternatives is still necessary under the Act even though express reference to alternatives has now

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364 *Harrison v Tasman District Council* [1994] NZRMA 193 (PT) at 197.
365 *WESI v Queenstown Lakes District Council* [2000] NZRMA 59 at [88].
366 "Better" is used here and elsewhere as shorthand for "more effectively" or "more efficiently".
367 *Federated Farmers of New Zealand Inc (Mackenzie Branch) v Mackenzie District Council* [2017] NZEnvC 53 at [457].
368 Section 32(4)(a).
369 Section 7(b) RMA.
370 Section 32(4)(b) RMA.
371 *Federated Farmers* above n 300 at [458].

been largely[372] omitted from section 32.

[313] We also follow that decision's statement[373]:

> [458] ... that economic efficiency involves a comparison of the net social benefits of the objective in question with the social benefits of the best alternative (often but by no means necessarily, the status quo).
>
> [459] Independent expert confirmation of those points can be gained from an excerpt from the New Zealand Treasury's *Guide to Social Cost Benefit Analysis*[374] ("*The Treasury Guide*") which was referred to by Dr Fairgray[375]. A relevant excerpt was produced[376] by Mr Gimblett, the planning consultant called for Meridian. That document – "Step 1: Define policy and counterfactual" – states[377] that:
>
> > *... Having established the potential need for a policy, the next thing to do is to clearly define the policy, alternative solutions and the counterfactual. The counterfactual is the situation that would exist if the decision is not made, if the policy does not go ahead. It is sometimes described as the "do nothing" or as the "do minimum" scenario. It is important to characterise the counterfactual accurately and to use it consistently, as the benefits and costs of the policy alternatives are measured against the counterfactual. This is often not straightforward, in particular where the "do nothing" or the "do minimum" scenarios are likely to evolve over the evaluation period. In those situations it will be necessary to forecast the evolution of behaviours and technologies.*

[314] The evidence of the economists Dr Fairgray for the Council and Mr Thompson for the Self family ranged through a number of methods of assessing the efficiency of development and use of the natural and potential physical resources of the land, which is a matter to which we must have particular regard under section 7(b) RMA in addition to being a requirement under section 32 of the Act. Where their respective analyses were quantified they relied on a cost benefit approach. However, neither provided a comprehensive net present value of the "impacts across all economic factors"[378] either of the options for each site before us for reasons we now discuss.

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372 Note that in the current (2017) version of section 32 it has a different heading.

373 *Federated Farmers* above n 300 at [458].

374 http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis/guide/... sourced 3/02/2017.

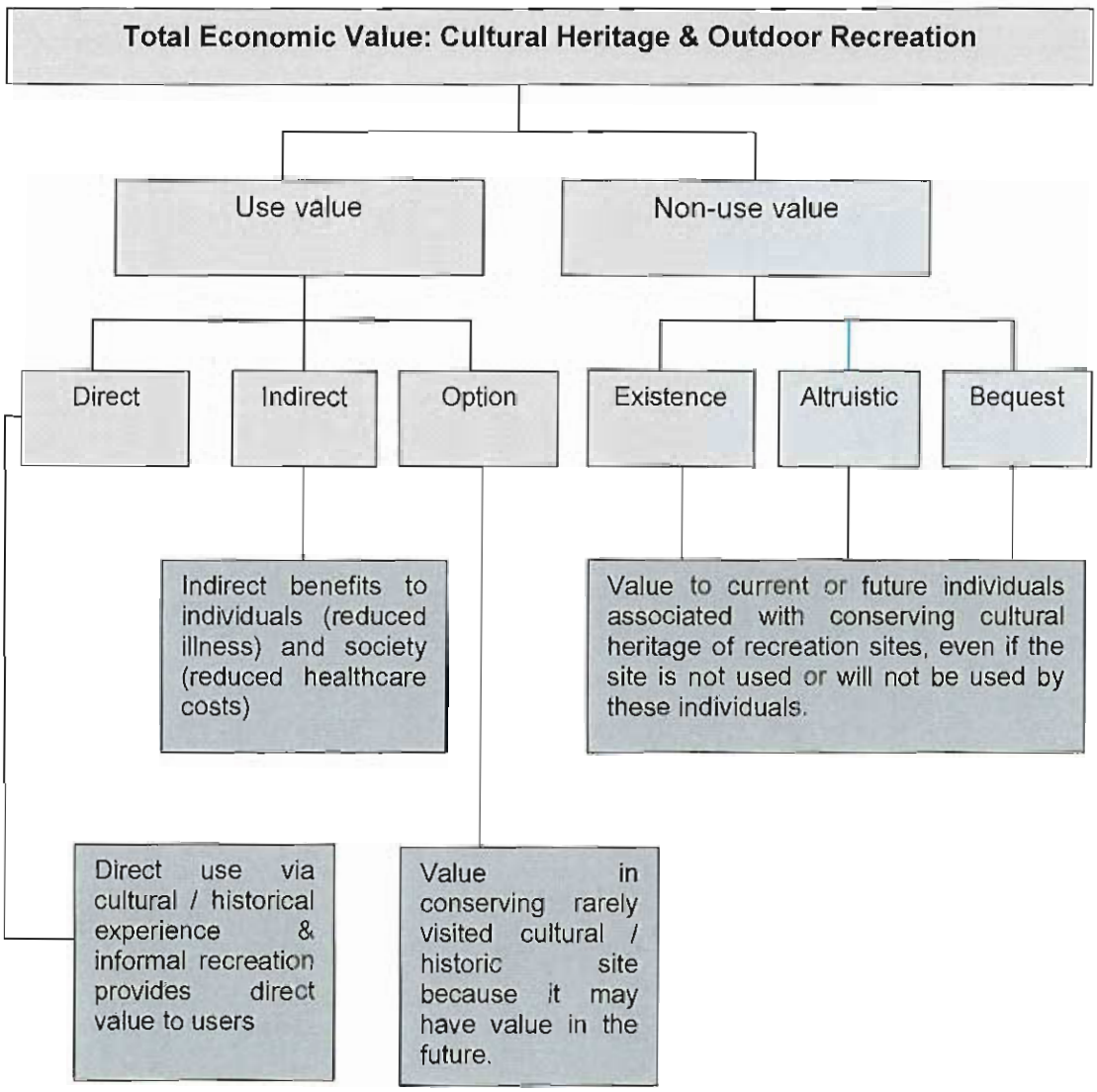
375 J D M Fairgray supplementary evidence 22 December 2016 [Environment Court document 9B].

376 Exhibit 30.1.

377 http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis/guide/... sourced 3/02/2017.

378 NZ Treasury *Guide to Social Cost Benefit Analysis"* para 19 http:/www.treasury.govt.nz/publications/guidelines/planning/costbenefitanalysis/guide/

[315] The economists' discussion can be given some coherence in the light of Mr Thompson's production of[379] a well-known scheme[380] of the relationships between the values of resources, and since Dr Fairgray generally approved[381] that "Total Environmental Value" framework, we will set it out here.



[316] The economists' evidence has increased credibility because they have at least recognised the existence of "non-use" values since these are of considerable importance in this case. The identification of both use and non-use values gives effect to that part of

379 A J Thompson evidence-in-chief Figure 9 [Environment Court document 27].

380 Cf 3. *Total Economic Value* in http://www.mfe.govt.nz/publications/fresh-water-rma/options-and-existence-values and *Cost Benefit Analysis and the Environment Recent Developments* OECD 2006.

381 J D M Fairgray rebuttal evidence at 7.19 evidence-in-chief [Environment Court document 10A].

the purpose of the RMA contained in section 5(2)(a) of the Act. That states:

> ... managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while —
>
> (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and ...

Sustaining the potential of resources is the equivalent of the economists' existence and bequest values.

[317] However, while the "Total Economic Value" approach is a step in the right direction towards including natural capital in a cost benefit analysis, Mr Thompson's evidence in particular concentrated on the use rather than the non-use values.

6.2 Enabling an efficient supply of residential land

[318] In part 5 we identified the options to be considered. Under the status quo (the Council decision) for Crater Hill development of some of the land for housing would not occur and the land would be utilised for rural production. The proposed housing would be accommodated elsewhere in Auckland.

[319] The alternative for us to consider is the Self family version under which the site is inside the RUB. Some parts would be zoned Single House Zone ("SHZ"), Mixed Housing Suburban Zone ("MHSZ"). According to Mr Thompson, the main features of the counterfactual for Crater Hill would be:

> (a) the land is utilized for 1,000–3,000 dwellings[382];
>
> (b) the land has access to trunk infrastructure and development would be likely to start in the short term (1–3 years);
>
> (c) the proposed roading would provide a high level of access to the Crater Hill reserve and coastal riparian strip.

[320] Also for the Self family Mr Scott calculated[383] that his proposed zones on Crater Hill provide:

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382 This figure assumes a large number (approximately 2,200) houses on Pūkaki Peninsula. That is most unlikely due to the airport related restrictions.

383 D J Scott evidence-in-chief at 124 [Environment Court document 29].

- Mixed housing – approximately 14 hectares which gives a potential yield of 300-600 dwellings);
- Single house – approximately 24 hectares giving a potential yield of 275 dwellings; and
- Open space (conservation) – approximately 80 hectares.

[321] For the Council Dr Fairgray calculated[384] that on that basis Crater Hill's capacity to provide 575 dwellings, would "represent" approximately 0.14% of total identified Auckland capacity for 422,000 dwellings over the next 30 years.

Housing market efficiency: Mr Thompson's theoretical approach

[322] Mr Thompson stated boldly that[385]:

> The first principle of urban economics provides the theoretical basis for my analysis of whether there is sufficient capacity for housing under the AUP. The principle is that 'prices adjust to achieve locational equilibrium'. This is a relatively complex concept however is commonly understood as the 'bid-rent curve'.

A footnote explains[386] that "I define a principle as a self-evident truth that most people that have studied urban economics readily understand and accept". Mr Thompson did not cite any authority for his principle, but merely referred to "bid-rent" curves. He later elaborated on those[387]:

> There are two bid-rent curves, one for **housing** and one for **development land**. The principle can be explained practically by the concept that a person will pay more for a house that is located near to the CBD, because this reduces his/her transportation costs, and conversely, that a person will pay less for a house that is located at the periphery because this increases his/her transportation costs.

[323] When reading the evidence before the hearing the court considered that Mr Thompson had some potentially useful evidence but was basing it on a principle that was both unsupported (in his evidence) and on unstated assumptions. To assist the witness

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384 J D M Fairgray evidence-in-chief at 5.7 [Environment Court document 10].
385 A J Thompson evidence-in-chief at [13].
386 A J Thompson evidence-in-chief footnote 1.
387 A J Thompson evidence-in-chief at [14].

and better inform the court, the presiding judge issued a Minute dated 12 October 2010, referring the parties and in particular the economists giving evidence to Chapter 3 "What Planners Need to Know about the New Urban Economics" by R Arnott from *The Oxford Handbook of Urban Economics and Planning* ("*The Oxford Handbook*")[388].

[324] In his response Mr Thompson wrote[389]:

> - My rebuttal evidence is based on the 'first principle of urban economics' which I define as 'prices adjust to achieve locational equilibrium'. This principle is synonymous with the monocentric model of the bid-rent curve.
>
> He said that Professor Arnott bases his chapter on the same principle, and quoted the author's view that[390]: "Fifty years after its conception, the monocentric model remains the cornerstone of urban economics ..."

[325] He also stated that Dr Fairgray explicitly rejected the first principle of urban economics and "... therefore adopts an extreme position"[391]. He added[392]:

> - Dr Fairgray's primary, rebuttal and supplementary evidence has not presented a theory or principle for analysing the efficacy of urban land markets or the locational choices of households or firms.

While essentially a pragmatic institution, the court is not averse to looking at the application of economic (or other) principles to evidence so long as it is soundly based and provides insight into the problems before the court. We bear in mind J M Keynes' reminder that "Practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist"[393]. However, we also need to recognise that the "principles" which we need to apply are those in the objectives (and policies) of the AUP. To that extent Mr Thompson's attack on Dr Fairgray is misconceived.

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388 Chapter 3 *What Planners Need to Know about the New Urban Economics* by R Arnott (from *The Oxford Handbook of Urban Economics and Planning* E D N Brooks et al (OUP, 2012).

389 A J Thompson, statement in response para 3 first two bullet points [Environment Court document 27A].

390 R Arnott *The Oxford Handbook* above n 390 at p 67.

391 A J Thompson statement in response para 3 third bullet [Environment Court document 27A].

392 A J Thompson statement in response para 3 fifth bullet [Environment Court document 27A].

393 J M Keynes *The General Theory of Employment, Interest and Money* (1936) pp 383-384.

[326] We consider Dr Fairgray is correct in his general approach in that he has assessed the efficiency of the options before the court in achieving the objectives of the AUP. The AUP was, in Dr Fairgray's words[394]:

> ... developed in the knowledge of how the core economic drivers can be expected to have effect, in the context of the economy itself including land and property markets, the regional population, the established polycentric urban form, the region's heterogeneous land base and terrain, and understanding of the key externalities arising in Auckland, and the nature and distribution of public goods.

We accept that. The key difficulties with Mr Thompson's approach are first that Auckland is a polycentric not a monocentric city; second that he has not taken the various specific externalities identified[395] by Dr Fairgray into account (but, in fairness, the AUP itself has tiptoed around the gaping externality which is the cost of congestion on Auckland's roads) and third, it is generally unrealistic in the ways Dr Fairgray has described.

Is there sufficient housing capacity?

[327] This is one point where the structure plan process directs us where to look. Appendix 1 of the AUP seeks that "the future supply and projected demand for residential land ... to achieve an appropriate capacity to meet the sub-regional growth projections in the Auckland Plan ..."[396]. However none of the witnesses told us what they were, nor did they analyse how the proposals might assist to meet those projections.

[328] More generally, an important issue in this proceeding is "whether there is sufficient supply of land for housing under the AUP"? Rather controversially, Mr Thompson approached the issue in another way. He stated[397]: "if there is sufficient capacity then houses will become increasingly affordable over time, conversely if there is not sufficient capacity then houses will become increasingly unaffordable over time".

[329] The AUP became partly operative on 15 September 2016, so the property market has had one year to adjust to the increase in housing capacity brought about in the AUP. Mr Thompson described[398] his assessment of the price of development land and new

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394 J D M Fairgray supplementary evidence at 4.2 [Environment Court document 11B].
395 J D M Fairgray evidence-in-chief at 4.13-4.40 [Environment Court document 11].
396 AUP, Appendix 1 para 1.4.1(1).
397 A J Thompson evidence-in-chief at 19 [Environment Court document 27].
398 Ibid 23 et ff and Table 1.

dwellings for the period since the AUP became operative. His analysis of new houses from "Trade Me" shows (according to Mr Thompson) that[399]:

- Across all listings, the average list price of a new dwelling in Auckland under the AUP is $1,030,000.
- In total, only 4 per cent of new dwellings have a list price of under $500,000, and 8 per cent of dwellings have a list price of less than $600,000.
- Of all new dwellings, more are priced above $1.75 million than are priced below $500,000.
- The majority of dwellings priced less than $600,000 are apartments. Given the cost of apartment construction, these are very small houses, generally of 40-50 m² (studio or one bedroom). On a per sqm basis they are very expensive. Small apartments are also generally unattractive for families for this reason.
- The current median Auckland dwelling sale price is $830,000 (source: REINZ). The current average new dwelling list price for Auckland is $1,030,000 (source: Trade Me). This is evidence that there is insufficient capacity under the AUP because the new dwelling prices are not aligned with demand. It also indicates that the price of dwellings will become increasingly unaffordable under the AUP, as the new housing is increasing the average price.

[330] Mr Thompson pointed to the value of rural land outside the FUZ which he estimated[400] to be $50,000 per hectare while he estimated[401] the value of "development land" to be $2 million per hectare. In other words development land is valued at 40 times rural land. He opined[402] that if there was sufficient land zoned for housing under the AUP the two values would be the same and concluded that there is "unequivocal evidence that Auckland has a severe shortage of development land, and that this is the fundamental reason for unaffordable house prices" [403].

[331] In summary, Mr Thompson relied on his evidence of the differential values of rural land and "development land" at or near the urban edge and argued that his First Principle of Urban Economics lead to the conclusion that Auckland City is under-supplied with development land. He concluded that the Auckland housing market is "... far out of equilibrium"[404] because there is a general lack of understanding of his "first principle" of urban economics.

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399 Ibid 28.
400 Ibid 17.
401 Ibid 17 and 24-26.
402 Ibid 17.
403 Ibid 26.
404 Ibid 41.

[332] Mr Thompson ignored extensive work commissioned by the IHP in favour of his theoretical market data-based method for determining capacity. That alone makes us pause. But his approach was substantially undermined when he admitted to the court that "there isn't a strong scientific or evidential basis"[405] for relying on market data when the AUP only became operative in part in September 2016. The weakness of his evidence was reinforced by the doubts that Dr Fairgray raised as to the figures used by Mr Thompson.

[333] Asked further questions in re-examination by Mr Bartlett, Mr Thompson was taken to the summary of capacity modelling results presented to the IHP[406]. He identified 270,000 of infill residential dwelling capacity. He said those figures represented "the maximum potential if everything was developed"[407]. However, as Ms Ash pointed out in her closing submissions, that statement is contrary to the IHP's report which identifies the capacity figures as "live zoned feasible enabled residential capacity"[408]. In effect, Mr Thompson's answer describes more "plan-enabled capacity", which is different. The IHP was careful to distinguish these in its statement of issues[409].

[334] There is a distinction between maximum plan-enabled capacity and the feasible residential development capacity. The latter is explained in one of the memoranda before the IHP (from the residential modelling expert group) as follows[410]:

> The ACDC model recalculates the capacity ... for each of 9 potential developments) on sites that have been identified ... as having plan enabled capacity, and in latter versions chooses a single feasible development option to report.
>
> ...
>
> In addition, all versions of the ACDC model outputs are not a forecast of development – they are a measurement, based on a snapshot in time of the opportunities for commercially feasible development given 'todays' costs, prices and planning frameworks. Relativity between model outputs can be used to compare the relative amount of enabled

405 Transcript p 410.

406 IHP Report to Auckland Council Overview of recommendations Annexure 1 Enabling growth July 2016, CBD, Vol 1, Tab 4.

407 Transcript p 415.

408 IHP Report to Auckland Council Hearing topic 013 Urban Growth July 2016, CBD, Vol 1, Tab 7, p 9.

409 IHP Report to Auckland Council Hearing topic 013 Urban Growth July 2016, CBD, Vol 1, Tab 7, p 6 at 2.1.1(i).

410 IHP Report to Auckland Council Hearing topic 013 Urban Growth July 2016, CBD, Vol 1, Tab 4, p 7.

development the plan being tested facilitates[411].

[335] We accept Ms Ash's submission that Mr Thompson has fundamentally misunderstood the modelling exercise undertaken for the IHP. As she wrote[412]:

> The IHP's capacity estimates discount non-feasible development capacity that is enabled by the plan. The figures for feasible residential development capacity will therefore necessarily be less than the figures for plan-enabled capacity. However, Mr Thompson appears to be under the impression that the IHP's figures include non-feasible development capacity. The capacity modelling therefore indicates more "usable" development capacity under the AUP than Mr Thompson assumes.

[336] Finally we note that the Self family's planner was of a different view to Mr Thompson. Cross-examined, Mr Putt conceded[413]:

> And it's a long way out, medium distance out, before the capacity in the RUB will need to be altered. ... in my mind the RUB has been generous in providing for the spaciousness particularly at the north-west and in the southern flanks of Auckland.

[337] The Council took a very different approach. Its economist, Dr Fairgray, analysed[414] both Mr Thompson's values and identified other causes for the differences in values. Dr Fairgray relied on the modelling undertaken for the IHP. The IHP obtained comprehensive reports which identified a large shortfall in the quantity of supply of residential land relative to the expected quantity in demand. To remedy that the IHP adopted a number of methods with the intention of "... err[ing] towards over-enabling capacity"[415].

[338] The IHP's estimate of the live zoned, feasible enabled residential capacity which would result from its recommendations was[416]:

- Live zoned feasible enabled residential capacity
  (a) 270,000 in existing urban areas;

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411 IHP Report to Auckland Council Hearing topic 013 Urban Growth July 2016, CBD, Vol 1, Tab 4, p 7.
412 Ms Ash closing submissions 6.112 [Environment Court document 39].
413 Transcript p 520.
414 J D M Fairgray evidence-in-chief Part 4 [Environment Court document 10].
415 IHP Report Topic 013 Urban Growth July 2016 CBD Vol 1, Tab 7, p 7.
416 IHP Report to Auckland Council Overview of recommendations on the proposed AUP 22 July 2016, p 52.

(b) 23,000 in live zoned land in new urban areas; and

(c) 14,000 in rural zones.

- Additional dwelling capacity in the FUZ (unlikely to be available in the next seven years[417]) 115,000

- Total feasible capacity over the whole period to 2041 at 422,000 dwellings.

That was considered broadly sufficient for Auckland's housing needs[418].

[339] The indicated date for development of Crater Hill is between 2026 and 2030. Taking the midpoint (2028) Dr Fairgray estimated that demand for the quantity of houses would then be in the range of 196,000-251,000 dwellings; and that the total dwelling capacity of approximately 310,000-330,000 for that period would exceed that substantially[419].

[340] We accept Dr Fairgray's opinions and his conclusion that "... there are many more influences on land values than simple distance from the CBD"[420]. His conclusion[421] on the prices of land and new houses is worth quoting in full:

> In my view, the reasons for the problems with the Auckland and national housing market are rather more clear cut, and not attributable to the difference in values between rural land some distance from urban centres, and land which is in the process of becoming urbanised. Clearly documented are the rapid growth in housing values nationally and internationally during the 2000-2007 period of easy access to finance and high consumer and investor confidence prior to the global financial crisis ("GFC") — a period when Auckland price growth was lower than all other regions in New Zealand; the subsequent shift in the economics of dwelling construction in Auckland as 3-yearly property revaluations saw land values outweigh improvement values on residential property for the first time; the heavy loss of construction capacity post-GFC and the slow recovery; competing demands for construction labour to repair the Christchurch earthquake damage; the return easy financial conditions, very low interest rates, and low inflation from 2012; the massive and sustained increase in immigration which saw Auckland's population growth rate double from 2014 onward; the large flows of investment capital from China especially, from around 2014; and the New

417 IHP Report to Auckland Council Overview of recommendations on the proposed AUP 22 July 2016, p 52.

418 J D M Fairgray, evidence-in-chief at 5.5 [Environment Court document 10].

419 J D M Fairgray evidence-in-chief at 5.26-5.30 [Environment Court document 10].

420 J D M Fairgray evidence-in-chief at 6.11 [Environment Court document 10].

421 J D M Fairgray evidence-in-chief at 6.14 [Environment Court document 10].

Zealand tax conditions which favour investment in housing rather than business activity.

Summary

[341] We have found that the likely number of new dwellings enabled by the Self family's proposal would be approximately 800[422]. To put this into proportion we bear in mind that the AUP already[423] enables over 1 million new sections. We conclude that the social costs of not having new houses on Crater Hill are very minor given the capacity elsewhere in the city.

6.3 Efficient integration of land use, transport and infrastructure

[342] Ms Trenouth[424] observed that the site is adjacent to the existing urban area and therefore can achieve outcomes that ... enable efficient supply of land and infrastructure provision". Mr Putt's evidence on integration of land use and transport was only slightly longer. It read:

> Future land uses on the subject land has ready transport connections to the principal road infrastructure of Auckland. The southwest motorway adjoins the property and connections to it are a short distance away at Massey Road. Easy access to the employment base at the airport is available. Bus routes to the urban train system at Papatoetoe are available and through good planning, cycleways can be integrated into these neighbourhoods where required.
>
> Transport, wastewater and water supply infrastructure is all readily available immediately adjoining the subject areas, either from Portage/Tidal Roads ...

Notwithstanding these generalised observations, we note that access to Ngā Kapua Kohuora is likely to be limited practically to two points of access off Portage Road. This being so, in the absence of new dedicated transport infrastructure and services, the location of much of the residential development proposed by the Self family, particularly the two Single House Zones, seems likely to create a high degree of vehicle dependency.

[343] Given the importance of this issue under objectives B2.2.1(1)(c) and (d) of the RPS, those assessments are inadequate in our view. In part that is the result of the

422 C A Trenouth rebuttal evidence at 2.3 [Environment Court document 11A].
423 C A Trenouth rebuttal evidence at 2.3 [Environment Court document 11A].
424 C A Trenouth evidence-in-chief at 12.71 [Environment Court document 11].

various policies in chapter 3. Instead of directing that persons seeking a change to the RUB give estimates (using proven standard traffic engineering techniques) of the number of extra or reduced hours people spend on Auckland's roads, Chapter B3 seeks generally[425] "effective, efficient and safe transport" which could mean almost anything. We would have expected Mr Putt to have identified where the relevant bus routes are and his assessments of the feasible options for transport mode available to prospective residents of the Crater Hill MH and SH zones, particularly given Mr Thompson's emphasis on the trade-offs between central location and travel time made by buyers of residential property. It is disingenuous to say that easy access to the "employment base" at the airport is available without taking into account time delays. The planners did not discuss this issue in their evidence.

[344] We accept that connections to other infrastructure may be available, but would have preferred expert evidence to confirm that. As we observed in section 5 of these Reasons, the absence of information about infrastructure – and in particular the lack of evidence about the integration of the proposed residential use of the site with transport networks – suggests strongly that if we are to approve the counterfactual it could only be in a modified version as a FUZ.

6.4 Productive values compared

[345] Mr Thompson compared the "productive" values of the two options as follows[426]:

[Status quo] (Auckland Council)	**Land area (hectares)**	**Value per hectare[427]**	**Value**
Crater Hill			
Elite Rural[428]	5	$250,000	$1,250,000
Prime Rural*	29	$200,000	$5,800,000
Other Rural*	59	$100,000	$5,900,000
Recreation / Conservation	16	$350,000	$5,600,000
Quarry	9	$50,000	$450,000
Total Crater Hill	***118***	–	***$19,000,000***

425 Objective B3.3.1 of the AUP.

426 Extracted from A J Thompson evidence-in-chief Table 5 [Environment Court document 27].

427 Rural Value: REINZ, Recreation & Quarry: Urban Economics.

428 Mr Thompson's source cited as D J Scott evidence-in-chief [Environment Court document 29].

[Counterfactual][429] (Self Family Trust)	Land area (hectares)	Value per hectare[430]	Value
Crater Hill			
Residential	38	$2,000,000	$76,000,000
Recreation / Conservation	80	$350,000	$28,000,000
Total Crater Hill	***118***	–	***$104,000,000***

[346] Dr Fairgray had three concerns[431] with Mr Thompson's evaluation of the productive value of the land. The first is Mr Thompson's unacknowledged assumption[432] that if Crater Hill is not urbanised there will be no response in the market elsewhere in Auckland. His second concern[433] is over the irreversibility of the changes in land use to housing. He illustrates his point by referring to the irreversibility of using prime (and elite) soils for housing. That is of more relevance to Pūkaki Peninsula so we will consider it there. However, the same principle applies in respect of the number of volcanos in southern Auckland. They are nearly all developed, so the irreversibility is really a cumulative effect issue.

[347] Dr Fairgray's third concern[434] is more fundamental. It is that Mr Thompson's productive assessment does not take into account the effects of urbanisation or the unquantified-but-important-under-the-AUP values relating to the coastal environment and the ONF, and the cultural and recreational values associated with them. Dr Fairgray wrote that Mr Thompson had "... assumed that all of the economic value is represented in the potential land value"[435].

6.5 Cultural, recreational and non-use values of each option

[348] For the Self family, Mr Thompson analysed the cultural heritage and recreational values of Crater Hill by dividing its "total economic value" for those two sets of values into 'use' and 'non-use' values as shown in the figure[436] shown in section 6.1 of these Reasons.

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429 Extracted from A J Thompson evidence-in-chief Table 6 [Environment Court document 27].
430 Source: Urban Economics – REINZ.
431 J D M Fairgray rebuttal evidence at 7.13-7.17 [Environment Court document 11A].
432 J D M Fairgray rebuttal evidence at 7.13-7.17 [Environment Court document 11A].
433 J D M Fairgray rebuttal evidence at 7.16 [Environment Court document 11A].
434 J D M Fairgray rebuttal evidence at 7.17 [Environment Court document 11A].
435 J D M Fairgray rebuttal evidence at 7.12 [Environment Court document 11A].
436 A J Thompson evidence-in-chief Figure 9 [Environment Court document 27].

[349] Because, as we have recorded, there is very limited public access to Crater Hill at present under the status quo, the site in Mr Thompson's opinion has only a non-use value, ie value derived from knowing the site exists and is protected[437]. Clearly it has minimal use value for either cultural heritage or recreation.

[350] Under the Self family proposal an additional 64 hectares of land would be zoned for recreation and cultural heritage use at Crater Hill because all the Self family land other than the living spaces and roads and other infrastructure would be zoned Open Space (and owned either by the Council or iwi interests according to Mr Self.

[351] Mr Thompson wrote — and this figure was not challenged — that[438]:

> Open Space Conservation Zone is estimated to have a value to the community of $350,000 per hectare. ... (based on the average value of a sample of other parks in South Auckland).
>
> The Self family version would have add[ed] an additional $22.4 million value to the community compared to the AC version scenario. It would also add value to the existing Crater Hill reserve, because it presently does not have vehicle access and is not well utilised.
>
> This would be a 'net benefit' as there is no public cost to offset the benefit, as the land would be gifted to the Council.

[352] Dr Fairgray agreed[439] that the TEV is an appropriate "framework ... for assessing effects and values". However, he qualified its usefulness by saying the approach "... depends on accurate and comprehensive assessment so that all relevant matters are taken into account"[440]. That is a basic principle[441] of assessment of social costs and benefits.

[353] In Dr Fairgray's opinion, Mr Thompson did not take into account all relevant matters. For example, while Mr Thompson has referred to the cultural and recreational use and non-use values of Crater Hill, he has not referred to its environmental values[442].

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437 A J Thompson evidence-in-chief at 79 [Environment Court document 27].
438 A J Thompson evidence-in-chief at 83 [Environment Court document 27].
439 J D M Fairgray rebuttal evidence at 7.19 [Environment Court document 11A].
440 J D M Fairgray rebuttal evidence at 7.19 [Environment Court document 11A].
441 NZ Treasury *Guide to Social Cost Benefit Analysis"* para 19 http:/www.treasury.govt.nz/publications/guidelines/planning/costbenefitanalysis/guide/
442 J D M Fairgray rebuttal evidence at 7.20 [Environment Court document 11A].

Neither, we add, has he referred to any ecosystem services it may provide.

[354] In particular, Dr Fairgray stated[443] that as an ONF the site has confirmed environmental values including landscape values, together with cultural values. His concern was that Mr Thompson had:

> identified some potential benefits or increases in value, but ... ignored the negative effects on the values of the ONF which would arise from urbanisation of a substantial area. Mr Thompson assumes that there is no loss of environmental or cultural value as an ONF it is developed for housing, rather than being left in its current land use.
>
> In the same vein, [Mr Thompson] states that the site would have *"only"* a non-use value, based on existence, altruistic and bequest values (para 79). In my view, much of the environmental value of the land arises from its non-use values, because the community places value on preserving and formally protecting important natural features into the long term, irrespective of whether they will ever use them. Where land has open space value, a substantial share of use values will generally accrue to the local community, whereas the option, existence, altruistic and bequest values will accrue to a much larger community who are unlikely to benefit from the use values themselves.

[355] In his view, Mr Thompson did not provide an adequate TEV assessment of the proposed urbanisation of the area. Bearing in mind the significance of Crater Hill to Te Ākitai and to the AVCS, we accept Dr Fairgray's criticisms and find we cannot rely on the comparison in value made by Mr Thompson.

[356] Dr Fairgray was criticised by Mr Bartlett for referring to the values identified in the objectives. However, assessment of net social benefits in achieving specified objectives is at the heart of any assessment of economic efficiency. In terms of the section 32 analysis it is the objectives in the AUP which are relevant so we do not accept Mr Bartlett's submission that such matters do not fall within the proper scope of Dr Fairgray's expertise as an economist. At law and in economic theory the question was quite misconceived. As Dr Fairgray said under cross-examination[444]:

> ... the fact that these resources have value and they're part of the overall mix so these resources have value to the community, because they have value to the community they're part of the decision-making process and the decision-making process determines land use so that's absolutely in my area. So I'm not evaluating the landscape or cultural value myself,

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443 J D M Fairgray rebuttal evidence at 7.20 [Environment Court document 11A].

444 Transcript p 203.

I'm just drawing on the expertise of others.

[357] We accept that view and recall that this is a matter to which particular regard should be had under section 7(b) RMA in addition to being a 'procedural[445] requirement' under section 32. We reiterate, because of its importance, that then it needs to cover all the social benefits and costs of achieving the relevant objectives. If they cannot be quantified then they should at least be identified so that a qualitative assessment can be made. Of course merely qualitative evidence reduces the utility of "efficiency" analysis because it then tends toward simply being an effectiveness evaluation (which needs to be carried out anyway[446]). The great virtue of quantitative analysis, where it can be comprehensively (even if only approximately) carried out, is that it gives an independent and objective assessment of the alternatives being examined.

6.6 Conclusion as to efficiency

[358] We asses that the net social benefits of the status quo are likely to be greater than those of the counterfactual.

PART C – PŪKAKI PENINSULA

7. The site and its context, and the issues under section 32 RMA

7.1 The environmental context

[359] Pūkaki Peninsula lies south of Pūkaki Crater. The Peninsula is bounded to the north by the suburb of Mangere, to the east by a creek which feeds sea water into (and out of) an estuarine wetland in the floor of Pūkaki Crater, to the south by Waokauri Creek and to the west by the larger Pūkaki Creek. The Peninsula is largely flat and most of it is currently used for market gardens with associated large sheds and glasshouses[447]. There are some clusters of dwellings at the southern end of the Pūkaki Road which runs north to south down the Peninsula.

[360] North of the Peninsula is the existing urban area, located within the RUB. That area has a Mixed Housing Suburban zone and is characterised by single and two-storey

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445 Per Wylie J in *Royal Forest and Bird Protection Society of New Zealand Incorporated v Bay of Plenty Regional Council* [2017] NZHC 3080 at [73].

446 Also under section 32 RMA.

447 C A Trenouth evidence-in-chief at 5.11 [Environment Court document 11].

detached houses. To the northeast of the Peninsula is Pūkaki Crater which is outside the appeal area. This crater has already been modified quite extensively: the northern wall and some of the eastern wall and rim of Pūkaki Crater are covered in houses along Prangley Avenue and Richard Road. The western and southern outside slopes of the crater are used for market gardening and cattle grazing. Northwest of the Pūkaki Crater and on its high outside slopes, there is further development in the Massey Road area.

[361] The "gently rising profile of the tuff ring"[448] of the Pūkaki Crater looks much like the alluvial ridges further east, so that a strong sense of a volcano is gained only on and within its circular tuff ring. The actual crater is at least 600 metres across and is one of the larger maar (explosion) craters on the Auckland Isthmus. The lagoon floor and the remaining inside walls of the tuff ring of Pūkaki Crater that are not affected by residential development are now in the shared ownership and management of the Auckland Council and the Pūkaki Māori Marae Committee. Hence the landscape, geomorphological and cultural components of the crater of most importance are largely protected with one exception we mention below.

[362] The northern edge of Pūkaki Peninsula for the purpose of this proceeding is a line midway around the southern external side of Pūkaki Crater. This area adjacent to and south of that edge is owned by Savanah Holdings Limited with most of the land below the crater rim used for horticulture, including greenhouses for lettuce.

[363] Pūkaki Creek, bordering the Peninsula to the west, is a tidal inlet within the coastal marine area of the Manukau Harbour and is identified as a Significant Ecological Area ("SEA")[449] in the AUP. The SEA is identified as comprising intertidal banks and shellbanks used by international migratory and New Zealand endemic wading birds. It also contains extensive areas of mangroves.

[364] Mr Brown described the Peninsula as:

> ... compris[ing] a mixture of pastoralism, market gardening, rural-residential development, and sporadic pockets of farmhouses and sheds. ... glass houses and packing sheds are the most substantial cultural elements within much of this setting. ... the international airport exerts its significant influence over most of the Puhinui / Pūkaki area and both industry and residential development is also pressing in on it near George Bolt Drive, Massey Rd, Tidal

448 S K Brown evidence-in-chief at 4.11 [Environment Court document 3].
449 SEA – Marine 2 27a.

> Rd, SH30 and eastern Puhinui Road.

Mr Brown was of the opinion that the Peninsula is "overwhelmingly rural in character"[450]. We consider the adverb is rather hyperbolic.

[365] Mr Scott noted[451] Mr Brown's comment and disagreed:

> ... [the] overall contextual perception is that in viewing this area it must be acknowledged that it is completely surrounded by urban development and is now inextricably urban in character.

We find that this is even more exaggerated and is in fact incorrect. Three sides of the Peninsula are surrounded by estuary – water and mangroves: it is after all, a peninsula. Further, its landscape context includes Crater Hill to the south-east (and the Manukau Memorial Gardens beyond that) which is rural as we have described earlier and the relatively natural land – extensive views and shrubs – surrounding the eastern end of the Airport's runway. Even allowing for the fact that the southern side of Waokauri Creek closer to Pūkaki Creek is zoned Light Industrial/FUZ under the Puhinui SP (see Map "C" attached) does not change our finding that Mr Brown is more accurate than Mr Scott in describing Puhinui Peninsula as rural.

Mana Whenua

[366] Te Ākitai Waiohua are the traditional owners[452] of Pūkaki Peninsula and the wider area containing it, including Auckland International Airport Pūkaki Marae and associated papakainga[453] are located at the southern end of the Peninsula adjacent to the Waokauri Creek. The associated urupā (Pūkaki urupā) sits on the southern tuff ring of the Pūkaki Crater, close to the arm of Waokauri Creek which extends into the Pūkaki Lagoon inside the crater.

[367] There are six particularly significant cultural sites on Pūkaki Peninsula according to Mr N H Denny who gave evidence for the Council[454]:

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450 S K Brown evidence-in-chief at 4.6 [Environment Court document 3].

451 D J Scott evidence-in-chief at 161 [Environment Court document 29].

452 *Central Earthmovers Ltd v Manukau City Council* (NZEnvC) A91/2002 (1 May 2002) at [194]; "Final Report of Board of Inquiry into ... Wiri" Vol 1, MfE Wellington, September 2011; Judge Milroy Maori Land Court 30 April 2013, s 7 Waikato Maniopoto MB7-11.

453 Whanau housing project.

454 N H Denny evidence-in-chief Attachment 1 "Cultural Heritage Assessment" p 28 [Environment Court

- Pūkaki Marae which is at the end of Pūkaki Road;
- the area of papakainga near the marae;
- Pūkaki Urupa;
- Ngatonatona;
- Waituarua;
- Pūkaki chapel.

[368] Ngatonatona, a former marae, is on the next polyp of the Peninsula north of the current marae, and provided a strategic outlook southwards down Pūkaki Creek towards Puhinui and the Manukau Harbour beyond. Waituarua is described as a former defended garden settlement sitting on the (low) headland on the south side of the creek that runs from the Pūkaki crater lagoon into Waokauri Creek. The Pūkaki chapel site is on Mr Edwards' land. It too adjoins Pūkaki Creek. While the last two sites are identified and recognised for their historic and cultural importance, no buildings remain.

[369] There are numerous middens, kūmara pits and other signs of Māori occupation on the land, located usually adjacent to the margins of the creeks. More recently in the first half of the 19th century the rich soils of the peninsula were used by Te Ākitai for commercial horticulture growing kūmara and other crops for the burgeoning Auckland market before they lost ownership in the common law sense in circumstances we describe briefly later.

[370] The urupa adjoining the Pūkaki crater is already on a separate title. This title is "landlocked" by the adjacent title (owned by the Living Foods Ltd) which fronts Pūkaki Road. Mr Putt observed[455] that an obvious solution to this problem would be through structure planning to provide legal access to Pūkaki Road for the urupa, allowing local iwi to have free and legal access without having to rely on the goodwill of the landowner.

The section 274 parties and their land

[371] Two of the section 274 parties own land and live on Pūkaki Peninsula. Mr and Mrs Gock live at the end of Pūkaki Road. Evidence was provided by Mr Putt covering the history of how Mr and Mrs Gock had acquired their property over the course of nearly

document 9].

455 B W Putt evidence-in-chief at 12.3 [Environment Court document 31].

30 years. As well as providing work and accommodation for locals, including iwi members, the Gocks assisted when building consents were not granted for land in the area because of lack of urban services. They agreed to purchase land fronting a paper road to enable the Wilson family (Te Ākitai) to build houses for their family on other sections owned in nearby Mangere. In the 1980s the Gocks also purchased land, previously leased, from Turners and Growers Ltd on condition that an old title and a new title for the Marae be gifted back to Te Ākitai Waiohua. These two titles became available[456] for the development of the new marae facility and papakainga housing, since developed.

[372] Mr Ted Edwards is the second section 274 party who owns land on the peninsula. He lives with his wife at 77 Pūkaki Road having purchased the 6.7 hectare property in 1999[457]. The land is in two titles and approximately 1.34 hectares is unformed road. There are two houses on the larger block by the road, the second is occupied by Mr Edwards' son. The Edwards family have used their land as a "lifestyle block" for the last 37 years, principally for rearing and training of trotting horses. The block is irregular in shape with a long peninsula running out into Pūkaki Creek.

[373] We have described how, while most of Pūkaki Peninsula is zoned Rural Production, there is a Special Purpose – Maori Purpose Zone[458] – at the end of Pūkaki Road. This zone covers 3 hectares (held in two titles). The zone description provides for the general development of marae and papakainga to support economic development in a manner that ensures the thriving and self-sustaining purpose of Maori communities. It also specifically provides for urban development at this location. There are at present 17 household units on the Pūkaki papakainga land (on a title of 2.77 hectares). Mr Putt calculated that under the provisions of a Mixed Housing Suburban Zone that could readily provide for up to 50 dwellings on the basis of a density of one dwelling per 400 m^2 (or more) if kaumata housing (housing for the elderly) is included. The marae title adjacent to the papakainga is 1.22 hectares which might be available for kaumata housing as well. This zone property is already fully serviced for wastewater and water supply so as Mr Putt wrote there is the potential for a substantial "urban settlement"[459], however he did not discuss the impact of the airport-related restrictions on such development.

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456 B W Putt at 13.5 and Attachment 3 to evidence-in-chief [Environment Court document 31].
457 T Edwards evidence-in-chief at 2 to 4 [Environment Court document 21].
458 In Chapter H27 AUP.
459 B W Putt evidence-in-chief at 12.6 [Environment Court document 31].

[374] Mr Brown's conclusions as to the significance of the Pūkaki Peninsula were[460]:

> Consequently, while much as the lower Pūkaki Peninsula, south of ONF 166 [Pūkaki Crater], remains significant at a more strategic, macro level, it has less significance, purely from a landscape standpoint, at a more fine-grained level. Even so, it is important to recognise the important connections that remain within this landscape, notably between Pūkaki Marae and the nearby crater, between the marae and the Pūkaki Urupa, and between the Waokauri and Pūkaki Creek system — including the margins of the Manukau Harbour — and Pūkaki Crater.

7.2 Introducing the section 32 evaluation

[375] Under section 32 RMA the reasonably practicable options for the Pūkaki Peninsula for us to assess are (again):

(a) the Council's decision ("the status quo"); and
(b) the relief sought by the appellant and adopted by the section 274 parties ("the counterfactual").

[376] The Council's decision on the RUB at Pūkaki Peninsula was to reject the IHP's recommendation and exclude the site from the RUB as the site was not suitable for urban development. The decision aligned the RUB with the edge of the ONF Overlay, excluding that feature.

[377] The consequences were that the RUB did not follow the coastline, and the FUZ was not applied to the area. The zoning applied was Special Purpose-Maori Purpose Zone (Pūkaki Marae, papakainga and urupa), Open Space – Conservation Zone on Pūkaki Crater and along the coastal edge of 83 Pūkaki Road, and Rural Production Zoning over most of the Peninsula[461]. The area defined as Rural Production Zone is also identified as sub-precinct H in the Puhinui Precinct, which provides for rural production activities and includes provisions relating to the ONF and for the Maori Cultural Landscape.

[378] The relief sought by the appellant and the section 274 parties seeks extension of the RUB at Pūkaki Peninsula to include approximately 85.9 hectares as Future Urban

460 S K Brown evidence-in-chief at 7.4 [Environment Court document 3].

461 C A Trenouth evidence-in-chief at 13.2 p 47, Attachment K, Exhibit 11.4 [Environment Court document 11].

Zoning and precinct provisions including the Special Purpose – Maori Purpose Zone and the Open Space – Conservation Zone.

[379] One of the matters we must evaluate is whether or not the Council's RUB is the most appropriate way to achieve the AUP's objectives[462], especially policy B2.2.2(2) of the AUP which establishes the criteria to be considered when determining the location or relocation of the RUB. The purpose of section 8 of our Reasons is to examine the effectiveness of the proposals for achieving the most relevant objectives in the statutory instruments, more particularly to consider the effectiveness of the appellant's proposal (and the section 274 parties' elaboration of it) and compare that with the effectiveness of the status quo (Council decision). In doing so we will refer to policy B2.2.2 which includes the criteria (a) to (e) to be considered when determining whether particular land is suitable for urbanisation, the requirement (f) to follow Structure Plan guidelines and the directives (g) to (l) to ensure adverse effects on natural and physical resources are avoided, and directive (m) dealing with the alignment of the Rural Urban Boundary.

[380] Policy B2.2.2(2) is considered in the following parts of the decision:

- Policy B2.2.2(2)(b) raising efficiency issues, is considered in part 9;
- Policies (h), (k) and (l) relating to the Waitakere Ranges, mineral resources and areas with significant natural hazard risks are not relevant in considering this area and will not be referred to; and
- The other policies are considered next (in part 8).

8. Assessing the effectiveness of the options

8.1 Promoting the achievement of quality compact urban form[463]

[381] Neither the decision of the IHP nor of the Council makes explicit reference to Pūkaki Peninsula's contribution to the compactness of the City. As discussed above, although Objective B2.2.1(i) describes what a quality compact form enables, and the associated Development Strategy provides reasons why a quality urban form benefits Auckland, there was relatively little expert evidence presented to the court on this subject.

462 Section 32(1)(b) RMA.
463 Policy B2.2.2.3(a).

[382] While there was some discussion about a potential mix of housing[464], there appeared also to be acceptance, in the light of the airport restrictions (MANA, HANA and the Engine Testing Noise Area[465]), that any urban use of the land would be more likely to be a Business Zone, such as Light Industrial. Mr Thompson wrote that the available area (approximately 80 hectares) would provide up to 192,000 square metres of industrial floor space[466].

[383] Relevant issues, such as the distance residents (if the land were zoned residential) or workers (if the land were zoned light industrial) would have to travel to and from urban centres of Mangere and Papatoetoe for community/social/commercial facilities or housing for workers, were not discussed in any detail.

[384] We accept Ms Trenouth's conclusion[467] that the criterion of compactness is a criterion that is unlikely to differentiate significantly between the effectiveness of the appeal proposal and that of the status quo in achieving such an outcome.

8.2 Integration of land use and transport[468] and the efficient provision of infrastructure[469]

[385] We have recorded that the section 274 parties seek a FUZ over the site, recalling that a FUZ is a transitional zone protecting land for future development. Any FUZ over the Peninsula would give the community an indication that the land would be needed and used in the future for urban development. Detailed Structure Planning would be required involving consultation with all owners of land in the area, and with Tangata Whenua. The southern end of Pūkaki Peninsula is affected by noise contours which require activities sensitive to noise to achieve appropriate acoustic mitigation and ventilation. As indicated by Ms Trenouth[470], it is unlikely that a Structure Plan would result in a residential zoning because of the added costs of development and the constraints imposed by the extent of the Airport Noise overlays. A Light Industrial Zone is the most likely zone.

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464 B W Putt evidence-in-chief at 4.14 [Environment Court document 31]; D J Scott evidence-in-chief Attachment B [Environment Court document 29].

465 C A Trenouth evidence-in-chief Attachment H [Environment Court document 11].

466 A J Thompson evidence-in-chief Appendix 2 [Environment Court document 27].

467 C A Trenouth evidence-in-chief at 12.71 [Environment Court document 11].

468 AUP, policy B2.2.2(c).

469 AUP, policy B2.2.2(b) and (d).

470 C A Trenouth evidence-in-chief at 13.9 [Environment Court document 11].

[386] Mr Thompson[471] stated that if the Pūkaki Peninsula was brought within the RUB, then it had the following characteristics which made it suitable for a future light industrial zoning:

> - **access to a major road**: the Pūkaki Peninsula is a 3-5 minute drive from the southwestern motorway along Pūkaki Road and Massey Road. It is therefore located relatively close to a major transport route;
> - **access to low-cost workforce**: the Pūkaki Peninsula is within the southern initiative area and has access to a large low-cost workforce;
> - **infrastructure**: the Pūkaki Peninsula has water and wastewater reticulation along Pūkaki Road;
> - **flat land**: much of the peninsula is relatively flat which enables easier development for industrial sites as less earthworks are required; and
> - **scale**: the peninsula could support up to 190,000 m² of industrial buildings. This is a significant amount of industrial development (almost two years of total Auckland demand) …

[387] No detailed analysis was presented on this topic and no firm indication of land uses and transport plans provided. The distance from urban centres of Mangere and Papatoetoe for community/social/commercial facilities or housing for workers was not discussed in any detail. The location of any urban development on the Peninsula seems likely to create a high degree of vehicle dependence. Providing public transportation in the area is unlikely to be cost-effective, and would depend on a new transport infrastructure or services because the only road in and out of the Peninsula is Pūkaki Road. This road of approximately 1.5 kms in length enters the Peninsula from the north, through the existing mixed housing suburban zone. Providing public transportation, cycling or short (desirable) walking routes in the area would not be simple. If the FUZ land were to be eventually zoned light Industrial, the quality of the amenities of existing residential and rural residents and Special Māori Purposes Zone would be affected by industrial traffic using that road.

[388] We consider locational efficiency in 9.2 below.

[389] Mr G D H Maddren, a Civil and Environmental Engineer called by J and F Gock, referred to his desktop assessment of the potential for critical infrastructure relating to the Gock family land. His conclusion was that his scoping exercise did not raise any impediments to urbanisation given that the viable density of development would be

471 A J Thompson evidence-in-chief at 70 [Environment Court document 27].

confirmed through engineering investigation and design. However, further engineering investigations and design work would be required and confirmation from the Council that capacity would be available within the existing or upgraded infrastructure if necessary[472].

8.3 Provision of choices in working environments[473]

[390] Mr Putt opined that development of Pūkaki Peninsula light industrial purposes would support the growth and expansion of Auckland International Airport reflecting the purpose of the Southern Initiative[474] in the Auckland Plan. We accept that the counterfactual would supply further jobs in relatively close proximity to a workforce in Massey and further northeast. However, the proximity of light industry on Pūkaki Peninsula to SH20 overlooks that there would be significant effects on the amenities of people living along Pūkaki and Massey Road. We consider this issue later in relation to the members of Te Ākitai living on the peninsula.

[391] In Ms Trenouth's opinion the Council's plans already provide adequate land for further development and the number of additional houses or workplaces made available if the Appeal were allowed would be small. Under the status quo there is potential for further development of horticulture and associated buildings such as sheds and glasshouses. Access to rural production land would offer the community the opportunity to develop additional horticultural and food production skills[475] (including development of mara kai gardens)[476] which would be more consistent with recognition of the mauri of the cultural landscape.

8.4 The Structure Plan guidelines[477]

Urban growth

[392] The first[478] of the Urban Growth guidelines in Appendix 1 of the AUP raises the question of future supply and demand at sub-regional level. This was not covered in

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472 G D H Maddren evidence-in-chief at 11.1 p 10 [evidence-in-chief 20].
473 Policy B2.2.2(e) AUP.
474 B W Putt evidence-in-chief at 3.9 [Environment Court document 31].
475 C A Trenouth rebuttal at 3.5, 6.5, 66 [Environment Court document 11A].
476 N H Denny evidence-in-chief at 9.4 [Environment Court document 9].
477 AUP, policy B2.2.2(2)(f) and Appendix 1 to the AUP.
478 Para 1.4.1(1) Appendix 1 AUP.

evidence by any party in any detail.

[393] The second and third guidelines on urban growth raise questions of design and development of the site, as does guideline 1.4.4 on "Use and Activity". These issues were not covered at all in the evidence. While the question of how much structure planning detail needed is clearly a question of fact and degree each time the location of a RUB is raised before the Council or the Environment Court, the lack of detail given in relation to the Pūkaki Peninsula is worrying especially with respect to:

- the location, type and form of the urban edge[479];
- the protection of "... the coastal environment"[480];
- the integration of the "green network"[481].

[394] The first two are related. We heard evidence from Mr Putt that the coastal environment would be protected by esplanade reserves or other reserves of "50 metres or more"[482]. Further, the special cultural sites identified above would also be protected by open space[483].

[395] One difficulty that arises is that if, as proposed by Mr Putt[484], the same width of open space is provided around Pūkaki Peninsula as for Puhinui South (see the Auckland Council's Puhinui Precinct Plan 5 – annexed as "G" to these Reasons) then, given the narrower width of the fingers extending into the creek on the western side of the Pūkaki Peninsula, the extent of developable land is questionable. The idea of a long finger of light industrial development either side of Pūkaki Road does not strike us as coherent or compact urban growth.

[396] There is little discussion in the evidence of the integration of the "green network" which is the estuarine system with open space and pedestrian and cycle networks beyond the suggestion that there would be esplanade reserves similar to those in Puhinui South. Mr Scott suggested there could be links.

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479 Appendix 1, para 1.4.1(3) AUP.
480 Appendix 1, para 1.4.2(1) AUP.
481 Appendix 1, para 1.4.2(3) AUP.
482 Transcript p 506.
483 B W Putt evidence-in-chief at 12.2 [Environment Court document 31].
484 "50 metres or more" (B W Putt) Transcript p 506.

[397] We find that the proposal for light industrial development would not protect the central landscape unit of importance as a whole. As a result of the Puhinui Precinct Structure Plan exercise, the cultural values of the "Puhinui Peninsula"[485] are largely confined now to the smaller Pūkaki Peninsula and sub-precincts H and A (the latter being coastal margin). The effect of development down Pūkaki Road would cut off the iwi from the urupa. If a formal access strip was provided to replace the current informal access from Pūkaki Road to the urupa, that would not compensate for the loss of the final enclave of "natural" cultural landscape left to Te Ākitai. Even that does not make the principal point which is that the Pūkaki Peninsula, together with Te Kapua Kohuora and the creeks are the interleaved "natural" cultural landscape associated with Te Ākitai. Covering it with light industrial buildings with their blank walls, and large surfaced outdoor spaces would remove the naturalness of the peninsula irreversibly and disconnect it from the coastal environment. To perceive Pūkaki Peninsula as an island is to use an urban cultural lens quite different from the interconnected view of Mana Whenua as we shall see.

8.5 Protection of scheduled natural and physical resources[486] and receiving waters[487]

[398] We recorded earlier that most of the Pūkaki Crater (a scheduled ONF which includes all of the Ngā Pūkaki Tapu o Poutukeka Historic Reserve and the associated lands) is protected by its Open Space-Conservation zoning, ownership, and control by the Council and the Pūkaki Maori Marae Committee, as well as by co-management arrangements. However, one part of the ONF lying within a parcel of land at 100 Pūkaki Road, is used for market gardens, and is owned by a party which is not involved in this appeal. The appeal seeks to include that parcel of land inside the RUB with a Future Urban Zoning[488]. Mr Jamieson expressed concern that "...development activities could result in significant adverse effects to the feature, including substantial damage or loss to a last remaining section of the tuff cone slope"[489].

[399] The Significant Environmental area (SEA-Marine) covering the adjacent creeks entails that these would remain physically unaffected by the proposal, as would the area zoned Special Purpose-Maori Purpose Zone.

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485 This is not a very accurate name: since it comprises at least three "peninsulas" including the two sites in issue in this case.

486 AUP, policy B2.2.2(2)(g).

487 AUP, policy B2.2.2(2)(i).

488 AC opening submissions at 8.41 p 51 [Environment Court document 2].

489 A R Jamieson evidence-in-chief at 8.34 [Environment Court document 4].

[400] There are potential adverse effects on the receiving environment (water and mangrove systems) of the Pūkaki and Waokauri Creeks from any urbanisation, whether residential or light industrial. Ms Trenouth in rebuttal explained that the Maori Reservation status of the Pukaki and Waokauri Creeks was a significant factor to consider because exclusive use rights had been afforded to Pūkaki Marae through the Regional Coastal Plan[490]. We accept that if proper processes were to be followed these effects are likely to be largely avoided.

8.6 Avoiding elite soils[491]

[401] No party disputed Dr Hicks's evidence that almost all of Pūkaki Peninsula includes elite or prime soils. We were advised that Dr Singleton, who participated in an Expert Witness Conference on behalf of the appellant, agreed with the Soil Report and maps attached to Dr Hicks's evidence so did not produce evidence[492]. A total of 71.5 hectares of land on the Peninsula (68%) contains elite (39.2ha) and prime (32.3ha) soils[493]. Continual erosion of even incremental quantities of such soils has an effect on potential sustainable food production for Auckland region and NZ as a whole. It was also stated that once urbanisation occurs land is not able to be returned to food production[494]. Of the area of elite soils, about 27 hectares are farmed by Mr and Mrs Gock. Mr Edwards' land too is largely elite soils.

[402] We discussed policy B2.2.2(2)(j) in section 3.4 of these Reasons. Counsel for Mr and Mrs Gock submitted that protection of elite soils is "not absolute"[495]. That may be correct, but we have held that the policy of avoidance requires that other activities which do not utilise the elite soils not be allowed, which is a strong bottom line.

[403] We find that the status quo is considerably more effective at protecting the elite soils than the counterfactual.

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490 C A Trenouth rebuttal at 7.5 [Environment Court document 11A].

491 AUP, policy B2.2.2(2)(j).

492 Joint Witness Statement para 4 (Attachment G to D L Hicks evidence-in-chief) [Environment Court document 5].

493 D L Hicks evidence-in-chief at 7.4 [Environment Court document 5].

494 S J Ford evidence-in-chief at 5.31 [Environment Court document 6].

495 Mr Webb closing submissions at 23 [Environment Court document 35].

8.7 Cultural issues

[404] Evidence on Maori cultural issues was presented by Ms M H Purkis (on behalf of the Gock family), and by Ms Wilson and Mr Denny (on behalf of Te Ākitai Waiohua Waka Tuau Incorporated and the Council). Ms Purkis said she did not disagree with Ms Wilson's evidence about the cultural sensitivity of the land, but believed it did not automatically follow that no other human habitation should be allowed and that careful planning of future uses could result in alternative uses of the land, other than growing vegetables[496]. Although Mr Kapea in cross-examination[497] said he was familiar with all the evidence and history that he had been able to access, his evidence was related principally to Ngā Kapua Kohuora.

[405] Ms Wilson explained that Te Ākitai iwi had played a role as a partner in the Structure Planning process for the Puhinui area, and described in detail the development of the Plan from its inception as Proposed Change 35 in 2010 to the Puhinui Structure Plan in 2015. She believed this process had helped inform the Council's case for the location of the RUB and zoning of the Puhinui area as presented to the IHP hearing. She stated that the Puhinui Structure Plan ultimately recognised the role of Te Ākitai Waiohua as kaitiaki of the Puhinui area. She then expressed concerns about the possibility of urban development on Pukaki Peninsula as making no sense from a Te Ākitai cultural perspective: "It is abhorrent and wrong for sites of such value to be subject to that level of development particularly without proper opportunities for Te Ākitai to participate in decision making processes as kaitiaki". [498] Ms Wilson explained that Mana Whenua values recognise the need to consider the whole Peninsula in a holistic way and described the Peninsula as a whole as a culturally significant area not suitable for urbanisation[499].

[406] Mr Denny, who was responsible for compiling the "Cultural Heritage Assessment for Puhinui Peninsula and Pūkaki Peninsula" referred to earlier, described the history of the site, providing a detailed explanation of the relationship Te Ākitai Waiohua has with the site. He also described the content of the Cultural Heritage Assessment and the processes followed in making this available to assist the Council in its Structure Plan. Mr

496 M H Purkis evidence-in-chief at 29 to 31 [Environment Court document 18].
497 Transcript p 481.
498 K A Wilson evidence-in-chief at 7.4 [Environment Court document 7].
499 K A Wilson evidence-in-chief at 7.7 [Environment Court document 7].

Denny expressed the view that the proposed extension of the RUB and consequential rezoning would diminish the value and significance that Te Ākitai Waiohua placed on the land. Among the concerns relevant to the Peninsula were the loss of potential mara kai gardens and loss of the cultural landscape[500]. However we have found on the evidence that water quality effects can likely be managed so there will be little deterioration of water quality. He also expressed concerns about potential impacts on the Pūkaki and Waokauri creek system.

[407] Ms Trenouth in her rebuttal referred to the purpose of Puhinui Precinct Plan 1 – Attachment "E" – (Maori Cultural Landscape Values)[501] so as "to identify the layers of values to recognise that the cultural values are not only assigned to a specific site and that sites and places together combine to form a landscape"[502].

8.8 Aligning the RUB with strong natural boundaries[503]

[408] Mr Putt argued that this provision required the Rural Urban Boundary to be aligned to a strong natural boundary (coastal edge), and that this step should be taken before the criteria and directives discussed above were considered. He also suggested that the boundary chosen by the Council was not a strong natural one[504]. Ms Trenouth's opinion was that the alignment of the RUB as supported by the Council was also a strong natural boundary (ONF) enabling protection of natural and physical resources while avoiding land containing elite and prime soils significant for their ability to sustain food production[505]. While we accept the land/water interface is the strongest natural boundary (in a physical sense) on this site, a line across the head of the peninsula (as on Attachment "C") is also, we find, a sufficiently logical and natural boundary to satisfy the Council's criterion.

8.9 Conclusions on effectiveness

[409] Overall we find that the RUB as set in the Council's decision (ie the status quo)

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500 N H Denny evidence-in-chief at section 9 [Environment Court document 9].

501 AUP map "Puhinui: Precinct Plan 1 – Maori Cultural Landscape Values" Exhibit 11.9 (Attachment "E").

502 C A Trenouth rebuttal at 7.4 [Environment Court document 11A].

503 AUP, policy B2.2.2(m).

504 B W Putt evidence-in-chief [Environment Court document 31].

505 C A Trenouth rebuttal at 5.61 p 28 [Environment Court document 11A].

achieves[506] the most relevant objectives (and policies) in the AUP better than the alternative coastal edge RUB (the counterfactual) proposed by the appellant and supporting section 274 parties.

9. The efficiency of the options for Pūkaki Peninsula

9.1 Efficiency in supply of industrial land

[410] Mr Thompson's view[507] was that while Auckland may, in theory, have sufficient industrial land capacity for future growth in terms of available zoned land, the actual price of land indicates insufficient capacity (so more could be made available on Pūkaki Peninsula). Mr Thompson's analysis was based on his comparison of:

- the cost of "development land" assessed by him at $50,000 per hectare; and
- the cost of industrial land at between $100,000–$200,000 (an uplift of x20 or 40)[508].

[411] Mr Thompson pointed to the apparent difference between the large quantity of vacant industrial land and the quantity on the market. Considering the small (in his view) number of different land owners he suggested "there may be a degree of monopoly in the industrial land market"[509]. He then estimated the quantity of light industrial demand as an additional 65 hectares per year over the coming decade for industrial zoned land. The Business Land study undertaken by Market Economics (ME) for the IHP[510] forecast a quantity demanded of 61 hectares (medium) per annum for industrial zoned land excluding FUZ land (Table 3.8). The total supply of vacant land was estimated in 2016 as 878 hectares.

[412] Dr Fairgray agreed[511] with some of Mr Thompson's general points on the focus of industrial employment and demand in southern Auckland, and how some characteristics of Pūkaki Peninsula are generally suited to industrial activity. However,

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506 Section 32(1)(b)(i) RMA.
507 A J Thompson evidence-in-chief at 60 [Environment Court document 27].
508 A J Thompson evidence-in-chief at 62 [Environment Court document 27].
509 A J Thompson evidence-in-chief at 65 [Environment Court document 27].
510 PAUP *Business Land: Land Demand by Activity and PAUP Supply* (2016) Yeoman, R; Huang, T and Akehurst, G.
511 J D M Fairgray rebuttal evidence at 8.2 [Environment Court document 11A].

Dr Fairgray disagreed with Mr Thompson's analysis on the rise in prices of industrial land and pointed to data[512] which suggest that unlike Auckland house prices, the prices of industrial land has only moved at 3% per year in real terms.

[413] Further, Dr Fairgray disagreed that there is any monopolistic exercise of market power, observing that nine of the top ten owners have just twelve properties between them[513] and another 584 hectares is spread across 162 properties[514]. He considered this was confirmed by the recent CBRE report[515] which found "The amount of new industrial supply that entered the market in 2016 is the largest since 2007". That does not suggest that market power is being exercised by land holders. The CBRE study also observed that "we see more speculative developments in the pipeline than in recent years, with four of the ten largest projects expected to be completed next year being built with no initial occupier commitment". In Dr Fairgray's view that indicates that the developers are able to build before demand arises with development being supply-led, rather than demand-led.

[414] The IHP zoned significant areas of proposed FUZ land for business. That provides significant additional land for development (Drury South, Warkworth North, Puhinui immediately south of Pūkaki Peninsula and Highgate). These areas combined added around 500 hectares of vacant land. In total over 1,300 hectares of land is zoned for industrial uses. This level of vacant supply is likely to supply 15 to 20 years of demand — 2013 to 2036. In Dr Fairgray's view that is sufficient. We accept his opinion based, as it is, on a more careful analysis of the facts.

9.2 Locational efficiency of Pūkaki Peninsula

[415] Mr Thompson assessed[516] the "locational efficiency" of Pūkaki Peninsula by counting the current population and employment numbers within 5km of the Peninsula, and comparing those with other locations which he described as "new urban areas". He concluded[517] that "Pūkaki Peninsula has a substantial locational efficiency advantage over other greenfield ready to go development land across Auckland".

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512 J D M Fairgray rebuttal evidence at 8.5 and 8.6 [Environment Court document 11A].
513 J D M Fairgray rebuttal evidence at 8.7 [Environment Court document 11A].
514 J D M Fairgray rebuttal evidence at 8.7 [Environment Court document 11A].
515 CBRE Auckland Industrial Occupier Outlook 2017.
516 A J Thompson evidence-in-chief at 108 to 112 [Environment Court document 27].
517 A J Thompson evidence-in-chief at 111 [Environment Court document 27].

[416] Dr Fairgray observed that Mr Thompson has considered only the current situation, and not the future situation. In Dr Fairgray's view the appropriate point for comparison would be in 2033 or 2043. Further, Dr Fairgray was unable[518] to replicate Mr Thompson's figures and the latter did not attempt to defend them. Dr Fairgray's analysis led to a conclusion that[519]:

> ... other locations including Redhills and Takanini will be equally or more efficient than Pūkaki Peninsula, into the longer term, in terms of the resident populations within 5km. I do not agree with his contention that Pūkaki has a substantial locational efficiency advantage.

[417] Since no attempt was made for the Gocks or Mr Edwards to test Dr Fairgray's evidence on the locational issues we prefer it to that of Mr Thompson. Accordingly we find that locational efficiency favours the status quo.

9.3 Efficiency of farming

[418] Mr and Mrs Gock called three witnesses concerning the financial viability of their farm. First, Mrs F Gock expressed her subjective opinion that their farm could not pay its way. Second, Mr Putt gave planning evidence for them, making the same point in reliance in what he described as the farm accounts (which he produced[520]), although Mr Ford in rebuttal and in cross-examination indicated they were not complete: "This data is simply a summary table of a number of years information"[521]. Third, Ms Hawes, the horticultural consultant, expressed her view that the farm was not financially viable, and we will consider her opinion shortly.

[419] In contrast, Mr Ford, the resource economist called for the Council, described his approach as being to "look at the area of the Pūkaki Peninsula as a whole and not concentrating so much on the Gocks' operation because ... the vast majority of the land there is being farmed very intensively for horticultural production"[522]. Cross examined by Mr Webb on the theme that the Gocks "just can't make it work anymore", Mr Ford replied[523]:

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518 J D M Fairgray rebuttal evidence at 7.27 [Environment Court document 11A].
519 J D M Fairgray rebuttal evidence at 7.28 [Environment Court document 11A].
520 B W Putt, Attachment 2 to evidence-in-chief [Environment Court document 31].
521 S J Ford rebuttal at 3.10 [Environment Court document 6A] and Transcript p 107.
522 Transcript, p 108.
523 Transcript, p 116.

> ... what's happened in terms of the growing industry over the last 10 or 15 years to the point, now, where 70% of the production of vegetables in New Zealand are grown by approximately 10 growers and those are large operations with very high technical inputs, huge infrastructure expenditure and I'm afraid the Gocks have been left behind in terms of that operation, as have many other small growers in the area.

[420] Mr Ford referred to the other growers on Pūkaki Peninsula (the Youngs). He said his enquiries revealed that they are very happy with, and are continuing with their operations[524]. Comparing the Youngs' operation to Mr and Mrs Gocks' he said "there is a considerable difference in the setup of how they get value out of their crops and one of the fundamental things is the technology they use in growing them"[525].

[421] We next consider the practicality of Mr Ford's figures. Mr Ford set out[526] a range of Gross Margin returns calculated as revenue less expenses for various crops on Pūkaki Peninsula. Ms Hawes confirmed that she had accepted and used Mr Ford's Gross Margin figures in her table following paragraph 7.32 in her evidence, and which she renamed as Table 3B[527]. These calculations can be replicated as follows:

(1) divide each of Mr Ford's Gross Margin return figures by 104 hectares (the entire peninsula) to get a per hectare rate;
(2) multiply the per hectare rate by 51 hectares being the area of elite and prime land owned by the Gocks (as set out in Table 2 of Ms Hawes' evidence); and
(3) the result is the high and low figures for both standard and aggressive rotation models as set out in Ms Hawes Table 3B (Mr Ford also explains the mechanics of the calculation in his rebuttal evidence[528]).

[422] Mr Ford and Mrs Hawes reached different conclusions in relation to Net Return because[529]:

(a) Ms Hawes double counted her post-harvest infrastructure costs as they

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524 Transcript, p 119.
525 Transcript, p 119.
526 S J Ford evidence-in-chief at 5.20 and 5.21 [Environment Court document 6A].
527 Transcript, p 327.
528 Transcript, p 12B.
529 S J Ford rebuttal evidence at 6 et ff [Environment Court document 6A].

were already included in Mr Ford's Gross Margin figures which she adopted[530]); and

(b) Ms Hawes calculated net return by assuming a 100% loan to value ratio (i.e. $0 in equity) and then deducts interest on that inflated loan value from the revenue.

[423] We accept Ms Ash's submission that the landowners' concerns about not being able to meet their "day-to-day expenses" are theoretical. Ms Hawes' calculations "... generally arise as a result of Mr Ford's accepted Gross Margin return figures being off-set by the assumed costs of servicing a mortgage for 100% of the rateable value of the Gocks' property"[531]. If that is not unrealistic in our current speculative rural economy, it is at least unreasonable.

[424] Ms Hawes' acceptance under cross-examination that the Gocks would have to meet the market should they wish to sell, did nothing to reinforce her evidence, as is suggested in the submissions on behalf of the Gocks[532]. Rather, it shows that rateable value was not a sound basis on which to make her calculations, putting aside the more fundamental problem with her approach which she conceded when acknowledging[533] the rateable value is not the market value.

[425] Mr Webb's submission is inaccurate when he says that "... farming the land is uneconomic, and Mr Ford says that doesn't matter because of the capital gain"[534]. Mr Ford's more relevant conclusion is that:

(a) if the double counting of costs is eliminated, and

(b) if there are more realistic mortgage assumptions, then:

> ... the Net Return exceeds the debt servicing figure in all scenarios except the standard rotation low Gross Margin scenario (this scenario will only be an exception if interest rates move higher than the current 5% identified by Ms Hawes). In all other scenarios, there is a considerable margin between the Net Return and debt servicing costs, even if the interest rate moves up from 5% to 7.5% per annum[535].

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530 S J Ford rebuttal evidence at 6.3 [Environment Court document 6A].

531 Council's opening submissions 7.19 [Environment Court document 2].

532 Submissions for J and F Gock, 8 December 2017, para 98 [Environment Court document 16].

533 Transcript, p 329.

534 Submissions for J and F Gock, 8 December 2017, para 96 [Environment Court document 16].

535 S J Ford, rebuttal evidence at 6.9 [Environment Court document 6A].

Further, Mr Ford stated that in his opinion the viability of the land should not be based on the rateable value of the land. That is correct as we discussed above when considering Ms Hawes' evidence (although it does suggest that Mr and Mrs Gock may have grounds for objecting to their rating valuation).

[426] Mr Webb suggested to Ms Trenouth in cross-examination that the area of elite soil at Pūkaki Peninsula was too small to have an impact on the Auckland region. She replied[536]:

> ... this issue was raised in terms of I think talking about housing the other day, but if you continue to argue every small piece of elite soil in that way we will lose all the elite soil, so you have to look at the bigger picture and say, "well when do you have to protect them?" The plan has made that call, it's operative and it says that elite soils should be avoided when urbanising land.

That is a satisfactory answer to Mr Webb's question given the forthright directive quality of the relevant policy.

[427] Mr Ford's evidence establishes that, viewed objectively, it is economically viable to farm the land at Pūkaki Peninsula, and the personal experiences of Mr and Mrs Gock do not diminish that. Consequently we find that farming on Pūkaki Peninsula is viable. It is simply not as profitable as the landowners would like, especially when compared with the potential profits from subdivision and redevelopment for urban purposes. The fact that the market would, if left to operate freely, move to the latter land use does not take into account the externalities that would impose in terms of failure to use elite soils, congestion on the roads (locational efficiency is a part of this) and potentially the substantial reduction in value of non-use values to Te Ākitai[537] and to the public.

9.4 Assessment of rural versus urban productive values

[428] Mr Thompson assessed the value of the status quo as follows[538]:

536 Transcript p 286.
537 We discuss this last externality in section 13.4 of these Reasons.
538 A J Thompson evidence-in-chief Table 5 [Environment Court document 27].

"Base Case" (Auckland Council)	Land area (hectares)	Value per hectare[539]	Value
Pūkaki Peninsula[540]			
Elite Rural	39	$250,000	$9,750,000
Prime Rural	32	$200,000	$6,400,000
Other Rural	32	$100,000	$3,200,000
Total Pūkaki Peninsula	**103**	–	**$19,350,000**

[429] In comparison he assessed the counterfactual as follows[541]:

Counterfactual (Gock/Edwards)	Land area (hectares)	Value per hectare[542]	Value
Pūkaki Peninsula			
"Future Urban Zone"	84	$200,000,000	$168,000,000
Total	**202**	–	**272,000,000**

[430] Dr Fairgray's analysis was summarised in section 6.4 of these Reasons and we adopt that here. Further he and Mr Ford pointed out that the use of the elite soils for Light Industrial was effectively irreversible so there is an important non-use value being eradicated here which has not been costed. Mr Thompson made no attempt to assess the non-use values so his table is incomplete, and thus of little value.

PART D – OVERALL EVALUATION

10. Revisiting the matters to be considered

[431] In parts B and C we set out our section 32 evaluations. But of course that is only a part of our task.

[432] In part A we set out[543] the other matters that our decision must accord with. We consider them in this way: first we consider the site-specific factors for Crater Hill, then

539 Source: Rural Value: REINZ, Recreation & Quarry: Urban Economics.
540 Figures from Dr D L Hicks.
541 A J Thompson evidence-in-chief Table 6 [Environment Court document 27].
542 Source: Rural Value: REINZ, Recreation & Quarry: Urban Economics.
543 In section 1.5 of these Reasons.

those for Pūkaki Peninsula and finally we consider the land as a whole (taking care not to double count relevant factors).

[433] There is one preliminary matter. Counsel and some witnesses for the landowners placed considerable emphasis on *Wallace*[544], a decision of the Environment Court relating to other land in South Auckland, which we discussed earlier on the issue of a 'strong natural boundary' for the RUB. There was another aspect of the decision that the farming parties drew to our attention. On the issue of the Māori cultural landscape the Court in *Wallace* held[545]:

> However, we are satisfied that Māori values and heritage characteristics can be provided for and/or adequately protected by sensitive development with appropriate constraints, this will, at the same time, enable the landowners to provide for their social and economic needs in accordance with Section 5 of the Act. A need which cannot be achieved while this land has a rural zoning because appropriate rural uses are not a viable option.

[434] The Court's reasons included[546]:

> To keep the land outside the MUL, with a rural zoning, would without further constraints, offer less protection to the characteristics protected by Section 6(e) and (f) of the Act. To lock the land up might indeed provide for Māori and heritage values. But it would not provide for the economic needs and well-being of the owners. By allowing sensitive constrained development, heritage and landscape characteristics can be protected while at the same time allowing the owners to provide for their economic well-being.

The appellant and supporting landowners submitted that we should place weight on the reasoning in *Wallace* and adopt the same approach. However, there are important distinctions between the cases both on the facts and in relation to the applicable statutory documents.

[435] First, in *Wallace* the land was not in the coastal environment, being separated from Manukau Harbour by the width of the Stonefields Reserve. In these proceedings a substantial part of the Pūkaki Peninsula is within the coastal environment as is much of Crater Hill, except for the inside of the crater[547]. Consequently, the NZCPS is applicable to the land in this case, whereas it was not in *Wallace*. Second in relation to cultural and

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544 *Wallace* above n 251.
545 *Wallace* above n 251 at [127].
546 *Wallace* above n 251 at [128].
547 See Mr Brown's map: Attachment "D" to this decision.

archaeological values the court now has a different set of objectives and policies in the (different) RPS to consider. Third, while elite and prime soils were found on the land in the *Wallace* case the Environment Court did not have to apply policy B2.2.2(2)(j), nor did it have evidence from an agricultural economist showing that positive returns were available from farming the land. A fourth distinction is that in the *Wallace* case the Council's option considered by the Court was more extreme: the Council had imposed a Notice of Requirement over the Ihumātao Peninsula (northwest of Auckland International Airport) which was for "Public Open Space and Landscape Protection Purposes"[548]. In contrast the appellants sought movement of the "Metropolitan Urban Limit" and (in some cases) urban zonings or a "future development zone"[549].

[436] The Environment Court found that:

> To keep the land outside the MUL, with a rural zoning, would without further constraints, offer less protection to the characteristics protected by Section 6(e) and (f) of the Act. To lock the land up might indeed provide for Māori and heritage values. But it would not provide for the economic needs and well-being of the owners[550].

The reference by the Environment Court to "locking up" the land in that case was to the Notice of Requirement. A taking of land is not proposed here.

[437] For those reasons we find *Wallace* to be of little assistance.

11. Crater Hill

11.1 Section 32 assessment

[438] We concluded in our section 32 analysis on the options for Crater Hill in Part B of this decision first that the status quo – leaving the Council's RUB where it is – is more effective than the counterfactual. Second, in relation to efficiency, we held that the net social benefit also favours the status quo, taking into account both the qualitative and quantitative evidence. We add that to the extent that we lacked information on some factors, we consider the risk of acting (i.e. changing the RUB as sought by the Self family) has greater adverse consequences than the risk of not acting.

548 *Wallace* above n 251 at [9].
549 *Wallace* above n 251 at [134].
550 *Wallace* above n 251 at [128].

[439] We recognise that there will be opportunities lost if we do not move the RUB — the Self family will lose the potential to gain a profit (including a producer's surplus) and about 500 households will lose the opportunity to move into one of three potentially attractive neighbourhoods. However, we noted on our site inspection that development on the southeast side of Pūkaki Crater does not look like an unequivocal success and the wider social implications of adding disconnected enclaves of housing to South Auckland were not explained at all. The Self family will undoubtedly be disappointed, but they still have their Rural land, or if it is no longer satisfying them, the opportunity to sell it to someone else as lifestyle blocks (and we accept Mr Scott's evidence that this may cause some detraction from the current relatively seamless appearance of the volcano) and for the development potential of the rehabilitated quarry in its own zone.

[440] A contextual element for us to bear in mind is that there are also subjective elements for other "owners" if we did move the RUB. The consequential development would be the last in a line of disappointments for Te Ākitai stemming from Crown actions during or after the Land Wars in the 1860s, then the taking of land for the airport one hundred years later, followed by the recent drawing of the RUB so as to include Puhinui Peninsula (south) and to allow urban development there. The risk of acting (moving to the counterfactual) is much greater than the risk of not acting as far as Te Ākitai is concerned. We return to this issue at the end of this part of our decision.

11.2 Giving effect to the RPS (Chapter 3 of the AUP)

[441] To a large extent giving effect to the RPS mirrors the "effectiveness" part of the section 32 analysis since the objectives to be implemented are the same. We focus here on one key issue. One of the most important aspects of this proceeding in relation to the Self family's site is that we are concerned with an ONF (Crater Hill), much of which – the outer slopes on the northern, western and southern sides – is within the coastal environment. This means that there are important objectives in two parts of the RPS – B4 (ONFs) and B8 (coastal environment).

[442] In relation to outstanding natural features[551] the objectives for Chapter B4 (Natural Heritage) are:

551 I.e. omitting outstanding natural landscapes for brevity.

B4.2.1 Objectives

(1) Outstanding natural features ... are identified and protected from inappropriate subdivision, use and development.

(2) The ancestral relationships of Mana Whenua ... with the natural features of Auckland ... are recognised and provided for.

(3) The visual and physical integrity and the historic, archaeological and cultural values of Auckland's volcanic features that are of local, regional, natural and/or international significance are protected and/or, where practicable, enhanced.

These three objectives of B4.2.1 AUP and their implementing policies, especially policy B4.2.2, requires close analysis of the kind indicated by *King Salmon*[552].

[443] Where there is an outstanding natural feature which is also a volcano, the first, more general, objective about ONLs and ONFs gives way in our view to the third more specific objective for volcanoes. Whereas the first objective only protects the ONLs and ONFs from inappropriate subdivision, use and development, the third objective protects the visual and physical integrity of those of Auckland's volcanoes which are of local, regional or national importance.

[444] Objective B4.2.1(1) fairly closely follows the words of section 6(b) RMA. By itself it does not really give much extra guidance beyond the matter of national importance in the RMA. However, it must be read with the other two objectives. Objective B4.2.1(2) requires recognition and provision for Mana Whenua ancestral relationships, culture and traditions comprising a "cultural landscape" as we have explained. Importantly B4.2.1(3) places Auckland's volcanoes (expressly identified in the objective as features) in a special category in that their "visual and physical integrity and [their] historic, archaeological and cultural values" are to be protected.

[445] Objective (3) does not use the words of objective (1) "... protected from inappropriate subdivision, use and development". It simply says "protected" with the implication in the context of these three objectives that any subdivision, use and development of "Auckland's volcanic features" is inappropriate. In our view, objective (3) is close to a bottom line of the "avoidance" type in the NZCPS. One other aspect of objective (3) is that even volcanoes of only local interest are protected. There is no need for a volcanic feature to be an outstanding natural feature at a regional (or higher) level to have the protection of the objective.

552 *King Salmon* above n 22.

[446] We conclude that the objectives can be read together in a consistent and coherent way. Complications arise when the implementing policies B4.2.2 are considered. Once an ONF is identified and evaluated under policy B4.2.2(4) and placed in Schedule 6 of the AUP[553], the policies to implement the protection of the ONF are:

> ...
>
> (6) Protect the physical and visual integrity of Auckland's outstanding natural features from inappropriate subdivision, use and development.
> (7) Protect the historic, archaeological and cultural integrity of regionally significant volcanic features and their surrounds.
> (8) Manage ... outstanding natural features in an integrated manner to protect and, where practicable and appropriate, enhance their values.

[447] Policy B4.2.2 requires "careful analysis" of the kind required by *King Salmon*[554]. Examining the policy more closely we see that the last three policies specifically protect ONF. All the remainder relate to their identification and evaluation in the first place. The three protective policies are (6), (7) and (8) quoted above. It will be seen that all three policies particularise the objectives to a limited extent. Policy (6) commences by repeating the formula in section 6(b) RMA but confines it to ONFs and their "physical and visual integrity". This policy refers to ONFs so that it appears to implement primarily objective (1) but uses the final phrase from objective (3) when it protects the physical and visual integrity of the ONF "...from inappropriate subdivision, use and development".

[448] Policy B4.2.2(8) is also important because it provides for the integrated management of ONFs so as to achieve enhancement of the values where both practicable and appropriate. The qualifying phrase is an acknowledgement that enhancement may not be possible in all cases, but only where it is appropriate. In contrast there is no reference to subdivision, use and development being appropriate.

[449] Those two policies must be read with policy (7). Policy (7) specifically relates to volcanic features – thus appearing to be intended to implement objective B4.2.1(3) –

(a) refers only to "regionally significant volcanic features and their surrounds";

553 Under AUP B4.2.2(5).
554 *King Salmon* above n 22 at [129].

and

(b) only protects their "historic, archaeological and cultural integrity".

The effect of policy (7) is that if a volcanic feature and its surrounds are "regionally significant" its historic, archaeological and cultural integrity should be protected. Development of regionally significant volcanoes is implicitly inappropriate in all circumstances, otherwise the formula "... protect from inappropriate subdivision, use and development" would have been used. To imply those words would make policy (7) redundant: the policy would add nothing to policy (6).

[450] These policies are uncertain because while objective B4.2.1(3) requires:

(a) complete protection of all Auckland's remaining volcanic features; and
(b) in particular protection of their "visual and physical integrity" (in addition to other values).

– the policies read together do not cover either field completely in that:

- locally important features are not referred to (that is not important in this case because Pūkaki Hill is a scheduled ONF);
- the requirement to protect the visual and physical integrity has been qualified by the phrase "from inappropriate subdivision, use and development";
- questions arise as to whether development and use can appropriately affect "visual and physical integrity" without affecting archaeological, historic and cultural integrity at all.

[451] These policies are difficult to apply because an ONF's historic, archaeological and cultural integrity is protected from adverse effects, full stop[555]. In contrast its physical and visual integrity are protected only from inappropriate subdivision, use and development[556]. It is difficult to see how the policies by themselves or in context can be said to consistently implement the objectives. However these policies need to be read with those in sub-chapter B8 as we shall see.

555 AUP, policy B4.2.2(7).
556 AUP, policy B4.2.2(6).

[452] Mr Bartlett submits that both policies B4.2.2(6) and (7) applied separately would be achieved if the RUB were moved to the IHP lines. On the evidence we have found, in section B, that the effects of the Self family proposed on Crater Hill are likely to be inappropriate. We prefer the evidence of Mr Brown on the adverse effects of the proposal on visual integrity to the less coherent evidence of Mr Scott (who, as his counsel reiterated) evaluated the proposals largely in the framework of the original ONF assessment criteria, rather than having regard to the conceptually different and wider list(s) provided in the AUP. We accept the evidence of Dr Hayward on the effects on its geophysical integrity. We find that the proposed Self family development would isolate the crater and fragment the important outside slopes.

[453] Mr Scott wrote that his proposal "respects ..." the comment in Schedule 6 of the AUP. We do not accept that in the light of the other experts' opinions. We find that two of the three blocks of houses will not maintain the visual and physical integrity of the slopes, even if some substantial creek-to-crater rim view and use shafts are to be kept open.

[454] We conclude from the evidence that the AUP's objectives are likely to be better achieved if the RUB is not moved. Some action might subsequently be taken by Council to redraw the ONF's limits. In our view there is a reasonable case for bringing its boundary west of the motorway (thus excluding the Self homestead block but including the rehabilitated quarry).

[455] We also find policy (7) would not be achieved in terms of cultural integrity because having houses over the last maunga in Te Ākitai's rohe which does not yet have housing would trespass on the mauri of the volcano and its other values under policy B6.5.2(2) of the AUP.

[456] In view of our findings and predictions on the evidence it is probably unnecessary for us to deal with a legal question that was raised by the court and submitted on by the parties. However for completeness we will refer to it. Mr Bartlett submitted[557] trenchantly that "for now the appellant is entitled to rely upon and does rely upon the unchallenged rules as determined by the Auckland Council". We think he meant "objectives and policies" rather than rules. He sought a right of reply if the Council resiled from relevant provisions.

557 Closing submissions for Self family 76 [Environment Court document 34].

[457] Mr Bartlett is critical of the Auckland Council. He submits that if it considers the AUP is incorrect (and it is not clear that it is saying that) then it should be initiating a plan change to correct it. While that may be so technically, we can understand that given the extremely tight timetable imposed by Parliament on the Auckland Council there has been no chance until recently for the Auckland Council and its staff to catch their collective breath. Further, an ONF in the coastal environment is a relatively rare feature so it does not seem unreasonable for the Auckland Council to wait for the Environment Court's view on the effectiveness of the AUP vis-à-vis policy 15(a) of the NZCPS.

[458] In her reply Ms Ash does not address any possible conflict directly but submits[558] that the High Court in *Royal Forest and Bird Protection Society of New Zealand Incorporated v Bay of Plenty Regional Council* stated at section 67(3) RMA – which was the equivalent of section 75(3) in this case – that "the documents listed in section 67(3) which a regional plan must give effect to, are conjunctive and not disjunctive". Accordingly she submits we must give effect to the NZCPS and policies 13 and 15 directly.

The volcano as an ONF in the coastal environment

[459] A relevant objective in the RPS is:

> B8.2.1(1) Areas of the coastal environment with ... high natural character are preserved and protected from inappropriate subdivision, use, and development.

[460] For a long time it concerned us that this objective does not cover the situation where there is an ONF which is also in the coastal environment. The reason for that scenario is relevant is that much of the Crater Hill ONF is within the coastal environment as comparison of plans D and H attached to this decision shows. Neither do any of the implementing policies refer to ONFs (or ONLs).

[461] However, a closer reading of sub-chapter B8 shows that this part of the RPS maybe more comprehensive than the planning witnesses suggested in their evidence it contains a number of sets of objectives. These relate to:

- Natural character (B8.2.1)
- Subdivision, use and development (B8.3.1)

558 Closing submissions for Auckland Council 4.8 and 4.9 [Environment Court document 40].

- Public access (B8.4.1)
- Managing Hauraki Gulf (B8.5.1)

The third set is of lesser importance in this case and the fourth set of objectives is irrelevant.

[462] While the objectives and policies for natural character[559] are limited in the way we have described, they must be read with the objectives and, particularly, the policies for subdivision, use and development. The objectives are focused on locating[560] subdivision, use and development in the "appropriate" places without giving much guidance as to where might be inappropriate, and on avoiding, remedying and mitigating[561] adverse effects in the coastal environment. The policies for general[562] use and development then include this[563] (relevantly):

> ...
>
> (2) Avoid or mitigate sprawling or sporadic patterns of subdivision – use and development – in the coastal environment by all of the following:
>
> (a) ...
>
> (b) avoiding urban activities in areas with natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, ...
>
> [underlining added].

[463] So sub-chapter B8 does reflect policy 15(a) of the NZCPS at least partly. The policy is a strong bottom line direction that urban activities (not a defined term, but we assume it includes housing) are to be avoided on scheduled heritage features such as Crater Hill. That appears to be relevant because the three distinct blocks of houses proposed by the Self family have the appearance of sporadic development of the site. However, none of the planners and landscape architects referred to[564] this policy. Accordingly we put no weight on this as a disbenefit of the Self family counterfactual. However, we see policy B8.3.2(2)(b) as consistent with B4.2.2.4(7) described above: the common theme is that the volcanoes should be protected from urban and other development.

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559 AUP, B8.2.1 and B8.2.2 respectively.

560 AUP, B8.3.1(1).

561 AUP, B8.3.1(2).

562 There are specific sets for activities relating to parts, reclamations and aquaculture.

563 AUP, B8.3.2(2).

564 Ms C A Trenouth identifies the "key policy" in B8 as B8.2.2(4) evidence-in-chief at 10.18 [Environment Court document 11].

11.3 Giving effect to the New Zealand Coastal Policy Statement

The evidence on giving effect to the NZCPS

[464] Policy 6 of the NZCPS applies to the Self family's proposed zonings. However, its language is not directive as the Supreme Court pointed out in *King Salmon*[565]. On the other hand, policy 15(a) is directive. The latter expressly enjoins local authorities and the court to "... avoid adverse effects of activities on ONFs ...". That is important because we have found that the houses, domestication and infrastructure of the Self family counterfactual is very likely to have adverse visual and physical adverse effects on Crater Hill.

[465] With respect to Mr Scott's evidence, we consider the view that the wording in NZCPS policy 13 is intended to enable protection or enhancement only of certain elements which might be deemed indicative of natural character in an area is incorrect. Rather, it is the totality of the natural character of the identified coastal environment that requires protection from inappropriate development.

[466] The planning evidence also reveals two contrasting perspectives on the NZCPS. As noted in the closing submissions for both the AVCS and the Auckland Council, the planner for the appellant, Mr Putt, appears to have paid little attention to the directive wording of policies 13 and 15 in the NZCPS and instead relied on Mr Scott's assessment. Mr Scott referred to Ms Trenouth's NZCPS analysis as follows[566]:

> Referring back to the description of Crater Hill under Schedule 6, I confirm that the elements identified have been respected fully in this development plan that I have provided. All of the scientific and educational importance of Crater Hill will be preserved and available permanently through the open space network I have proposed. Noted in this description in Schedule 6 is the comment that it is also the only remaining explosion crater in the Auckland field where the external slopes of the volcano outside the crater rim are nearly entirely intact and unmodified.

This is not evidence about whether the objective is satisfied. Further we have already recorded our concern that the criteria analysed by Mr Scott relate primarily to the

565 *King Salmon* above n 22 at [127].

566 D J Scott evidence-in-chief at 120 [Environment Court document 29].

identification of an ONF in the RPS not to its protection, and that there are other criteria and, more importantly, objectives not expressly considered by Mr Scott, which cover that issue.

[467] We agree with Ms Trenouth's observation that the appellant's witnesses – Mr Scott and Mr Putt – have not adequately assessed the appeal proposal against the statutory test to give effect to the NZCPS. Rather inconsistently Mr Putt both relied on Mr Scott's assessment, and stated that, while he considered the NZCPS was "important"[567]:

> In terms of the [NZCPS] I consider that as the higher order statutory instrument [the NZCPS'] policies and content have been appropriately reflected in the AUPOiP – Coastal Section [and] ... I consider that the provisions of the NZCPS have been fully met. ...

Mr Putt did not expressly consider NZCPS policy 15(1) at all. Rather, he stated[568] that Ms Trenouth had identified the relevant statutory instruments in her para 6.7 and that he agreed with that analysis.

[468] We therefore prefer the evidence of Mr Brown and Ms Trenouth on this matter.

What weight should be given to the NZCPS policies?

[469] The conflict between the witnesses raises the issue of the weight we should give to the NZCPS, although this only becomes a determinative issue if our understanding of how to apply the AUP is wrong.

[470] Concerns were in fact raised by two of the planners: the planning conferencing statement of 9 November 2017 concludes with a statement by Ms Trenouth and Mr Lawrence (but not joined by the third planner Mr Putt) that[569]:

> the NZCPS is relevant because the RPS Policies [B4.2.2] Natural Heritage do not reflect the same directive language as Policy 15(a) to avoid adverse effects.

As we shall see, a similar issue arises in relation to the RPS provisions on the coastal environment (B8).

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567 B W Putt evidence-in-chief at 15.2 [Environment Court document 31].
568 B W Putt evidence-in-chief at 15.1 [Environment Court document 31].
569 Exhibit 11.1.

[471] The Auckland Council and the AVCS relied on the decision of the High Court in *The Royal Forest and Brid Protection Society Inc v Bay of Plenty Regional Council ("the Bay of Plenty case")*, a case concerning a proposed plan change. Wylie J stated[570]:

> The statutory provisions require that a proposed plan give effect to both any New Zealand coastal policy statement and any regional policy statement. The requirement that a proposed plan's policies implement the proposed objectives is a separate and distinct obligation. The requirement for an evaluation report under s 32 to examine, inter alia, the extent to which the proposed provisions are the most appropriate way to achieve the objectives, is a procedural obligation. Neither the obligation to implement a proposed plan's objectives, nor the requirement for an evaluation report, removes the necessity for a proposed plan to give effect to both any New Zealand coastal policy statement and any regional policy statement.

In other words we must be careful to ensure that the result of the section 32 evaluation does not automatically outweigh the obligation to give effect to[571] the NZCPS and any RPS.

[472] In another passage in the same decision he held[572]:

> In my judgment, the Environment Court erred when it proceeded primarily by reference to the RCEP's objectives, with only limited reference to the RPS and the NZCPS. Its approach in effect ignored the statutory directive contained in s 67(3). That subsection is clear in its terms. It requires that decision-makes promulgating regional plans must "give effect to", inter alia, National Policy Statements and Regional Policy Statements. The Environment Court failed to have regard to the majority of the Supreme Court's finding that the words "give effect to" mean to implement, and that this is a strong directive, creating a firm obligation on the part of those subject to it.

[473] Wylie J also disagreed[573] with the approach taken by the Environment Court in *Appealing Wanaka Incorporated v Queenstown Lakes District Council*[574] that:

> ... the effect of *EDS v NZ King Salmon* is that the only principles, objectives and policies which normally (subject to the second and third points) have to be considered on a plan change are the relevant higher order objectives and policies ... in this case the QLDP ...

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570 *The Bay of Plenty case* above n 445 at [73].
571 Under section 75(3)(b) RMA.
572 *The Bay of Plenty case* above n 445 at [69].
573 *The Bay of Plenty case* above n 445 at [88].
574 *Appealing Wanaka Incorporated v Queenstown Lakes District Council* [2015] NZEnvC 139 at [47].

> Second, only if there is some uncertainty, incompleteness or illegality in the objectives and policies of the applicable document does the next higher relevant document have to be considered (and so on up the chain if necessary). Third, if, since a district plan became operative, a new statutory document in any of the lists identified in section 74(2) and (2A) and section 75(3) and (4) has come into force, that must also be considered under the applicable test. While the simplicity of that process may sometimes be more theoretical than real, since in practice plans may be uncertain, incomplete or even partly invalid, it is easier than the exhaustive and repetitive process followed before the Supreme Court decided *EDS v NZ King Salmon*.

It is easy to see why Wylie J was critical: quite apart from section 72(3)(b) RMA'S express direction that a district plan (and change) must give effect to the NZCPS, the language of *Appealing Wanaka* is redolent of the "subject to part 2" test in section 104 RMA which applies to resource consents (not plan changes).

[474] What the Environment Court appears to have been reaching for (apart from simplicity) in *Appealing Wanaka* was that on a plan change there are often many objectives and policies in the document being changed or in other statutory instruments underneath an NPS which are beyond challenge and indeed may be intended to guide subordinate plan changes. The logic of the *Appealing Wanaka* argument is:

(1) *King Salmon*[575] states, in effect, that the NZCPS gives effect to and "particularises" Part 2 of the RMA in general and section 6(a) and 6(b) of the Act in particular;

(2) normally there should be no need to look at Part 2 of the RMA when making decisions[576] – " … section 5 should not be treated as the primary operative decision-making provision";

(3) by analogy the AUP gives effect to and particularises the NZCPS (it certainly claims to do so in the introductory D10.1 Background") to Chapter D10);

(4) again by analogy with *King Salmon*, there is (usually) no need to look at the NZCPS unless the AUP is uncertain, incomplete or illegal.

[475] It appears to us that there are issues about consistency of approach that need to be resolved by the superior courts, but we take them no further here because we are bound by the decision of the High Court in *Royal Forest and Bird Protection Society of*

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575 *Appealing Wanaka Inc v Queenstown Lakes District Council* [2015] NZEnvC 139.

576 *King Salmon* above n 22 at [130].

New Zealand Incorporated v Bay of Plenty Regional Council[577] (and because, strictly, they may not be raised by our findings on the evidence). Accordingly we need to apply policy 15(a) of the NZCPS. Further, if it is not achieved we should give it considerable weight because of the uncertainties in the RPS. We have found, relying on Mr Brown's and Mr Jamieson's evidence that the Self family proposals will cause adverse effects on the intactness and values of the ONF. Thus the status quo's RUB will give effect to the NZCPS for the crest and outer slopes of Crater Hill, whereas the Self family's proposal does not.

[476] On the question of uncertainty or "tension" in the subordinate document Wylie J wrote[578]:

> It seems to me that if there is a tension perceived in a lower order document, the approach taken by the majority in *King Salmon* should be applied to try and resolve that tension. If the tension cannot be resolved, then recourse would be made to the higher order planning documents to see if the tension is more apparent than real. I agree with counsel for Transpower that, where regional plan objectives could lead to more than one policy framework, it is incumbent on decision-makers to check whether their preferred policy framework gives effect to the higher order planning documents. That is what s 67(3) requires.

[477] Finally he added[579]:

> ... it does not matter that the RPS at issue in this case is recent and settled. That is irrelevant, both in terms of the statutory scheme and the Supreme Court's observations in *King Salmon*.

That is the answer to Mr Bartlett's point that the AUP has only recently been settled.

11.4 The IHP's recommendations and the AC decision

[478] We consider the general aspects of these documents below.

[479] As for Crater Hill itself, the IHP stated "... that the Self family land use and landscape analysis and spatial planning has been substantially completed in a

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577 *The Bay of Plenty case* above n 445.
578 *Royal Forest and Bird Protection Society Inc v Bay of Plenty Regional Council* above n 575.
579 *Royal Forest and Bird Protection Society Inc v Bay of Plenty Regional Council* above n 575.

comprehensive manner". It concluded[580] "Having reviewed the evidence, the Panel is satisfied that the residential zonings proposed by the Self family and the additional provisions recommended (for example the 5 metres height limitation on dwellings on the flanks) are appropriate, while ensuring that the feature itself is protected."

[480] While we accept Mr Scott's description[581] of current land use is generally accurate, his landscape and spatial planning only appears comprehensive because it comprises many pages. However, it is not focused and we find it does not follow the structure planning guidelines in Appendix 1.

[481] Having reviewed the evidence before us, and also having visited the site and its surroundings and walked around some of the outer slopes of Ngā Kapua Kohuora, we are compelled to disagree with both Mr Scott's evidence and the Panel's conclusions for the reasons which we have set out above (both in respect of ONF protection and protection of the natural character of the coastal environment). Specifically, we find important differences between the current state of ONF 22 and the "many other volcanic features that exist within the Rural Urban Boundary across the region". In our view, even with the proposed 5 metres height limitation on dwellings on the flanks (i.e. the two proposed SH zones), the gently sloping topography is such that the impact of residential development on these slopes will still have a significant adverse effect on the natural character of the coastal environment in this location.

The AC decision

[482] The Council rejected the recommendation of the IHP. The decision's version of the Unitary Plan maintains the RUB around the northern edge of Crater Hill and Pūkaki Crater as shown on Attachment "C". The reasons for the Council's decision at Ngā Kapua Kohuora (Crater Hill) related to the fact that the site is within the ONF Overlay, is a significant geological feature and has significant cultural heritage and landscape value to Mana Whenua as well as containing prime soils.

[483] We place some weight on the decision of the Auckland Council. It gave only very brief reasons for its decision (understandably given the very short time frame for making its decision). Although it omitted to consider some relevant factors, we consider its

580 IHP Recommendations, p 88, Section 3.3.

581 D W Scott evidence-in-chief 101-102 and attachments [Environment Court document 29].

grounds for not including Crater Hill inside the RUB refer to the most relevant (and important) objectives in the RPS (Chapter B of the AUP).

11.5 Preliminary conclusions

[484] In part 5 of these Reasons we found that the status quo is more effective in achieving more of the objectives of the AUP. In part 6 we found that we had insufficient quantitative information to decide which of the options is the more efficient, but that the qualitative evaluation suggested to us that the status quo is more efficient at achieving the objectives of the AUP. However, we give the efficiency consideration little weight because when comparing qualitative efficiency on the one hand and effectiveness on the other there is a real danger of double counting.

[485] The findings in the previous paragraph are slightly tentative because we find the AUP so confusing. In our view, the need for the RUB to give effect to the NZCPS, especially policy 15(a) imposes a much stronger requirement for location of the RUB – that it be located where it will avoid adverse effects on Crater Hill as an ONF. We find that strongly favours the Auckland Council's line for the RUB. We now pause before coming to a definitive conclusion by turning to the Pūkaki Peninsula.

12. Pūkaki Peninsula

12.1 Introduction

The positions of the section 274 parties

[486] Mr Edwards' evidence was that he believed the land had no realistic rural future and should be made available for urban development. He outlined a number of factors preventing good use of his land for rural purposes: isolation from larger areas of rural land to the south reduced the ability for larger scale rural production, the individual sites were too small, the irregular shape of the land, and the tendency of his land, though having a "depth of soil" on it, "pugging up" in winter[582]. Mr Edwards believed the land's proximity to commercial areas of the airport and to residential areas north of the Peninsula made it perfectly suited to business activities including warehousing and associated offices. He also believed that there was capacity on the wider peninsula to

582 T Edwards evidence-in-chief at 7 to 9 [Environment Court document 21].

provide housing for workers. He suggested that the existing esplanade reserve to the north could be extended south around the edge of his property giving extended public access and also including the Maori site (a midden) on the coastal edge[583].

[487] Mrs F Gock gave evidence for herself and her husband that they too cannot make their farm viable any more. She described their efforts since the 1950s and they are very impressive as a record of persistent hard toil on the land. We bear in mind the efforts and aspirations of the landowners in what follows when weighing their rights with other relevant considerations.

The airport

[488] We record here that we received concise evidence and submissions on behalf of the AIAL[584] and BARNZ in relation to the effects of the airport overlay in the AUP. We hope we do not inaccurately summarise the cases for those section 274 parties if we say they come down to opposing residential development on Pūkaki Peninsula within any of the three overlay lines which cross the peninsula at right angles to Pūkaki Road, but do not oppose a Light Industrial zone within the affected area. Thus they do not oppose the counterfactual RUB in itself, but would wish conditions to be imposed so that residential development was ruled out.

[489] We have also recorded our understanding that Mr and Mrs Gock do not oppose that, and accept that if the RUB was to move, as they seek, their land would need to be rezoned as Light Industrial (or at least, not identical). That is a sensible concession. We agree that most of Pūkaki Peninsula is unsuitable for residential development because of its proximity to the airport and the fact it is included within the HANA, MANA and engine noise testing lines.

The matters to be considered

[490] We summarised the matters to be considered in section 1.4 of these Reasons. In relation to section 32 RMA, we considered the effectiveness of the two options for the RUB on Pūkaki Peninsula in section 8 of this decision and concluded that overall the status quo achieves the objectives of the RPS better than the proposed alternative. We

583 T Edwards evidence-in-chief at 15 and 16 [Environment Court document 21].
584 See para [10] above.

have also considered the efficiency of the two competing options in achieving the objectives of the RPS. In summary, we found that the net social benefit assessed qualitatively (but incompletely) favours the status quo. To the extent that we lack information, especially quantitative data on the efficiency issue, we consider the risk[585] of acting by changing the RUB is greater than the risk of maintaining the status quo. We now turn to the other relevant considerations.

12.2 Giving effect to the RPS

[491] While we recognise the potential financial advantages to the landowners of moving the RUB so that it parallels the coastal edge (but at least 50 metres back according to Mr Putt[586]) we received insufficient information to satisfy us that the RUB should be moved and a FUZ imposed on the land. In particular we are not satisfied that moving the RUB will lead to a compact urban form.

[492] Further, we consider the counterfactual does not give effect to the RPS in two important ways:

(1) it does not protect the elite soils of the Pūkaki Peninsula; and
(2) it does not recognise and protect the Mana Whenua of the Pūkaki Peninsula as a whole.

[493] In relation to the latter, counsel for Mr and Mrs Gock submitted that the Council was taking an inconsistent approach to the Pūkaki Peninsula compared with the rump Puhinui Peninsula to the south of Waokauri Creek. When cross-examined by Mr Webb, Ms Trenouth relied[587] on the cultural assessment prepared by Mr Denny in 2014 and on the map called "Puhinui: Precinct Plan 1 – Maori Cultural Landscape Values" which was produced to the court and is attached to these Reasons marked "E". Mr Webb pointed out that shows large areas in the Puhinui Peninsula marked as "important site or place" and yet they are now zoned light industrial.

[494] Mr Webb referred to a Council *Update on the Puhinui Structure Plan*[588] dated 16

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585 Section 32(2)(c) RMA.
586 Transcript p 506.
587 Transcript p 281.
588 C A Trenouth rebuttal evidence Attachment "C" [Environment Court document 11A].

October 2014. The author – a Mr Sukhdeep Singh (Principal Planner) – wrote[589]:

> This area [South Puhinui Peninsula] requires further consideration in terms of detailed precinct provisions to specifically address cultural heritage matters.

Mr Webb comments[590] that no explanation is given why this approach cannot work for the Pūkaki Peninsula and submits that the Council's cultural witnesses Ms Wilson and Mr Denny agreed that could work if a structure plan was developed.

[495] We consider Mr Webb puts far too much weight on an early report to the Auckland Council (the author was not called to produce it and it precedes the Council's decision) and on Ms Wilson's and Mr Denny's agreement as to a possibility.

[496] More importantly the matters in the report are outweighed by two other important matters. First, the Puhinui Precinct map on Maori Cultural Values strongly suggests that the Pūkaki Peninsula is the centre of Te Ākitai's interests and values in the area. The agreement of the witnesses about the benefits of structural planning was as we understood their evidence in the context of the benefits of being consulted, and the protection of particular sites, not that structure planning would protect their cultural landscape as a whole. Second there is an accumulative effect here: if Te Ākitai's values in "their" landscape have been reduced by the proposed development of southern Puhinui (as they claim) then that makes any remaining values even more important.

[497] In establishing what is appropriate or inappropriate, the context is very important. For the landowners the context is relatively simple: they own land on an "island" of rural land surrounded by urbanisation and that, in their view, makes little sense.

[498] In fact the context is physically, ecologically, and culturally considerably more complex than that. Physically, most of the Pūkaki Peninsula is in fact surrounded by tidal creeks lined with mangroves and is part of that more natural environment. Culturally the Pūkaki Peninsula is, with Crater Hill on the other side of Waokauri Creek, the last piece of a continuous land/water interface that is the rohe of Te Ākitai. It may be difficult for landowners to accept that, but it is a matter of national importance for the Auckland Council to both recognise and provide for "the relationship of Māori and their culture and

589 C A Trenouth rebuttal evidence Attachment "C" at [47] [Environment Court document 11A].

590 Closing submissions for Mr and Mrs Gock 16 [Environment Court document 35].

traditions with their ancestral lands, water, sites waahi tapu and other taonga"[591] and that is reflected in the RPS.

12.3 Giving effect to the NZCPS

[499] As for the NZCPS, the relevant policies are 2(g)(ii), 13 and 17. Under the first we must protect any "... area ... or site of significance or special value to Maori ...". We find that the whole of Pūkaki Peninsula and the adjacent creeks, together with Nga Kapua Kohuora is an area of special value to Te Ākitai based on Mr Denny's evidence and the attached Cultural Impact Assessment[592] with its conclusion that[593]:

> ... the overarching cultural landscape of the Puhinui Peninsula, along with key sites that lie within its boundaries, are of extreme importance to Te Ākitai Waiohua.

Moving the RUB so that this land is available for urbanisation does not achieve the policy.

[500] Policy 13(i) NZCPS states that to protect the natural character of the coastal environment – which in this case includes the whole of the Pūkaki Peninsula – from inappropriate subdivision development and use, "significant adverse effects should be avoided". "Avoided" of course has the meaning explained in *NZ King Salmon*[594] of "not allow" or "prevent the occurrence of".

[501] "Significant" adverse effects are, like inappropriate ones, a matter of context. Any light industrial development which might arise under the counterfactual RUB could lead to rows of buildings turning their backs on the creeks, and separating the two sides of the Peninsula almost completely (even allowing for legal access to be provided for Pūkaki Road to the urupa). That effect would on any objective assessment be adverse to the coastal environment because it diminishes natural character and increases industrialisation and domestication. By themselves those adverse visual effects might not be significant in the coastal environment, but coupled with the adverse effects on the cultural landscape of the Mana Whenua we find that they are significant.

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591 Section 6(e) RMA.
592 As suggested by policy 2(g)(i) NZCPS 2010.
593 Te Ākitai Waiohua Cultural Heritage Assessment for Puhinui Peninsula.
594 *King Salmon* above n 22 at [100].

[502] Consequently, the effects are to be avoided, and further counterfactual questions of inappropriateness do not apply.

[503] As for policy 17 of the NZCPS this requires integrated management of archaeological sites[595]. We received little information on this, the section 274 parties adopting the position of the IHP that this was a matter for future structure planning under a FUZ. We prefer Ms Trenouth's evidence and find that integrated management favours the status quo over moving the RUB because[596] the farm owners' approach "does not recognise the landscape context of the site" as required by policy 17(c) NZCPS.

[504] We consider we should put considerable weight on our conclusions with respect to the NZCPS.

12.4 The IHP and Council decision on site-specific factors

[505] On the topic of soil quality, the IHP noted:

> ... that while the recommended regional policy statement policy on land containing elite soils requires 'avoidance', this is not an absolute but is in the overall context of the soil's significance for its ability to sustain food production across the values for which elite soils are protected. In this instance, and with the wider and surrounding urbanisation of Puhinui, this area is effectively a rural island whose soils are not significant in terms of their ability to sustain food production across the versatile range that is associated with elite soils.

[506] It also commented:

> ... that leaving such a relatively small pocket of land outside the Rural Urban Boundary, but surrounded by land inside the Rural Urban Boundary, had little planning merit – notwithstanding the existence of some 27ha of land containing elite soil and the regional statement policy of general avoidance. On that matter Council was opposed by a number of landowners, including the Self and Gock Family Trusts, who provided planning and other technical evidence in support of a Future Urban Zone across the Pūkaki Peninsula. This is discussed further in the following section with respect to rezoning.

[507] The IHP considered all the historic heritage and cultural sites could be protected by open space provisions under a structure plan. We consider that overlooks the

595 Policy 17(b) NZCPS.

596 C A Trenouth evidence-in-chief at 12.27 [Environment Court document 11].

remaining coherence of the coastal environment and of the cultural component of the area which are of great importance to Te Ākitai.

[508] In contrast the briefer reasons for the Council's decision at Pūkaki Peninsula were that the site was not suitable for urban development because it had significant cultural heritage and landscape values to Mana Whenua, it lay partly within the ONF overlay for Pūkaki Crater, and contained significant areas of elite soils, all of which would be compromised by urban development. The Council also identified that part of the area was under the proposed HANA and MANA for the future northern runway at Auckland International Airport, restricting the establishment of activities sensitive to aircraft noise such as dwellings.[597]

[509] We consider the Council's decision has struck the right balance and give it more weight than the IHP decision.

12.5 Preliminary conclusion under the AUP

[510] Our preliminary conclusion is that Pūkaki Peninsula is unsuitable for inclusion within the RUB (even with a potential light industrial zone) for three main sets of reinforcing reasons:

(1) it would not protect the elite soils; and
(2) it would not preserve the coastal environment from inappropriate subdivision, development and use.
(3) it would not maintain Mana Whenua values, especially the connectivity of the "overarching cultural landscape"[598] from the maunga (volcanoes) to the sea,

[511] That view is not changed by consideration of the *Wallace*[599] decision. It can be distinguished for the reasons stated in section 10. For Mr and Mrs Gock, counsel urged us to apply the findings in *Wallace*[600] that the status quo would "lock... up the land". However, as we have explained, that case referred to a proposed designation for Open

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597 Decisions Report of the Auckland Council, 19 August 2016; C A Trenouth evidence-in-chief at 13.3 p 47.
598 Te Ākitai Waiohua Cultural Heritage Assessment p 31.
599 *Wallace* above n 251.
600 *Wallace* above n 251 at [128].

Space. Here the status quo is that the land remains for rural production, and we have found on the evidence before us that is a viable activity, and an important one under the AUP because of the extensive elite soils on the Pūkaki Peninsula.

13. The two sites together

13.1 The synergy of the two sites

[512] So far we have considered the two sites separately. However, they are tied together by four considerations — one tangible and the other three less so. The first is that much of each[601] of the two sites are both part of the coastal environment; the second is that there are two relevant statutory instruments which apply to the land in its wider context, the third is that the sites were considered together (in some aspects) by the IHP and the AC in their decisions; and the fourth is both are part of the Te Ākitai cultural landscape. Thus, depending on the weight we give to these matters, there is some synergy between the concepts (and again some danger of double counting).

13.2 The NPSUDC and the Auckland Plan

[513] We have found little in the NPSUDC to guide us. While it is instructive on the factors that make up demand for housing, and no doubt provides useful direction to local authorities when it states that development capacity for housing must not only be zoned but also[602] serviced (or at least funded) and "feasible"[603] in the short and medium terms, we have insufficient information to assess the efficient use of the sites, and infrastructure in other than the qualitative way we have described in the respective sections on efficiency in our section 32 evaluation. We consider, based on Dr Fairgray's evidence, there would be minimum adverse effect on the competitive operation of land markets if the status quo prevails.

[514] The NPSUDC gives almost no guidance as to what rural or other non-urban land should be zoned (or otherwise made available for housing) when that land has other values recognised by the RMA or some other statutory instrument under it. Overall this

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601 Excluding the crater of Crater Hill and a rectangle along Pūkaki Road on the Peninsula.

602 Policy PA1 [NPSUDC 2016 p 11].

603 "Feasible" is defined as meaning "that development is commercially viable, taking into account the current likely costs, revenue, and yield of developing …". Quite how the Council can ensure that is not explained.

National Policy Statement gives little assistance in making our judgment in this proceeding.

[515] We quoted the rather bland objectives of the Auckland Plan ("the AP") earlier in these Reasons. They add little or nothing to the aspirations of the AUP. Other, more specific, provisions of the Auckland Plan have been discussed earlier. There is one final matter we should consider which is that the planning witnesses pointed to a development strategy in the AP for southwestern Auckland called the "Southern Initiative"[604]. Its purpose is[605] "... to plan and deliver a long term programme of co-ordinated investment and actions to bring about transformational, social, economic and physical change". Mr Putt developed this theme as follows[606]:

> ... the Self family plays directly into the purposes of the Southern Initiative by ensuring that the Pūkaki and Crater Hill land are placed within the RUB and can thereby make best use of the existing infrastructure for wastewater, water supply and transportation linkages within the urban context of Auckland and in particular servicing the purpose of the Southern Initiative in close proximity to the Auckland International Airport.
>
> The idea of the Southern Initiative links with broader modern international planning ideas centred on the concept of creating multi-faceted investment opportunities around international airport hubs. Land use combinations of business, residential and open space form the basis of this idea named for general purposes as *Aeropolis*. The subject area at Crater Hill and Pūkaki Peninsula is well within the framework of an *Aeropolis* concept supporting the growth and expansion of Auckland International Airport. The boundaries are conveniently provided by the south-western motorway and the coastal edge. This idea is well framed within the concept of the Southern Initiative which is focused on the presence of the Auckland International Airport. The urban spatial context for Pūkaki and Crater Hill is clearly apparent when this broader view of the land use context is taken. This is not a view in my opinion which is apparent from the Respondent's decision making or evidence.

[516] It is unclear to us how the coastal edge can be said to link Crater Hill (and the Pūkaki Peninsula) with the airport and the *Aeropolis*. We find that the opposite is the case. We accept that the land is relatively close to the airport in a straight line but from both sites routes have to go around and/or over the Pūkaki Creek system to get there. We have already found that the Self family proposal lacks some of the necessary detail required by a structure plan in respect of infrastructure and transportation linkages.

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604 Part D, para 90 AP, covering an area as shown on map D.2 [p 55 AP].
605 Para 107 AP.
606 B W Putt evidence-in-chief at 3.8 and 3.9 [Environment Court document 3].

[517] In Mr Putt's opinion the Self family appeal advances "unfinished business"[607] by ensuring that:

> ... all land suitable for development within the Southern Initiative is provided with appropriate implementation provisions in the AUPOiP. Those provisions may be live zones as is the case in most of the Puhinui Precinct area or Future Urban zones which will rely on subsequent structure planning guided by Appendix 1 of the AUPOiP. Within that framework, open space and NOF provisions can be readily achieved. This was the outcome of the IHP's recommendations for the subject area.
>
> He concluded: I consider ... that the Auckland Plan outlook for 30 years was appropriately implemented in the provisions recommended by the IHP. The Council's decision in my opinion has not only failed to take into account the broad planning strategy set by the Auckland Plan and implemented by the AUPOiP, but has also failed to acknowledge the 30 year outlook inherent in the IHP recommendations.

[518] While it is technically correct that the Council's decision failed to expressly acknowledge a 30 year planning horizon, we consider that its decision is consistent with such an outlook and implicitly recognises the other environmental objectives in the Auckland Plan. In contrast, the IHP relies on the overlays which we find would only achieve the important objectives in a piecemeal way.

13.3 General aspects of the IHP recommendations and the AC decision[608]

The IHP's recommendations

[519] The Independent Hearing Panel ("IHP") recommended extension of the RUB around Pūkaki Crater, and Crater Hill, and the Pūkaki Peninsula — so as to bring all three together within the Rural Urban Boundary. This would have allowed the area to be rezoned for a range of urban purposes, including General Business, Mixed Use and Residential. As shown on Attachment "B" to these Reasons, the Pūkaki Peninsula would have been zoned FUZ, and Crater Hill would have been zoned for two different types of Residential zone and a large area of Open Space.

[520] Counsel for the Self family and for the supporting section 274 parties, Mr and Mrs

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607 B W Putt evidence-in-chief at 3.11 [Environment Court document 31].

608 Relevant under section 290A RMA.

Gock and Mr Edwards, urge that we should place a great deal of weight on the IHP decision. They say that the IHP recommendation comprises not only the:

> (1) report on Hearing Topics 016, 017 changes to the RUB; 080, 081 rezoning and precincts ... (Annexure 3 precinct south).

— which focuses on the land in the context of the larger area identified as Puhinui Peninsula, but also[609] three further higher level reports of the IHP:

> (2) overview of recommendations Annexure 1 enabling growth[610];
> (3) report on issues of regional significance – Hearing Topic 005[611]; and
> (4) report on urban growth – Hearing Topic 013[612].

[521] We have considered each of those reports carefully. We discuss (1) in a little more detail below and we have considered relevant aspects of (2) in section 6.2 of these Reasons. Report (3) is largely explanatory and we can put no weight on it. We have noted the IHP's recommendations to increase residential commercial and industrial capacity in report (4) in the list above and in particular the statement that[613]:

> The panel considers it critical to the long-term well-being of people and communities in the region that the Unitary Plan enables a development pattern that is capable of meeting residential demand over the long term, and that it errs toward over-enabling capacity. The panel considers its recommendations go as far as possible toward achieving this by enabling sufficient capacity for projected long-term demand (based on current information). The recommendations also ensure flexibility in the location of the RUB should it emerge that more supply, or supply in more efficient locations, is required.
>
> The panel has recommended in the regional policy statement that the Council be required to ensure on an ongoing basis there is sufficient feasible enabled capacity to meet at least the next seven years' demand.

[522] Crucially, we have found that the status quo will ensure there is sufficient enabled capacity to meet the next seven years' demand as required by RPS policy B2.2.2(1).

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609 R Bartlett submission 13 [Environment Court document 34].
610 Tab 4, Common Bundle (Vol 1).
611 Tab 6, Common Bundle (Vol 1).
612 Tab 7, Common Bundle (Vol 1).
613 IHP report on urban growth – Hearing Topic 13 (Common Bundle Tab 7).

[523] The IHP decided to include "the two outstanding natural features of Pukaki Crater and Crater Hill"[614] within the RUB:

> ...noting that the multiplicity of overlays and relevant provisions would be sufficient for their protection and management. The Panel noted that this was no different to many other volcanic features that exist within the Rural Urban Boundary across the region.

We consider that is, with respect, rather superficial (which is understandable given the unreasonable time restraints imposed on the IHP). We have already shown how the ONF "overlay" and the application of the "relevant provisions" requires protection of most of Crater Hill from adverse effects of housing and development and a judgement of "appropriateness" is not required. We discuss the cultural landscape "overlay" next.

[524] We respectfully give the IHP decision little weight beyond seriously considering its concerns about having to find other rural land elsewhere to zone for housing or light industrial. We are satisfied, based on Dr Fairgray's evidence, that those concerns are easily met.

[525] The Council decision did not refer to the objectives and policies which:

- provide for a compact urban form;
- establish defensible boundaries for the RUB; or
- refer to efficiency.

13.4 Recognising and protecting the Mana Whenua

Chapter B5 of the AUP

[526] The land (and connecting crater) have high values under the six factors in the list in policy B6.5.2(2). While the hiahiatanga tūturu (customary needs) are met largely from resources below high water mark, they may include customary (māra kai) gardens as discussed by Mr Denny[615].

[527] We accept that the individual (unscheduled and scheduled) sites of significance and others of historical significance could be protected under the counterfactuals, as

614 Common Bundle, Vol 1, Tab 1, p 85, Section 1.1.
615 N H Denny evidence-in-chief at 9.4 [evidence-in-chief 9].

would future discoveries under the standard protocols. However, we really struggle to see how the further fragmentation of the two sites into more allotments, and the building of residential housing and light industrial, will do much that is positive for the holistic world view[616] of Te Ākitai, or will maintain the mauri of the coastal environment, notwithstanding the proposed transfer of some land back to Te Ākitai.

[528] Mr Kapea's evidence is summarised in these two passages[617]:

> In the traditional Māori way, the aurora of Ngā Kapua Kohuora and the association that Tangata Whenua have with it historically, today and into the future will never be lost. As in this proposal it will continue to represent "the past, the present and the future". As Mr Putt rightfully points out 60% of the farm which includes Ngā Kapua Kohuora is being left to the people of Auckland and that generosity is unprecedented.
>
> ...
>
> in my experience I see in this case an excellent opportunity for Te Ākitai Waiohua take a positive stand that supports the development proposal of the appellant and secures in public ownership all identified mana whenua values. In my experience such opportunities are hard to come by.

Mr Kapea was not cross-examined on those points, and Mr Bartlett submitted[618] that his evidence "... provides a strong evidential basis for this court to follow the approach taken in the *Wallace* case."

[529] Iwi and hapu around New Zealand are, subject to resolution of Treaty of Waitangi claims, often obliged to be content with that sort of approach. However, where the mana whenua has been shrunk repeatedly there must be a line where the duty to accord "sufficient weight"[619] to mana whenua values (including mātauranga Māori) entails that a local authority (and on appeal, this court) should consider whether more is required.

[530] We recognise that in this proceeding the Self family is putting forward an opportunity for the Council and/or the Te Ākitai to become legal property right owners of up to 60% of Crater Hill. Mr Bartlett wrote[620] on this issue:

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616 Policy B6.3.2(6).

617 W A H Kapea evidence-in-chief paras 6.12 and 5.25 (6.25 in sequence [Environment Court document 30].

618 R E Bartlett submissions para 92 [Environment Court document 34].

619 Objective B6.3.1(1) AUP.

620 R E Bartlett submissions at 93 [Environment Court document 34].

> The suggestion that the Self proposal is a generous one is reinforced by the fact that Auckland Council has afforded no historic heritage status to Crater Hill. The site is not scheduled in the Unitary Plan Appendix 4.1 Sites and Places of Significance to Mana Whenua. Nor is it scheduled in Unitary Plan Appendix 14.1 Schedule of Historic Heritage Area or in D17 Historic Heritage Overlays. There are no registered waahi tapu for Crater Hill in the Heritage New Zealand Pouhere Taonga Act 2014 ("HNZPT") Schedule. A moratorium on development of land of this status on the basis of Te Ākitai's preference could have far-reaching and unfair consequences.

[531] We do not accept his "reinforcing" point nor that the Council's position is a moratorium – it limits residential (and some industrial) development but retains existing uses. The submission also misses a fundamental aspect of mana whenua which is that it is for the tangata whenua or a Mana Whenua Group (defined as discussed earlier) to decide how their kaitiakitanga should be exercised. If Te Ākitai decide they consider the mauri of the area requires maintenance of all the land on Te Kapua Kohuara and Pūkaki Peninsula in its current condition (subject to zoning and existing use privileges the land owners have) rather than 60% ownership of Crater Hill plus open space (and legal access strips) on Pūkaki Peninsula, it is not for the Auckland Council or this court to contradict them (at least in the circumstances similar to this proceeding). That position is consistent with the holistic character inherent in the Māori world view (and expressed in policy B6.3.2(4)(a) and B6.3.2(6)(a). Recognising Te Ākitai's position is also a matter which section 8 of the RMA requires us to take account of. That is a procedural matter which can rarely be particularised in a plan.

[532] Crater Hill and Pūkaki Peninsula are part of a cultural dimension to the area which is very important. The importance lies not only in the individual sites (both identified and as yet unlocated) but in the area as a whole as identified as sub-precinct H in the Puhinui Structure Plan. This case is really the last gasp for Te Ākitai and their Mana Whenua: if they cannot retain the sub-precinct with the current land use zoning that is inherently far more sympathetic to the mauri of the land that would be the case with residential or light industrial development over significant portions[621], they will lose the cultural dimensions of this area (i.e. their cultural landscape) as a whole. We conclude that maintaining the status quo RUB is essential for sustaining the existing quality of naturalness, and thereby the mauri of the small remaining undeveloped parts of Te Ākitai's rohe.

621 N H Denny evidence-in-chief at 9.2 [Environment Court document 9].

13.5 Result

[533] After taking into account the various positive features of the counterfactual and giving them appropriate weight under the RPS (Chapter B4) and the NZSUDC in the context of Auckland as a whole (as emphasised by the case for the appellant in particular), we find that there is one characteristic of each site which by itself outweighs the positive characteristics of the counterfactual. These are the ONF on Crater Hill and the elite soils on Pūkaki Peninsula — when assessed under the RPS and (in the Crater Hill case) the NZCPS, and policy 15(a) in particular.

[534] When we add to those matters, the consideration of the coastal environment factors as they apply to Pūkaki Peninsula (we do not double count those for Crater Hill) together with the need to recognise and protect Te Ākitai's values in respect of both sites, the case for the status quo clearly outweighs that for the appellant and section 274 parties.

[535] We realise those parties will be disappointed that they cannot exercise the potential full extent of their property rights (although we consider that all can reasonably exercise some of them, i.e. section 85 RMA is not likely to be applicable).

[536] Under *King Salmon*, Part 2 of the RMA need not, or perhaps should not, normally be looked at. It is difficult to square that with section 74 RMA as explained in *the Bay of Plenty case*. We consider the obligations to take into account[622] the principles of the Treaty of Waitangi must not be ignored. Further, it is a matter of national importance under section 6(e) RMA to recognise and provide for (and this means much more than lip service by future use of "overlays") the relationship of Te Ākitai and their culture and traditions with their ancestral lands, and the adjacent water, and their wāhi tapu. If that provision is not made now, there will be no further opportunity because the counterfactuals' proposed developments would lead to an irreversible fragmentation of Te Ākitai's cultural landscape.

[537] We accept and respect that the IHP made a huge attempt at balancing all the relevant factors in its determinations and recommendations, especially in relation to supply of land for housing. We also accept that disallowing further development on the

622 Section 8 RMA.

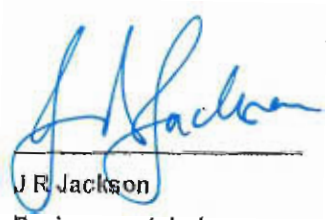
land will have implications elsewhere in the city. But housing demand is not a simple issue: it is not a case of 'push the balloon of supply in here, and it will bulge out elsewhere'. Rather, the evidence of Dr Fairgray was that a great deal of the land available for housing is already within the RUB. So taking into account the various markets for housing as identified in the NPSUDC we are satisfied that our decision is likely to have minimal impact on housing supply and prices.

[538] Standing back and looking at all relevant considerations, properly weighted, we consider the Auckland Council drew the RUB in the correct place so as to exclude the Pūkaki Peninsula and Crater Hill. Its decision should be confirmed as creating an appropriate strong defensible boundary in this area.

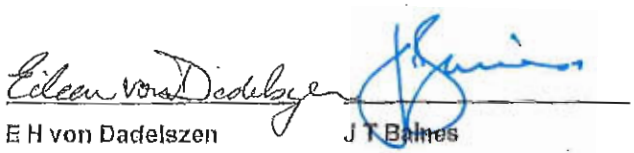
[539] Given our conclusions in the previous paragraph on the principal issue, it is not necessary for us to consider whether a FUZ would have been more appropriate for the Self family land than the specific (urban) zonings it proposed.

[540] Costs will be reserved, but our initial view is that this is an inappropriate case for any orders as to costs.

For the court:



J R Jackson
Environment Judge



E H von Dadelszen
Environment Commissioner

J T Baines
Environment Commissioner

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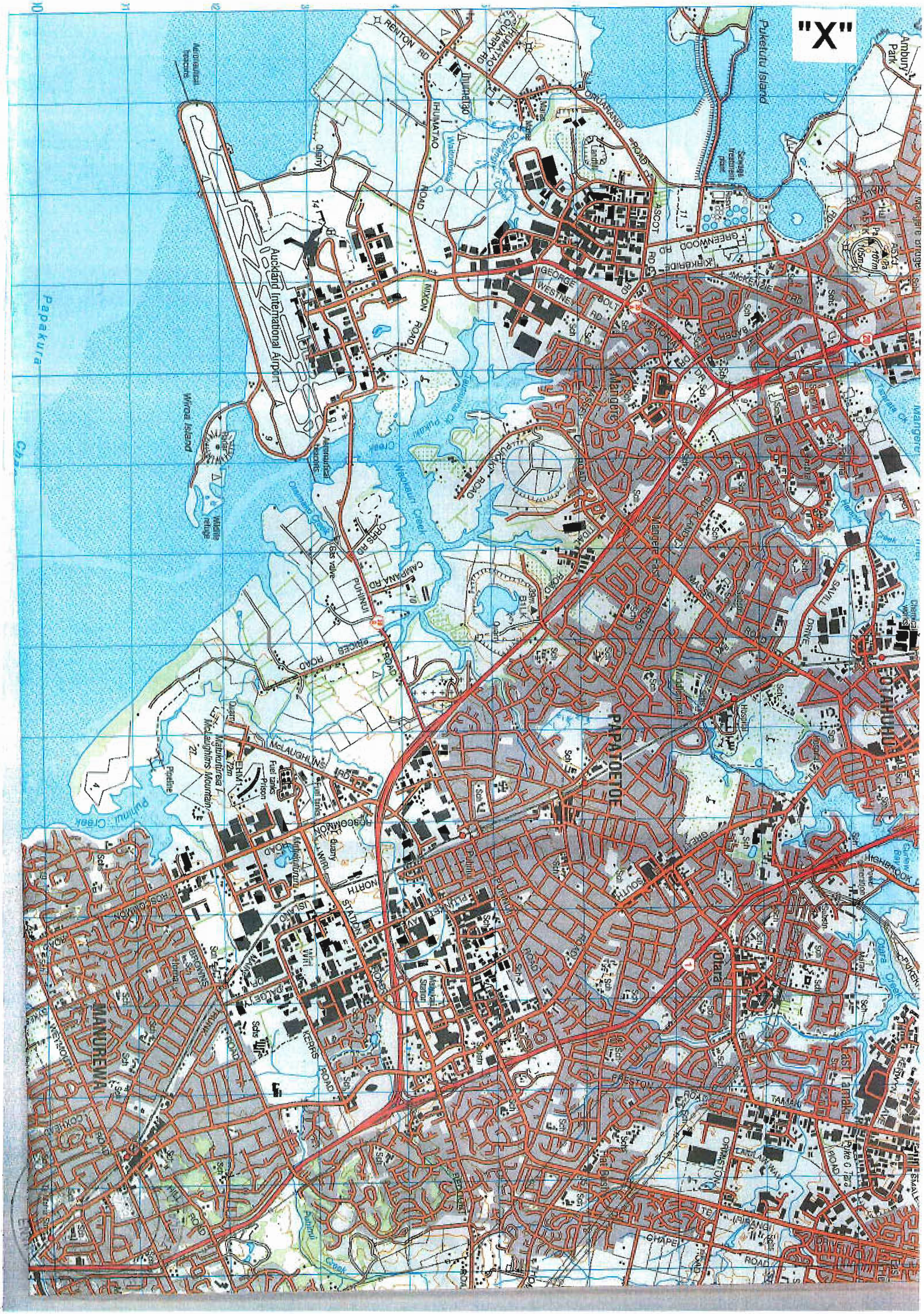

"X"
Puketutu Island
Ambury Park
Auckland International Airport
Mangere
Papakura
Wiroa Island
PAPATOETOE
OTAHUHU
Otara
MANUREWA

Auckland Council

Map

ANNEXURE "A"

DISCLAIMER:
This map/plan is illustrative only and all information should be independently verified on site before taking any action. Copyright Auckland Council. Land Parcel Boundary information from LINZ (Crown Copyright Reserved). Whilst due care has been taken, Auckland Council gives no warranty as to the accuracy and plan completeness of any information on this map/plan and accepts no liability for any error, omission or use of the information.
Height datum: Auckland 1946.

Site Location Map

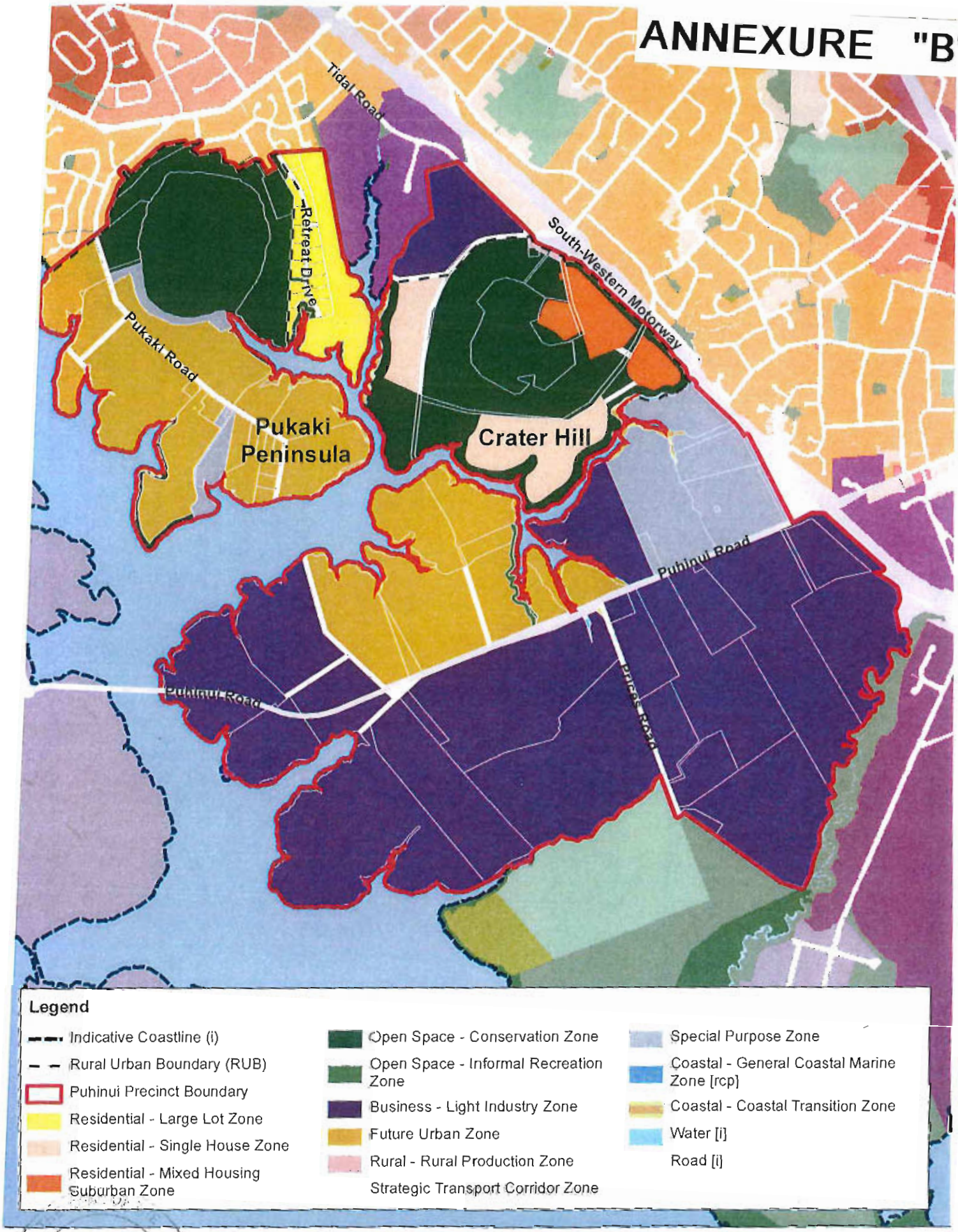
0 100 200 300
Meters

Scale @ A3
= 1:9,000

Date Printed:
9/11/2017

Auckland Council
Te Kaunihera o Tāmaki Makaurau

ANNEXURE "B"



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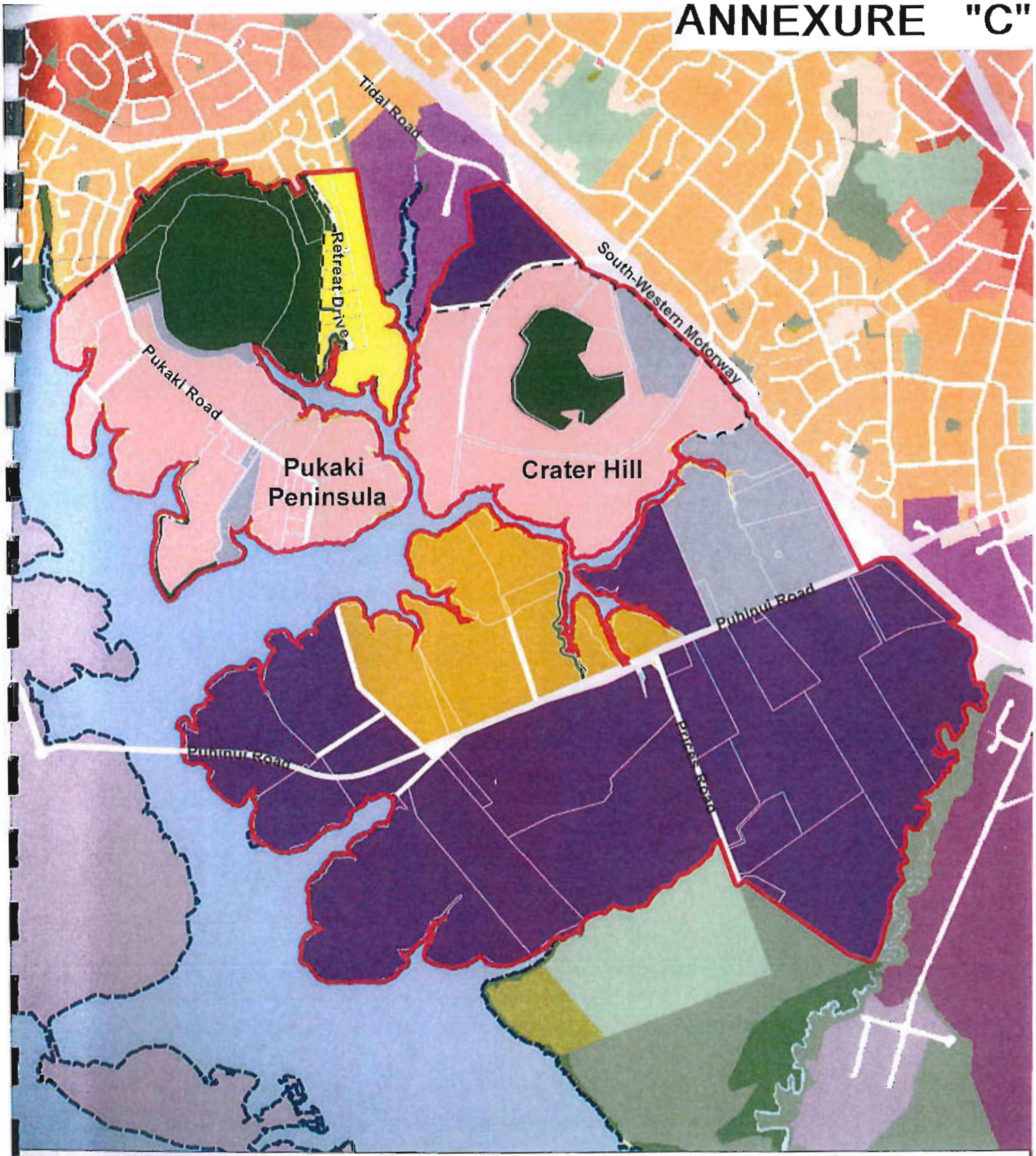
Date: 9/03/2017

Puhinui Precinct, Zoning and Rural Urban Boundary
Proposed Auckland Unitary Plan
Recommendation Version (22 July 2016)

Auckland Council

ANNEXURE "C"



Legend

- Indicative Coastline (i)
- Rural Urban Boundary (RUB)
- Puhinui Precinct Boundary
- Residential - Large Lot Zone
- Open Space - Conservation Zone
- Open Space - Informal Recreation Zone
- Business - Light Industry Zone
- Future Urban Zone
- Rural - Rural Production Zone
- Strategic Transport Corridor Zone
- Special Purpose Zone
- Coastal - General Coastal Marine Zone [rcp]
- Coastal - Coastal Transition Zone
- Water [i]
- Road [i]

Puhinui Precinct, Zoning and Rural Urban Boundary
Proposed Auckland Unitary Plan
Decisions Version (19 August 2016)

Auckland Council

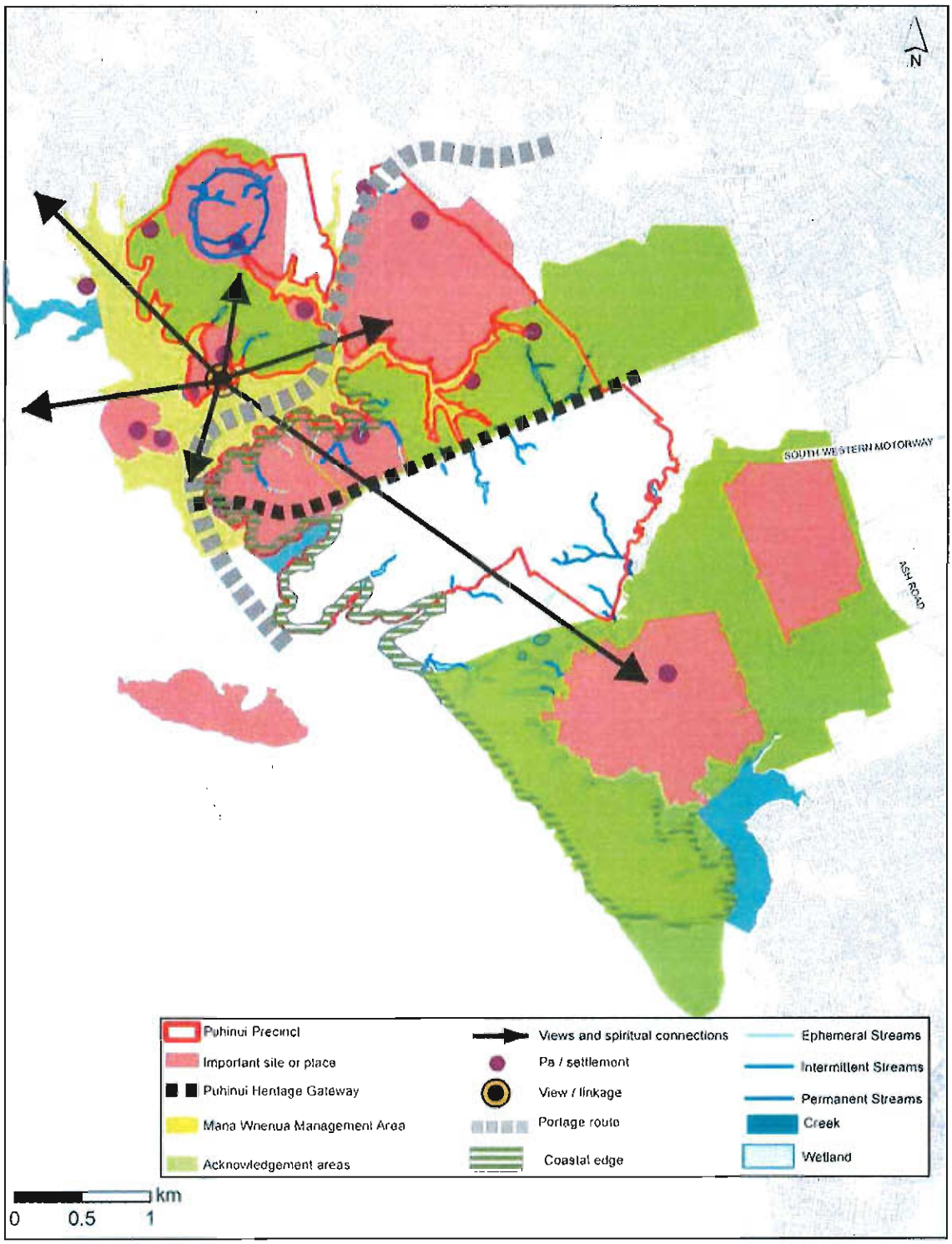
ANNEXURE "D"

EXHIBIT 3.1

Copy of Extract From S K Brown's Evidence at p.62: *"Map of Revised Coastal Environment (blue outline)"*

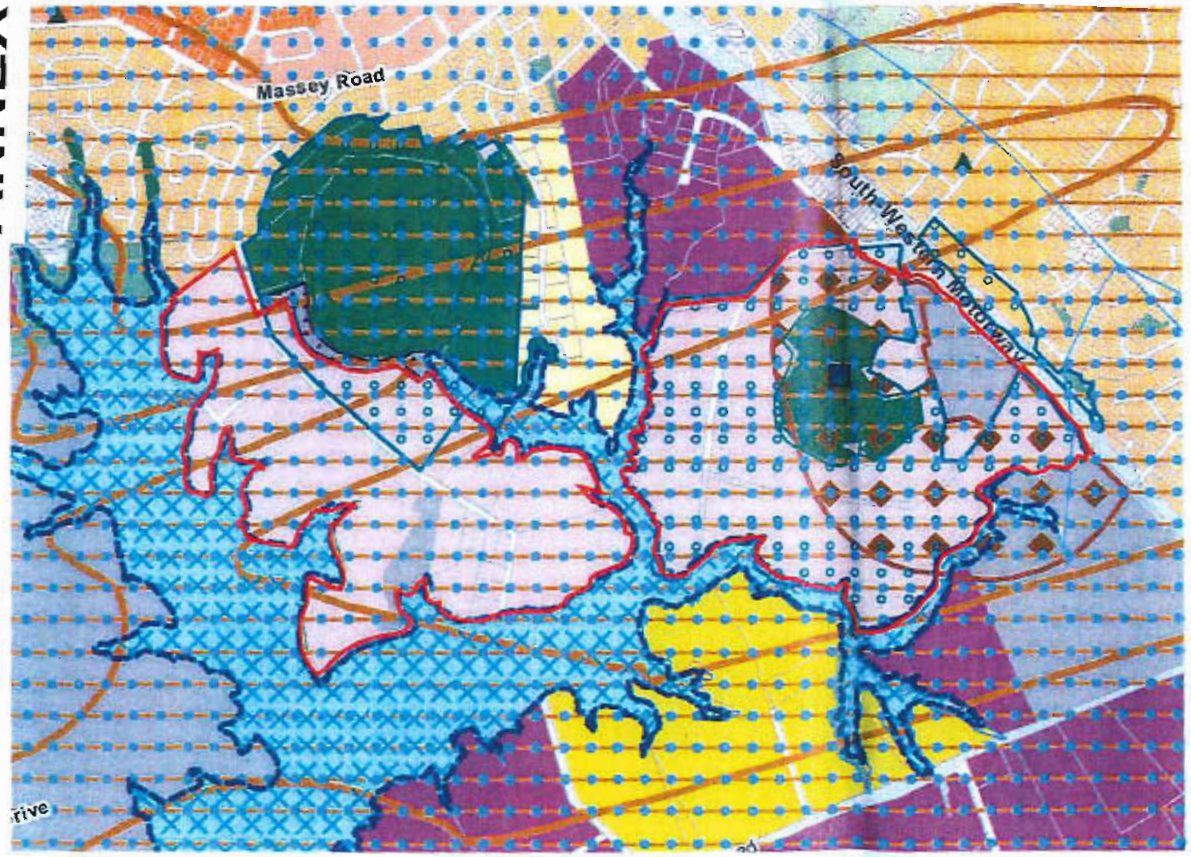
I432.10. Precinct plans

I432.10.1. Puhinui: Precinct plan 1 – Māori cultural landscape values



ANNEXURE "F"

Attachment D – Map of Zoning and Overlays

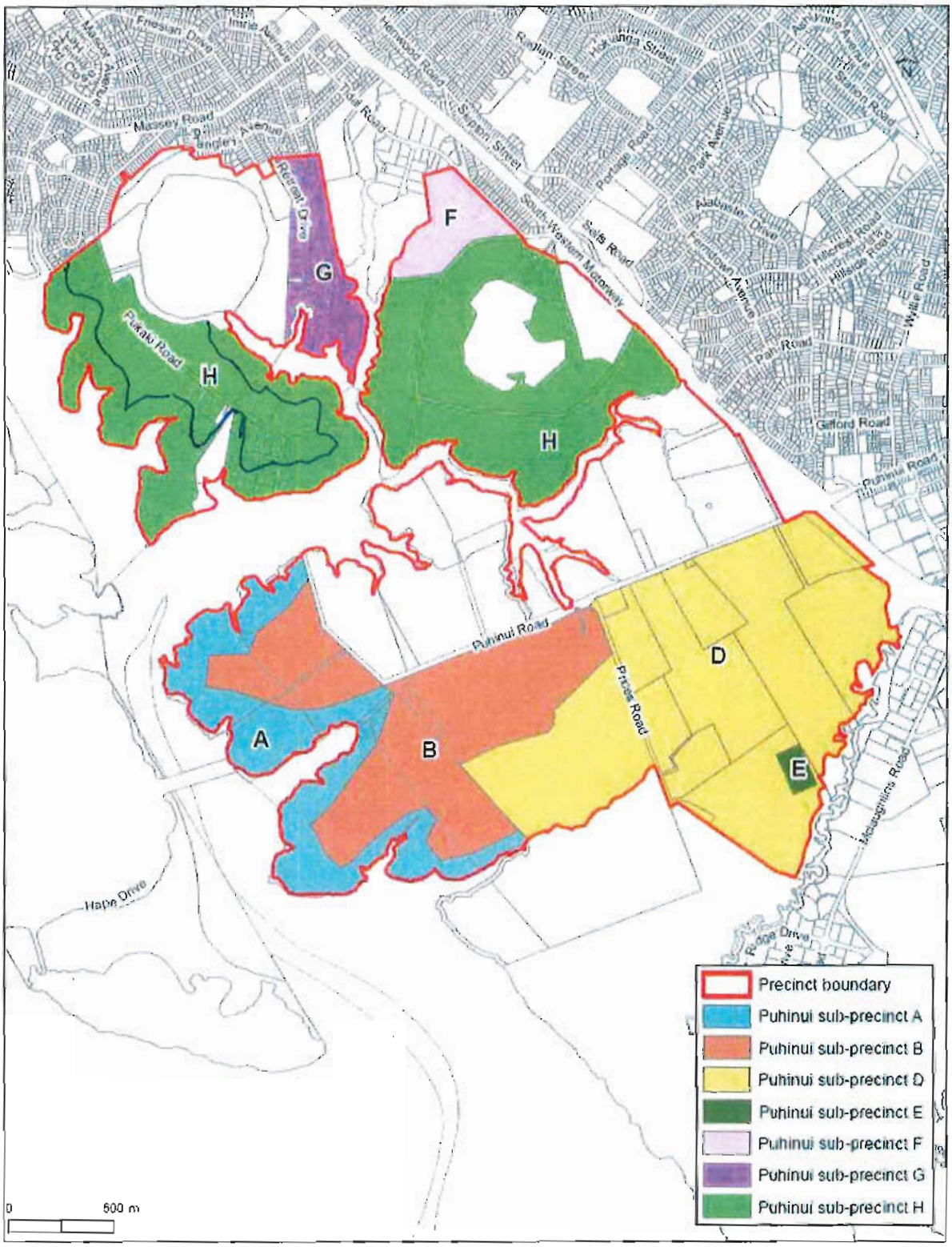


AUP (OP) Zoning and Overlays

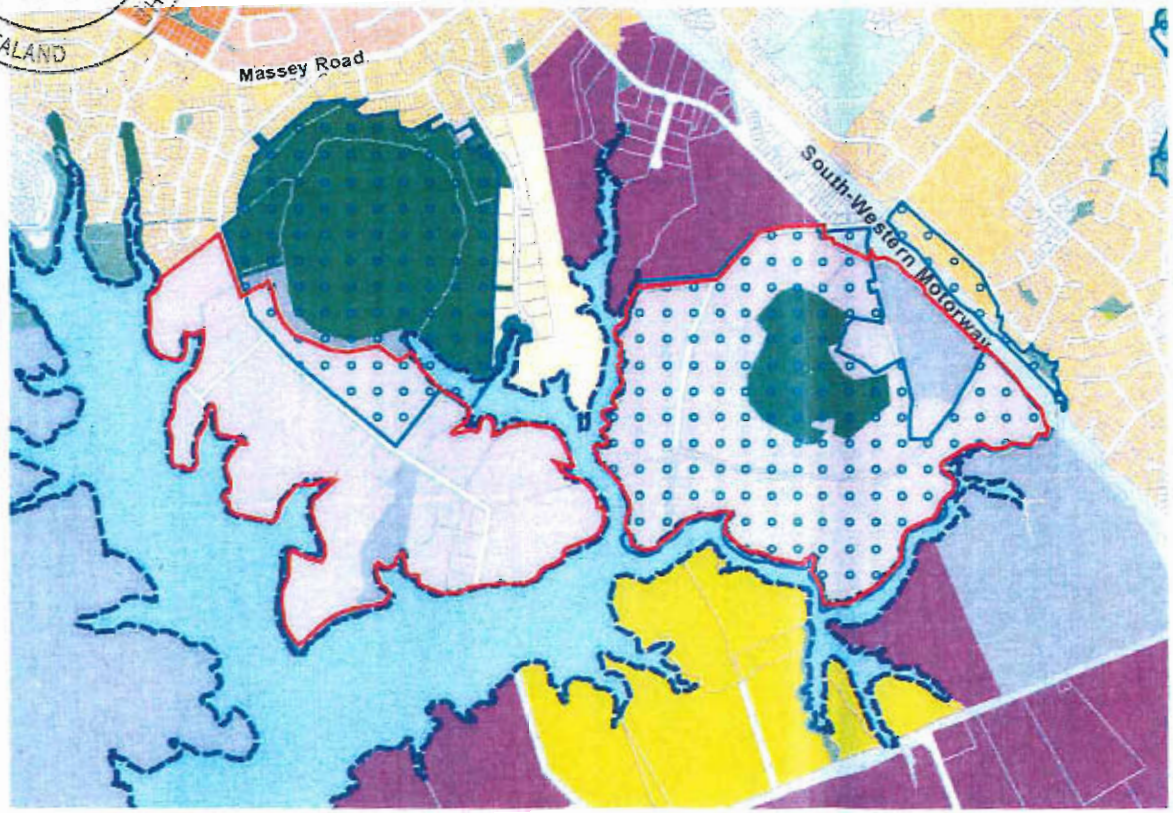
Key

- Residential- Large Lot Zone
- Residential- Single House Zone
- Residential- Mixed Housing Suburban Zone
- Residential- Mixed Housing Urban Zone
- Residential- Terraced Housing and Apartment Buildings Zone
- Business- Light Industry
- Open Space- Conservation Zone
- Open Space- Sport and Active Recreation Zone
- Rural- Rural Production Zone
- Future Urban Zone
- Special Purpose Zone- Airports and Airfields; Cemetery
- Terrestrial Significant Ecological Areas Overlay
- Marine 2 Significant Ecological Areas Overlay
- High-Use Aquifer Management Areas Overlay
- Outstanding Natural Features Overlay
- Aircraft Noise Overlay
- Quarry Buffer Area Overlay
- Sites and Places of Significance to Mana Whenua Overlay
- Notable Trees
- Indicative Coastline
- Subject Area

I432.10.5. Puhinui: Precinct plan 5 – sub-precincts



Attachment E – Map of the extent of outstanding natural features



AUP (OP) Zoning and Overlays

Key

- Residential- Large Lot Zone
- Residential- Single House Zone
- Residential- Mixed Housing Suburban Zone
- Residential- Mixed Housing Urban Zone
- Residential- Terraced Housing and Apartment Buildings Zone
- Business- Light Industry
- Open Space- Conservation Zone
- Open Space- Sport and Active Recreation Zone
- Rural- Rural Production Zone
- Future Urban Zone
- Special Purpose Zone- Airports and Airfields; Cemetery
- Outstanding Natural Features Overlay
- Indicative Coastline
- Subject Area

ANNEXURE "H"