Before the Environment Court **ENV-2016-AKL-**

In the Matter	of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) and the Resource Management Act 1991 (**RMA**)
And	
In the Matter	of an appeal under section 156 of the LGATPA against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearings Panel (**Hearings Panel**) on the proposed Auckland Unitary Plan (**the Unitary Plan**)
And	
In the Matter	of Proposed Plan Hearing Topic 080-081 Rezoning and Precincts General and Geographic Areas
Between	Peter Sargisson and Michael Barnes
	Appellants
And	Auckland Council
	Respondent

Notice of Appeal
Dated 16 September 2016

Richard Brabant
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To: The Registrar
Environment Court
Auckland

1. We, Peter Sargisson of Parnell architect and Michael Barnes of Parnell surgeon, appeal against a decision of the Auckland Council (**Council**) on provisions of the Proposed Auckland Unitary Plan (**PAUP**).

2. We appeal the Council's decision under section 156(3) of the LGATPA because the Council accepted a recommendation of the Hearings Panel that was beyond the scope of any submission to the Proposed Plan requesting a re-zoning from Single House Zone (**SHZ**) to Mixed Housing Suburban (**MHS**) or Mixed Housing Urban (**MHU**) of properties the notified PAUP zoned SHZ in Judges Bay Parnell. The Council's decision resulted in zoning provisions being included in the proposed plan substantially different from those in the notified version. We are unduly prejudiced by the re-zoning decision.

3. We provide further details of the reasons for our appeal below.

4. Along with other Judges Bay residents, we made a further submission (**Attachment B**) on the matter of potential re-zoning of the locality.

5. We are not trade competitors for the purposes of section 308D of the Resource Management Act 1991.

6. We received notice of the decision on 19 August 2016.

7. The decision that we are appealing is:

   (a) The re-zoning recommendations adopted as the Auckland Council decisions on Topic 081; and specifically –

      (i) The re-zoning from SHZ to MHS or MHU of properties in Judges Bay Parnell in the residential area

bounded by Judges Bay Road, Taurarua Terrace, Canterbury Place, St Stephens Avenue and Judge Street zoned SHZ in the PAUP as notified— (except for those properties between Gladstone Road and Taurarua Terrace), as more particularly shown in black diagonal on the zoning map of Judges Bay **Attachment E** zoning relief sought.

8. The reasons for the appeal are as follows *(references to Unitary Plan provisions are to the decisions version unless otherwise stated):*

(a) There was no recommendation of the Hearings Panel on the residential zoning of Judges Bay. There were no specific zoning recommendations about Parnell residential zonings including Judges Bay, that referred to the submission(s) relied upon, the evidence in support of or in opposition to the re-zoning shown on the relevant decisions version of the Unitary Plan plan map (**Attachment D**), and accordingly no stated reasons for the re-zoning of Judges Bay properties zoned SHZ in the PAUP as notified (see **Attachment C** for the zoning as notified);

(b) There was no submission (including any further submission) to the PAUP requesting the re-zoning of any of the residential properties in Judges Bay shown in black diagonal in **Attachment D** from SHZ to another residential zone. As a consequence, the rezoning decision as shown on the decision version plan map for Judges Bay (**Attachment D**) was made *outside the scope* of any submission (noting there is no recommendation of the Hearings Panel determining whether some or all of the properties in Judges Bay should have their notified zoning changed);

(c) The Hearings Panel report does not contain a s32AA evaluation of the matters set out in s32 (1) to (4) in respect of this re-zoning decision. Those provisions require a specific

evaluation that was not done in respect of the re-zoning the subject of this appeal;

(d) In respect of the area of Judges Bay residential zoning we ask revert to SHZ, and by reference to the objectives and policies for the SHZ and those for the MHS and MHU, viewed overall the character, amenity values, section sizes and existing intensity of development better accord with the objectives and policies for the SHZ;

(e) If the area of Judges Bay we request revert to the SHZ were to remain zoned MHS as the Council's decision confirmed, the permitted level of development and the development controls and performance standards for the MHS zone that enable more intensive development on smaller sites would enable a form and character of development that would adversely affect existing and future character and amenity values;

(f) The re-zoning decision does not have regard to the particular topography, coastal location, road access, quality of housing development, mature vegetation and site sizes that exist in this location;

(g) If the zoning of this discrete area of Judges Bay, Parnell residential properties were to revert to the SHZ, there would be an infinitesimal, if any, effect on the Unitary Plan's objective of providing sufficient residential housing development capacity to accommodate Auckland's housing needs until 2041;

(h) Generally, the re-zoning shown on the relevant plan map is not in accordance with the purpose of the RMA and does not have regard to relevant provisions of Part 2, in sections 5 & 7.

9. We seek the following relief:

   (a) Re-zone to SHZ the residential properties at Judges Bay shown in black diagonal on the zoning map **Attachment E**.

10. An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz.

11. I **attach** the following documents to this notice:

   (a) A copy of the relevant parts of the decision (**Attachment A**);

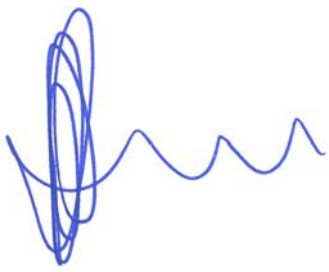
   (b) A copy of the further submission (**Attachment B**);

   (c) Part of the zoning map as notified showing the zoning of Judges Bay (**Attachment C**);

   (d) Part of the zoning map decisions version showing the zoning of Judges Bay (**Attachment D);**

   (e) Part of the zoning map decisions version with the requested re-zoning sought by the appeal shown in black diagonal (**Attachment E**).

Signature: **Peter Sargisson and Michael Barnes** by their authorised agent:



Richard Brabant

Date: 16 September 2016

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

To become a party to the appeal, you must, within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to unitaryplan.ecappeals@justice.govt.nz) and serve copies of your notice by email on the Auckland Council (to unitaryplan@aucklandcouncil.govt.nz) and the appellant.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the RMA.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

Advice
If you have any questions about this notice, contact the Environment Court in Auckland.

Attachment “A”

A copy of the relevant parts of the decision

IHP Report to AC Overview Report

4. Scope

4.1. Summary

The scope for the Panel's recommendations generally lies between the provisions of the Unitary Plan as notified by the Council and the relief sought in submissions on the Unitary Plan. This can include consequential amendments that are necessary or desirable to give effect to such relief. In addition, the Panel has a special power to recommend amendments even where there is no scope for that in submissions. That power must be exercised in accordance with the principles of natural justice and the requirement in the Local Government (Auckland Transitional Provisions) Act 2010 that the Panel establish a procedure for hearing sessions that is appropriate and fair in the circumstances.

The extent to which many submissions sought broad and extensive relief means that the scope for recommending changes to the Unitary Plan is very wide. The particular recommendations that are beyond the scope of submissions are identified in the recommendation reports and summarised in Appendix 3 to this overview report.

4.2. Relevant law

The Council must act in accordance with the Resource Management Act 1991 when preparing or changing a policy statement or plan. In addition, in relation to the Unitary Plan, the Council must also act in accordance with the Local Government (Auckland Transitional Provisions) Amendment Act 2010.

The starting point is that a policy statement or plan must be prepared by the relevant local authority "in the manner set out in Schedule 1" to the Resource Management Act 1991[4]. Schedule 1 has been described as a code for this process [5] although important glosses have been added by case law as discussed below.

A careful reading of the text of the relevant clauses in Schedule 1 shows how the submission and appeal process in relation to a proposed plan is confined in scope. Submissions must be on the proposed plan in support of or in opposition to particular provisions and cannot raise matters unrelated to what is proposed. If a submitter seeks changes to the proposed plan, then the submission should set out the specific amendments sought. The publicly notified summary of submissions is an important document, as it enables others who may be affected by the amendments sought in submissions to participate either by opposing or supporting those amendments, but such further submissions cannot introduce additional matters. The Council's decisions must be in relation to the provisions and matters raised in submissions, and any appeal from a decision of a council must be in respect of identified provisions or matters. The Environment Court's role then is to hold a hearing into the provision or matter referred to it and make its own decision on that within the same framework as the Council[6].

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[4] Sections 60(1), 64(1) and 73(1) Resource Management Act 1991
[5] See *Re Vivid Holdings Ltd* [1999] NZRMA 467 at para (16).
[6] Section 290 of the Resource Management Act 1991

In relation to the Unitary Plan, Schedule 1 applies except so far as it is excluded or replaced by Part 4 of the Local Government (Auckland Transitional Provisions) Act 2010. For the purposes of this discussion relating to scope, the principal amendments made to Schedule 1 by Part 4 of the Local Government (Auckland Transitional Provisions) Amendment Act 2010 relate to:

i. the public notice requirements of clause 5 of Schedule 1[7];

ii. the alternative dispute resolution provision in clause 8AA of Schedule 1[8];

iii. the hearing process set out in clauses 8B and 8C of Schedule 1[9]; and

iv. decisions on submissions set out in clause 10 of Schedule 1[10].

Importantly, the Local Government (Auckland Transitional Provisions) Act 2010 has made a substantial change to the extent to which the Panel can make recommendations to the Council. Section 144(5) provides:

> However, the Hearings Panel—
>
> (a) is not limited to making recommendations only within the scope of the submissions made on the proposed plan; and
>
> (b) may make recommendations on any other matters relating to the proposed plan identified by the Panel or any other person during the Hearing.

This means that the Panel is not constrained in making recommendations only to the boundaries of what was proposed in the Unitary Plan as notified and what was sought in submissions. While this general discretion is not subject to any express limits, the Panel has proceeded on the basis that it must adhere to a hearing procedure that is appropriate and fair in the circumstances, as required by section 136(4)(a) Local Government (Auckland Transitional Provisions) Act 2010. Even where a discretion is expressed in unlimited terms, the general law requires a statutory body which makes decisions that could affect people's rights and interests to act in accordance with the principles of natural justice.

Section 144(8)(a) of that act also requires that the Panel's report must identify any recommendation that is beyond the scope of the submissions made. This is an important requirement for informing the Council and submitters of such recommendations, as it affects the appeal rights of submitters. These appeal rights in relation to the decisions of the Auckland Council are different for those recommendations which are within the scope of submissions and those which are not. Section 156(3) of the Local Government (Auckland Transitional Provisions) Act 2010 provides for a more extensive right of appeal in respect of any decision of the Council which accepts an out of scope recommendation by the Panel. This enables any person (including a person who was not a submitter) who is unduly prejudiced by the Council's acceptance of the Panel's recommendation to appeal against that decision. To this extent Parliament has addressed the potential natural justice issue that may arise by providing a procedural balance to the Panel's ability to make a recommendation that is beyond the scope of submissions.

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[7] See section 123(4)-(6) Local Government (Auckland Transitional Provisions) Amendment Act 2010
[8] See section 134 Local Government (Auckland Transitional Provisions) Act 2010
[9] See sections 128-132 and 136-140 Local Government (Auckland Transitional Provisions) Act 2010
[10] See sections 144 and 145 Local Government (Auckland Transitional Provisions) Act 2010

The Panel must also, in formulating its recommendations to the Council, comply with section 145 of the Local Government (Auckland Transitional Provisions) Act 2010 which sets out a number of things to which regard must be had. Among those are the provisions of the Resource Management Act 1991 (not including Schedule 1) that apply to the preparation of the Plan and the Auckland Plan, being the spatial plan for Auckland prepared and adopted under section 79 of the Local Government (Auckland Council) Act 2009.

Having set out the relevant statutory provisions, it is also important to keep in mind the case law which has interpreted and applied them, noting that the Panel has been operating under a unique regime which has not been tested through case law. Even within the parameters of Schedule 1 to the Resource Management Act 1991, the process is tempered appropriately by considerations of fairness and reasonableness.

In the leading case of *Countdown Properties (Northlands) Ltd v Dunedin City Council* [11] a full court of the High Court considered a number of issues arising out of the plan change process under the Act, including the decision-making process in relation to submissions. The High Court confirmed that the paramount test is whether or not the amendments are ones which are raised by and within the ambit of what is reasonably and fairly raised in submissions on the plan change. It acknowledged that this will usually be a question of degree to be judged by the terms of the proposed change and the content of the submissions. The Court observed that councils need scope to deal with the realities of the situation where there may be multiple and often conflicting submissions prepared by persons without professional help. In such circumstances, to take a legalistic view that a council could only accept or reject the relief sought would be unreal.

As observed in an oft-repeated dictum in *Royal Forest & Bird Protection Society Inc v Southland District Council* [12]:

> … it is important that the assessment of whether any amendment was reasonably and fairly raised in the course of submissions, should be approached in a realistic workable fashion rather than from the perspective of legal nicety.

Since those cases were decided, subsequent case law shows that the circumstances of particular cases have led to the identification of two fundamental principles:

i. the Court cannot permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected (see *Clearwater Resort Ltd v Christchurch City Council* [13]); and

ii. care must be exercised on appeal to ensure that the objectives of the legislature in limiting appeal rights to those fairly raised by the appeal are not subverted by an unduly narrow approach (see *Power v Whakatane District Council & Ors* [14]).

As has been observed in the case law itself, there is obvious potential for tension between these two principles. The resolution of that tension depends on ensuring that the process for

[11] [1994] NZRMA 145.
[12] [1997] NZRMA 408 at 413.
[13] (unreported: High Court, Christchurch, AP34/02, 14 March 2003, William Young J) at para [66].
[14] (unreported: High Court, Tauranga, CIV-2008-470-456, 30 October 2009, Allan J) at para [30].

dealing with amendments is fair not only to the parties but also to the public. Quoting from *Westfield (NZ) Ltd v Hamilton City Council* [15]:

> [72] I agree that the Environment Court cannot make changes to a plan where the changes would fall outside the scope of a relevant reference and cannot fit within the criteria specified in ss 292 and 293 of the Act: see *Applefields*, *Williams and Purvis*, and *Vivid* [16].
>
> [73] On the other hand I think it implicit in the legislation that the jurisdiction to change a plan conferred by a reference is not limited to the express words of the reference. In my view it is sufficient if the changes directed by the Environment Court can fairly be said to be foreseeable consequences of any changes directly proposed in the reference.
>
> [74] Ultimately, it is a question of procedural fairness. Procedural fairness extends to the public as well as to the submitter and the territorial authority. Adequate notice must be given to those who might seek to take an active part in the hearing before the Environment Court if they know or ought to foresee what the Environment Court may do as a result of the reference. This is implicit in ss 292 and 293. The effect of those provisions is to provide an opportunity for others to join the hearing if proposed changes would not have been within the reasonable contemplation of those who saw the scope of the original reference.

The consideration of procedural fairness was discussed in *Motor Machinists Ltd v Palmerston North City Council* [17]. That case was principally concerned with the related issue of whether a submission was 'on' a plan change, but Kós J examined that question in its context of the scope for amendments to plan changes as a result of submissions by reference to the bipartite approach taken in *Clearwater*:

i. whether the submission addresses the change to the status quo advanced by the proposed plan change; and

ii. whether there is a real risk that persons potentially affected by such a change have been denied an effective opportunity to participate in the plan change process.

Laying stress on the procedures under the Resource Management Act 1991 for the notification of proposals to directly affected people, and the requirement in section 32 for a substantive assessment of the effects or merits of a proposal, Kós J observed that the Schedule 1 process lacks those safeguards for changes to proposed plans as sought in submissions. The lack of formal notification of submissions to affected persons means that their participatory rights are dependent on seeing the summary of submissions, apprehending the significance of a submission that may affect their land, and lodging a further submission within the prescribed timeframe.

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[15] [2004] NZRMA 556 at 574-575.
[16] *Applefields Ltd v Christchurch City Council* [2003] NZRMA 1; *Williams and Purvis v Dunedin City Council* (Environment Court, CO22/C002, 21 February 2002, Judge Smith); and *Re Vivid Holdings Ltd* [1999] NZRMA 467.
[17] [2013] NZHC 1290.

In particular, his Honour noted that a core purpose of the statutory plan change process is to ensure that persons potentially affected by the proposed plan change are adequately informed of what is proposed. He observed:

> [77] . . . It would be a remarkable proposition that a plan change might so morph that a person not directly affected at one stage (so as not to have received notification initially under clause 5(1A)) might then find themselves directly affected but speechless at a later stage by dint of a third party submission not directly notified as it would have been had it been included in the original instrument. It is that unfairness that militates the second limb of the *Clearwater* test.

As in the *Westfield* case, however, this approach does not set any absolute limit:

> [81] . . . Yet the *Clearwater* approach does not exclude altogether zoning extension by submission. Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further s 32 analysis is required to inform affected persons of the comparative merits of that change. Such consequential modifications are permitted to be made by decision makers under schedule 1, clause 10(2). Logically they may also be the subject of submission.

A further aspect of the scope for consequential change is where, as here, the regional policy statement is the subject of submissions and recommendations. Because the plans must give effect to the regional policy statement,[18] it follows that submissions seeking amendments to the regional policy statement may well result in changes needing to be made to the plans. Similarly, because rules in plans must be appropriate ways to achieve objectives and policies,[19] it follows that where changes are made to objectives and policies, consequential changes may need to be made to the rules.[20]

To the extent that much of the relevant case law relates to changes to parts of operative plans rather than a review of an entire plan, or indeed the preparation of a fully combined plan, the guidance on the limits of consequential amendments needs to be considered carefully in light of the scale of the planning exercise.

4.3. The Panel's approach to scope

Against that background and conscious of its special power to make out of scope recommendations, the Panel has prepared its recommendations on the basis of having:

i. read the plan provisions as notified, together with any relevant section 32 reports prepared by the Council;

ii. read the submissions and further submissions;

iii. heard the Council and other submitters and read the material lodged by them;

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[18] For the regional plan (including the regional coastal plan) see section 67(3)(c), and for the district plan see section 75(3)(c), of the Resource Management Act 1991

[19] See sections 32(1)(b), 68(1)(b) and 76(1)(b) of the Resource Management Act 1991

[20] *Clark Fortune McDonald and Associates v Queenstown Lakes District Council (No 2)* Decision No C89/2002.

iv. taken into consideration the relevant plan-making provisions of the Resource Management Act 1991, especially sections 32 and 32AA and the provisions specifically listed in section 145(1)(f) Local Government (Auckland Transitional Provisions) Act 2010;

v. had regard to the Auckland Plan; and

vi. applied the specialist knowledge and expertise of the members of the Panel in relation to making statutory planning documents based on sound planning principles.

While the submission process is a very important part of this planning process, it is not the only part. The purpose of the Unitary Plan is to achieve the purpose of promoting the sustainable management of natural and physical resources for the whole of Auckland. The whole includes not only all people and communities, but also future generations and all other living things that are part of the environment as broadly defined in the Resource Management Act 1991. Also important in that broad context is the identification of significant resource management issues and appropriate methods to address them in ways that achieve the purpose of the Resource Management Act 1991. As the Environment Court has noted on many occasions, addressing such issues is not simply a numbers game to be done by adding up the submissions for and against a proposed plan provision. Further, the Panel is not required to make recommendations that address each submission individually.[21]

The Panel heard submissions on the objectives, policies and rules in the proposed plan over a period of 18 months and then on rezoning issues over a further two months. In dealing with the evidence presented by the Council and other submitters on rezoning areas of the region (including applying precincts), the Panel was therefore aware of the range of resource management issues that any such rezoning or application of a precinct would raise and that must be addressed by its recommendations. These issues include not only accommodating population growth in the region, but also how to deal with different levels of effects on the quality of the environment and the amenity values of different areas of the region.

These issues are complex and any consideration of them involves a range of competing considerations. In many cases the resolution of an issue is not a binary choice between the position of the Council and that of a particular submitter. In a wide-ranging planning process, the choice is much more likely to be a synthesis of a number of submissions, together with an evaluation of the relevant provision in accordance with sections 32 and 32AA of the Resource Management Act 1991. This evaluation must include the application of the judgment of the Panel to review (and in a number of cases establish) and recommend objectives, policies and methods to achieve integrated management of the natural and physical resources of Auckland and of the effects of the use, development, or protection of land and associated natural and physical resources of Auckland.

4.4. Consequential changes

Against that background, there are at least four distinct types of consequential changes that have arisen:

[21] See section 144(8) Local Government (Auckland Transitional Provisions) Act 2010

i. format or language changes;

ii. structural changes;

iii. changes to support vertical or horizontal integration and alignment; and

iv. spatial changes to overlays, zonings or precincts.

These types of change each need to be considered in several dimensions, being:

i. direct effects: whether the amendment would be one that directly affects an individual or organisation such that one would expect that person or organisation to want to submit on it;

ii. Plan context: how the submission of a point of relief within it could be anticipated to be implemented in a realistic workable fashion; and

iii. wider understanding: whether the submission or points of relief as a whole provide a basis for others to understand how such an amendment would be implemented.

4.4.1. Format or language changes

Numerous submitters and expert witnesses sought changes to the format and language of the Unitary Plan as notified. The extent of such changes was limited to concerns about clarity of meaning and ease of use, and did not extend into substantive changes to the effect of a provision including degrees of enablement or restriction (although in many cases concerns about expression were presented together with concerns about the substance of the provisions).

The Panel accepts without hesitation that the Unitary Plan should, as far as reasonably possible:

i. be expressed in plain English;

ii. use consistent terms and modes of expression;

iii. be organised, numbered and formatted or laid out consistently in a way that assists in finding specific provisions and in navigating between related provisions.

These principles are also consistent with the expectation set up in paragraph 805 of the Auckland Plan.

The extent to which accepting these submissions results in the Unitary Plan looking different to its notified version and in many places being set out and worded differently is extensive. In most cases it is not feasible simply to compare the notified version and the recommended version on a word-for-word basis. However, the Panel is satisfied that if the corresponding parts of the different versions are read in a substantive sense, then the substantive changes that are recommended will be apparent and can be understood in the context of the separate recommendation reports for each topic.

On this basis the Panel does not identify any recommendations in respect of these changes that are beyond the scope of the submissions made on the proposed Unitary Plan.

4.4.2. Structural changes

The structure of the Unitary Plan is complex. It is a combined plan pursuant to section 80 of the Resource Management Act 1991, bringing the regional policy statement, the regional plan (including the regional coastal plan) and the district plan into a single document. This plan applies to almost all of the Auckland region, excluding only the district plan provisions in respect of the land area of the Hauraki Gulf Islands. The scale of such a combined planning exercise has never before been undertaken in New Zealand.

In that context, no-one should be surprised to learn that there were many submissions relating to the structure and seeking changes generally to make the Unitary Plan easier to comprehend and to navigate. The separation of controls among overlays, zones, Auckland-wide and precinct provisions means that a single site may be subject to four or more layers of plan provisions. Identifying all provisions that may be relevant to a site or a proposal, both easily and accurately, is not a trivial task.

As well as the concerns raised by submitters, the Panel also identified a number of structural issues which it recommends be changed to improve the usability of the Unitary Plan and its overall integration. As for format and language changes, the basis for the proposed changes is that they do not, by themselves, result in any substantive change to the plan provisions.

The changes recommended by the Panel include:

i. the tagging of specific sections or provisions as being part of the regional policy statement, the regional plan, the regional coastal plan or the district plan;

ii. the merging or separation of sections; and

iii. the movement of sections between plan layers (provisions for overlays, zones, Auckland-wide rules or precincts).

A common example in this category is where a provision that was notified as being a zone or precinct provision in respect of a natural or built heritage matter would be better identified as and located in the relevant overlay, or (in reverse) a development control or standard in an overlay would be better located in the zone or precinct provisions.

In a number of cases, the Panel recommends moving precinct provisions into the relevant zone, overlay or Auckland-wide layers, particularly where the precinct only addresses a limited range of resource management issues and can be deleted once the provisions are moved.

A specific example is the recommendation to include a new chapter in the Unitary Plan which consolidates a number of overlay, zone and Auckland-wide rules that are likely to relate to the establishment or maintenance of network infrastructure (E26). The Auckland Utility Operators' Group sought this change so as to improve the usability of the Unitary Plan by contractors who, on a daily basis, are likely to be undertaking excavations and vegetation clearance all over the region.

A key consideration when evaluating any such proposed structural change is to assess whether it would have any further consequential effect, such as by the operation of the general rule C1.6 which establishes the precedence of rules in different layers.

4.4.3. Changes to support vertical or horizontal integration and alignment

It is essential to the effectiveness of the Unitary Plan that it promotes the purpose of the Resource Management Act 1991 in an integrated way. As section 32 requires, the appropriateness of objectives must be evaluated in terms of achieving that purpose; then other provisions, being the policies, rules and other methods, must be evaluated in terms of achieving the objectives. This vertical relationship of the Unitary Plan with the Resource Management Act 1991 is repeated across all of the aspects of the environment in Auckland. Rather than addressing any aspect on its own, there must also be an assessment of the horizontal relationship of the provisions. In a combined Unitary Plan, this integration must also address the regional, coastal and district functions of the Council.

This context means that amendments to support integration and to align provisions where they are related could be in three dimensions:

i. down through provisions to give effect to a policy change;

ii. up from methods to fill the absence of a policy direction; and

iii. across sections to achieve consistency of restrictions or assessments and the removal of duplicate controls.

Consequential amendments to achieve vertical integration and alignment tend to be within the range of each topic, except where the link is between the regional policy statement and plan level, or where the link arises through the mapping of plan controls or by way of definitions which span several topics. Given the hierarchical scheme of section 32 and Part 5 of the Resource Management Act 1991, and the logical requirement for a plan to function through these levels, these changes would normally be considered to be reasonably anticipated.

Consequential amendments to achieve horizontal alignment are more likely to depend upon scope drawn from submission points that may be outside of any particular hearing topic. Some of these submissions seek consistency across zones by scaling of intensity or by a trend of enablement or restriction, often using activity status or a progression of development controls. Changes of this kind need to be approached carefully to ensure that an apparent consistency of plan method is in fact aligned with the different types of natural or physical resource.

Changes to definitions are the single most common form of amendment which can affect horizontal alignment. These changes can therefore have their own consequential changes throughout the text of the Unitary Plan. Care has been taken to ensure that, as far as possible, a definition does not import some aspect of policy or set a standard: those matters should be done explicitly in the policies and rules. Where a review across the sections of the Unitary Plan has revealed that certain words are being used inconsistently, then this has been addressed as a consequential result of the integration process.

4.4.4. Spatial changes to overlays, zonings or precincts

It is somewhat ironic that the mapping exercise, which logically comes at the end of the statutory plan preparation process, is usually the first point of contact for users of the plan and the aspect of the plan that tends to generate the greatest number of submission points. While the hierarchy of the statutory planning documents indicates a top-down logic, the response of most people to planning controls is from a bottom-up perspective.

Mapping amendments are most frequently sought in relation to zoning, probably because those are the provisions which most directly affect individual properties. As a result of requests for zoning to be changed, the chance that consequential changes may need to be made to neighbouring properties is increased. In some instances overlays, mapped zone provisions or other layers relating to substantial groups of properties will be affected in a way that could have consequential effects but, as these are typically applied by reference to matters that are determined by resources other than property boundaries, there is usually less reason to consider consequential amendments.

Examples of a consequential amendment for a spatial change would be:

i. where a zone change for one property raises an issue of the consistency of the zoning for neighbouring properties; or

ii. the identification of a rational boundary to the zone when considered against a change in the character, intensity or scale of existing development or the existence of a particular development constraint or opportunity.

It is important to note that few if any submitters have sought that these boundaries be adjusted for the general reason of maintaining some rational edge or that other consequential changes be made. These are aspects of plan-making that are based on achieving the objectives of the zone and the plan generally, giving effect to the regional policy statement and sound resource management principles.

A number of submissions are couched in broad terms, creating a spectrum of options for Unitary Plan provisions. For example a submission which sought to “focus intensification in the Western Isthmus area from Mt Eden to Avondale” could be the basis of a recommendation generally to upzone business and residential land across an area presently occupied by over 300,000 people. Possibly the real intent of the submission is not so much to intensify that area, but more that intensification should not occur elsewhere. It may be relevant that few people lodged further submissions specifically in support of or opposition to that submission. As noted above, however, the issue is not to be determined by the number of submissions for or against a particular change, but in response to the resource management issues which can be identified in relation to that submission and in the context of many other submissions which are relevant to more detailed aspects of the Unitary Plan provisions affecting that area of Auckland.

More specifically, there are submissions seeking greater intensification around existing centres and transport nodes as well as submissions seeking that existing special character areas be maintained and enhanced. The greater detail of these submissions assists in understanding how the broader or more generalised submissions ought to be understood. The strategic framework of the regional policy statement also assists in evaluating how the range of submissions should be considered.

The Auckland Council presented a position at the hearings for Topics 080 and 081 Rezoning and precincts (General and Geographic Areas) which was largely consistent with the proposed zonings shown in the Unitary Plan as notified. While the Council did not pursue rezoning proposals as shown in revised maps which it considered to be out of scope, that evidence was called (by way of summonses to the witnesses) by Housing New Zealand Corporation on the basis that it was within the scope of that submitter's submissions.

As well as presenting its own case, counsel for Housing New Zealand referred to the submissions of the Minister for the Environment and the Minister for Business, Innovation and Employment in support of its own submissions seeking increased residential intensity in areas where it owns state housing and argued that these submissions provide scope for extensive rezoning of certain residential areas. Opposing views were advanced by numerous submitters, including Auckland 2040 and the Kohimarama Neighbourhood Group which presented a detailed legal argument in relation to scope.

The legal basis for the opposing arguments was essentially based on the case law summarised in section 4.2 above. The issues emerged in relation to particular areas and the content of specific submissions. Ultimately, the Panel has reviewed zoning and precinct issues by area, with reference to the submissions in relation to each area. On that basis, the recommendations are considered to be within the scope of submissions seeking rezoning or consequential to such submissions. In any particular location where the Panel's recommendation is specifically identified as being out of scope, this is identified.

Where there are good reasons to recommend in favour of a particular rezoning sought in a submission and also good reasons for that rezoning to include neighbouring properties as a consequence, the Panel's recommendations include those neighbouring properties even where there are no submissions from the owners or occupiers of them. While participation by all potentially affected persons may be desirable, the legislation governing this planning process does not require it. The Panel has sought to ensure that there should not be appreciable amendments to the Unitary Plan without real opportunity for participation by those potentially affected. The process, involving notification, submission, summarising the points of relief, further submission and the opportunity for waivers for late submissions and further submissions has provided that real opportunity which many people have taken.

4.5. Out of scope recommendations

The recommendation reports specifically identify any out of scope recommendations as required by section 144(6)(a) of the Local Government (Auckland Transitional provisions) Act 2010. These are summarised in Appendix 3 to this overview report.

The very broad range of submissions on the text of the Unitary Plan (the objectives, policies and rules) has meant that very few changes to the text are out of scope. Many amendments to the text are the result of seeking better alignment of provisions with each other and vertical and horizontal integration throughout the Unitary Plan. The Panel has provided narratives of its approach to the Unitary Plan provisions and the submissions on them. These narratives identify the issues raised in submissions and the reasons for the Panel's recommendations, whether supporting the provisions as notified or supporting the relief sought in a submission, or (as is most often the case) explaining the reasons for the amendments which are recommended to be made.

Out of scope changes to the Unitary Plan have arisen in relation to the planning maps in the topics on rezoning and precincts. In cases where a submission seeks a change to the maps, that change may be based on reasons which apply not only to the site which is the specific concern of the submitter, but also neighbouring sites. As a matter of good practice and resource management principle, the zoning of an individual site or of several separate sites in an area differently to surrounding sites is normally (and in the absence of other relevant zoning factors) not the most appropriate way to address a zoning issue. Usually, the issue is better dealt with by considering whether neighbouring sites ought to be rezoned as well.

These considerations have led to recommendations for rezoning sites which were not specifically sought in submissions but which are consequential to the rezoning of other sites. The Panel has deliberated on these, considering not only the reasons why any rezoning ought to be considered but also the potential effect on land owners or occupiers who have not made submissions.

The Panel has adopted a conservative approach to the identification of out of scope recommendations, being to treat any real issue as to scope as warranting identification of that recommendation as being out of scope. This is intended to ensure that the right of appeal in respect of out of scope recommendations conferred by section 158(3) of the Local Government (Auckland Transitional provisions) Act 2010 is available to any person who did not make a submission but may be unduly prejudiced by such rezoning.

4.6. Drafting and mapping conventions

As set out in the following sections, the Panel has made extensive changes to the structure and wording of the Unitary Plan. Best practice approaches were agreed by the Panel to ensure a high degree of precision, clarity and consistency. These were based on current planning practice, case law and submissions and evidence presented in the course of the hearings. They addressed such matters as drafting of objectives and policies, approaches to assessment criteria and cross-references, as well as how best to tag provisions to clearly identify them as regional policy statement, regional coastal plan, regional plan or district plan.

The Panel also focused on achieving a high degree of integration across the Unitary Plan and within individual sections of the Unitary Plan. This was achieved through a structured process of panel review throughout the hearings and deliberations, and other methods including testing a sample of resource consents against the provisions.

The Panel has also accepted numerous submissions which sought the Unitary Plan provisions be simplified and clarified and that its layout be amended to make it easier to find relevant provisions. In some cases (for example, the accidental discovery protocols and the earthworks and vegetation clearance provisions in relation to infrastructure) this approach has led to provisions being moved to different sections of the Unitary Plan. In other cases (for example, the Waitākere Ranges precincts and the Major Recreation Zone) this approach has led to restructuring the Unitary Plan methods to reduce the number of layers.

IHP Report to AC RUB, Rezoning and Precincts

particular proposition that precincts should, in certain defined circumstances, override overlays.

In a small number of circumstances precincts based on character have been recommended despite the Panel having reservations about the necessary extent of those precincts. It has made those recommendations on the cautionary basis that at least interim protection should be afforded pending a fuller consideration by Council. An example is Rosella Precinct at Middlemore, where its strategic proximity to the rail station would otherwise warrant an upzoning to Residential - Mixed Housing Urban Zone.

As noted above, overlay constraints (for example flooding, height-sensitive areas, and volcanic viewshafts) have generally not been taken into consideration as far as establishing the zoning is concerned. That is, the 'appropriate' land use zoning has generally been adopted regardless of overlays. That approach leaves overlays to perform their proper independent function of providing an important secondary consideration, whereby solutions and potential adverse effects can be assessed on their merits. It also avoids the risk of double-counting the overlay issue both at the zone definition and then at the overlay level. In many instances this has resulted in consequential rezoning changes. In Newmarket, for example, the Panel has upzoned the centre to Business - Metropolitan Centre Zone; removed the particular building height restrictions; and relied upon the Volcanic Viewshaft and Height Sensitive Areas Overlay (along with general development controls) to govern individual site structure heights.

As a consequence of the approach to zoning noted above, typically the setting aside of an overlay from a residential site for the purpose of establishing the zoning, has resulted in upzoning of that site by one order of dwelling typology – commonly from Residential - Single House Zone to Residential - Mixed Housing Suburban Zone for instance (indeed, the Residential - Mixed Housing Suburban Zone has become the new 'normal' across many parts of the city). This residential upzoning has most commonly arisen from the uplifting of the flooding overlay, which in no way diminishes the relevance of that, or any other, overlay because of its importance in the hierarchy of controls.

The Panel has recommended the deletion of the pre-1944 overlay, see the Panel's Report to Auckland Council – Overview of recommendations July 2016.

3.3.4. Residential zoning

At the interface of zones the Panel recommends a rule that imposes the stricter of the two zones' standards. Accordingly the Panel does not consider it necessary always to step up the zones in sequence (from Residential – Single House Zone to Mixed Housing Suburban Zone, to Residential - Mixed Housing Urban Zone to Residential - Terrace Housing and Apartment Buildings Zone for instance). While the concept of concentric zone patterning has a certain logic, that is neither practical nor efficient in many on-the-ground circumstances.

In terms of applying higher density zones, the Panel has preferred a wider walkability metric than the 200-400m proposed by Council. While accepting that a 400-800m metric as proposed by the Housing New Zealand Corporation is not appropriate in all circumstances, or likely realisable within the current medium-term, ten-year planning horizon, the Panel considers that approach to be more appropriate strategically when taking the longer-term

2041 planning horizon into account. As many submitters noted, rezoning merely provides the opportunity; it does not by itself ensure an outcome. Not to zone appropriately and sufficiently, however, can certainly frustrate wider strategic and longer-term objectives.

The Panel also notes that in some cases, for example in Belmont, it has proceeded with upzoning around the centres despite there being clear infrastructural constraints presently. In Belmont, for instance, this relates to Lake Road and its current congestion. However, in such cases the Panel has proceeded because improvement works are reliably forecast or scheduled within the current 10-year lifespan of the Plan and the rezoning is likely to facilitate a resolution of that existing issue. Furthermore, that particular infrastructural issue is the sole significant constraint to an otherwise strategic location at Belmont – and therefore upzoning a wider area around the centre to Residential – Mixed Housing Urban Zone and Residential – Terrace Housing and Apartment Buildings Zone has been adopted.

The Panel also records that in a number of areas that are characterised by more dense Housing New Zealand Corporation property ownership, such as around Mangere township for example, where Housing New Zealand Corporation has sought to upzone in order to achieve higher densities, the Panel has infilled the upzoning across other properties where that makes a more logical block as consequential changes.

Live zonings have been adopted for land brought within the Rural Urban Boundary where justified by evidence. Where this has not occurred it has usually been for the reason either that insufficient work has been undertaken to satisfactorily answer outstanding questions about, for example, infrastructure provision, or because the Panel has not been able to resolve detailed concerns in the available time. In many instances it anticipates that those matters will be able to be brought forward through plan changes/variations in the near future because of the work undertaken to date.

The Panel has not accepted Council's principle that the Future Urban Zone should only be used within a Rural Urban Boundary. As discussed in the Panel's Report to Auckland Council – Overview of recommendations July 2016, the Panel has adopted a Rural Urban Boundary only around the main urban area, the two satellite towns of Warkworth and Pukekohe, and Kumeu-Huapai and Riverhead. It sees no sensible planning purpose in placing a Rural Urban Boundary around smaller settlements but sees considerable merit in signalling areas that are suitable as land zoned Future Urban Zone.

The Panel notes that, contrary to a number of submitters, it has not assumed that Future Urban Zone areas will necessarily all come into live zoning as residential land. As noted elsewhere, the Panel has specifically assumed that these will encompass both business and residential activities, as well as a mix of recreational, open space and other zones, but has not attempted to predetermine those outcomes.

3.3.5. Business zoning

While the Panel accepts the thrust of Council's evidence from Messrs Wyatt, Akehurst and Ms Fairgray in respect of the geographic shortage of land zoned Business - Light Industry Zone, it has recognised the existing reality of many of those proposed zones. That is, many of these proposed zones are not currently used for or by light industry, and the clear commercial evidence is that they are most unlikely to revert to light industry even if zoned as

Attachment “B”

A copy of the further submission

4 April 2016

The Hearing Administrator
Independent Panel Hearing Panel
Email: aupihp@govt.nz

Unitary Plan Independent Hearings Panel chairman, Judge David Kirkpatrick; Email: aupihp@govt.nz
Team Leader Unitary Plan Hearings, Julie McKee, Email: Julie.McKee@aupihp.govt.nz

CC:
HNZ's legal counsel, Claire Kirman, Email: ckirman@ellisgould.co.nz
Auckland Council chief executive, Stephen Town, Email: stephen.town@aucklandcouncil.govt.nz
GM Auckland Council Planning in Place, John Duguid; Email: john.duiguid@aucklandcouncil.govt.nz

Unitary Plan – Request to waive time limit to accept late further submission regarding zoning of the area in Judges Bay, Parnell that is bounded by Judges Bay Road, Taurarua Terrace and Gladstone Road

1. This request arises out of the new (late) zoning proposals made by Housing New Zealand Corporation (HNZ). It is made pursuant to s135 Local Government (Auckland Transitional Provisions) Act 2010 which permits the Chair of the Hearings Panel to decide whether to receive further submissions after the closing date. We would be grateful if you would place our letter before the Chairman of the Panel for the Panel's urgent attention and such direction as he considers appropriate.

2. The submitters are:
   - Owners and residents of properties in the Judges Bay area between Judges Bay Road, Taurarua Terrace and Gladstone Road (in the latter case the submitters' properties have frontages onto Taurarua Terrace as well as Gladstone Road). Their names are listed below.
   - The Parnell Community Committee Inc.

3. The submitters' position on the zoning of the properties in this area is as follows:

   - They support the Single-House zoning, shown in the notified Unitary Plan, for the area bounded by Judges Bay Road and Taurarua Terrace (as set out in attached plan); and seek to be heard in opposition to the submissions of HNZ that belatedly propose an "up-zoning" of the area to Mixed Housing Urban and Mixed Housing Suburban.

   - The owners and residents support the separate earlier submission of the Parnell Community Committee Inc seeking to have the blocks bounded by Taurarua Terrace and Gladstone Road zoned Mixed Housing Urban.

4. **The scope** of the further submission and submitters' **reasons** for seeking a waiver and for their submission are:

The submission: The further submission opposes the new relief belatedly sought by HNZ on Topic 81 in respect of the zoning of the Judges Bay area. The relief that HNZ now seeks for the area is shown in attached plan.

The reasons for seeking a waiver and for the further submission are:

- HNZ's proposed rezonings have the potential to adversely affect the special character, heritage and other values of the Judges Bay area. Such values are recognized in the 1999 decision of the Environment Court led by Environment Judge D F G Sheppard (Decision A54/99). They are plainly out of step with the area's existing special character, heritage and other values and will have serious adverse effects on the environment that cannot be avoided, remedied or mitigated, as required by the Resource Management Act 1991.

- They will not promote sustainable management of resources, or achieve the purpose of the RMA and are contrary to Part 2 and other provisions of the Act. They will not enable the social, economic and cultural well-being of the community in the Auckland region or meet the reasonably foreseeable needs for future generations.

- The submitters have been taken by surprise and are deeply concerned at HNZ's proposals. They have just become aware that HNZ, in its recent appearance before the Panel on Topic 081 (Rezoning and Precincts - Geographical Areas) is now seeking significant and substantial changes to the zoning of the area that go well beyond what the submitters could have reasonably understood to be within the scope of original submissions made by HNZ and others to the notified Unitary Plan. As disclosed in its recently released Zone Principles Conceptual Map for Waitemata, HNZ is only now seeking that the Judges Bay area be rezoned Mixed Housing Urban and Mixed Housing Suburban in place of the Single-House Zoning that applies to most of the area in the notified Unitary Plan.

- The submitters wish to produce expert evidence to provide an updated assessment of the values of the Judges Bay area and the inappropriate nature of HNZ's proposals for the area. They anticipate they will be able to file evidence by 12 April 2016 and possibly before then. Such evidence will assist the Panel in making its recommendations to the Council and ensure that it has adequate material to assess HNZ's proposals.

- The Community Committee has an interest as representative of the Parnell community in the avoidance of adverse effects of the zoning changes on the special character on the area. The owners and residents in the area are directly affected by HNZ's proposals for the zoning of their properties and those in the immediate surrounding neighbourhood. Consequently they have a greater interest than the public generally in the relief sought by HNZ. It is in the interest of fairness and justice that the submitters be permitted to be heard on HNZ's late submission.

- The submitters are not proposing any new relief. The interests of the community generally will not be affected by the waiver that the submitters are seeking. Additionally the waiver and further submission will not delay the hearing process.

The submitters are moving quickly and have arranged for legal representation by Russell McVeagh and a planner. A brief period of a few days is needed to be adequately prepared.

- The submitters had assumed, with good reason, that the Single-House zone proposed in the notified Unitary Plan was not under challenge after the withdrawal of "out of scope" proposals in Auckland Council's submission on Topic 81e Rezoning and Precincts (Geographical Areas) that was lodged on 26 January 2016. The deep concerns that the submitters had about those changes were set out in a letter sent to Auckland Council's Chief Executive Stephen Town on 11 February 2016, a copy of which is attached. A copy of the letter was also forwarded to the Hearings Panel Chairman Judge David Kirkpatrick at the time. Those concerns apply equally to HNZ's decision to adopt those "out of scope" proposals.

5. HNZ has been served with a copy of this waiver request and submission.

We thank you for your assistance and look forward to hearing from you.

Yours sincerely,

The owners and residents who make this request and late further submission are: Michael Barnes, Hannah Sargisson, Tony Garnier, Juliet LeCouteur, Peter Sargisson and Luke Niue for the Parnell Community Committee Incorporated.

The submitters are members of the concerned group of residents in Judges Bay Rd, Taurarua Terrace and Gladstone Rd which was recently formed to address their deep concerns about the late out of scope zoning proposals of Auckland Council: Malcolm Legget, Carrie Hobson, Michael Barnes, Leonorilda Robles, Kerry Stotter, Jill Stotter, Bill Holmes, Lindsay Holmes, Wayne Hughes, Jane Hughes, Tony Eade, Tony Garnier, Juliette Lecouteur, Richard Pearson, Anne Coney, Peter Sargisson, Hannah Sargisson, Jo Malcolm, Simon Stokes, Tiena Pratt, Mary Rutherford, Bruce Phythian, Janet Banks, Warren Hughes, Juliet Le Couteur, Janette Norman, Anne Bollard, Luke Niue. See attached letter. All members of the group support this submission. For reasons of urgency they are not signatories to this application and submission but their support will be confirmed at the hearing.

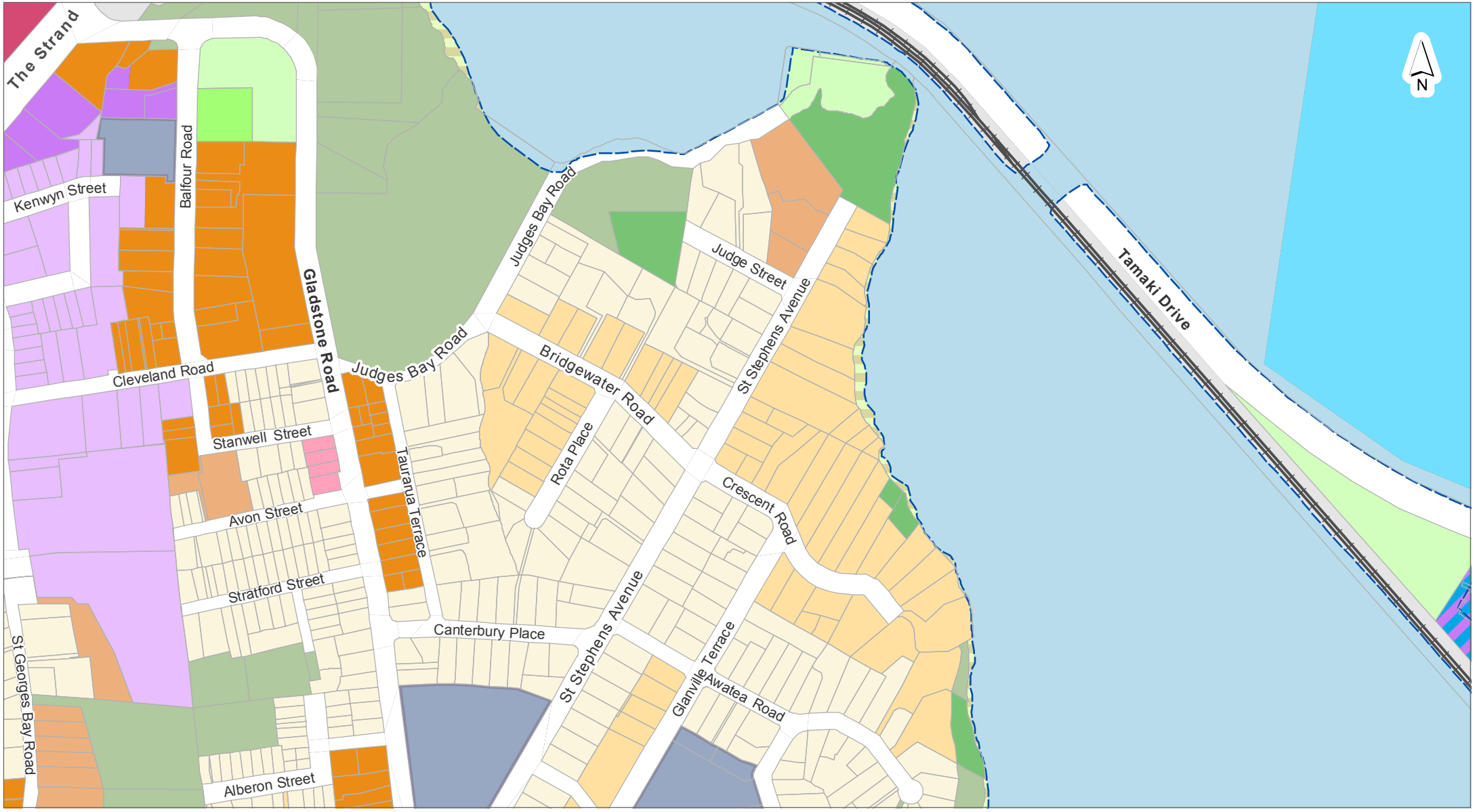
Address for Service: C/- Luke Niue
Parnell Community Committee Inc
Email: parnellpcc@gmail.com
Phone: 021 0554574

Attachments:

- MAP: NNZC Zone Principles Conceptual – Waitemata
- Letter sent to CEO of Auckland Council and the Unitary Plan Hearings Panel – 11 February 2016.

Attachment “C”

Part of the zoning map as notified showing the zoning of Judges Bay



PAUP Notified Version

0 30 60 90
Meters

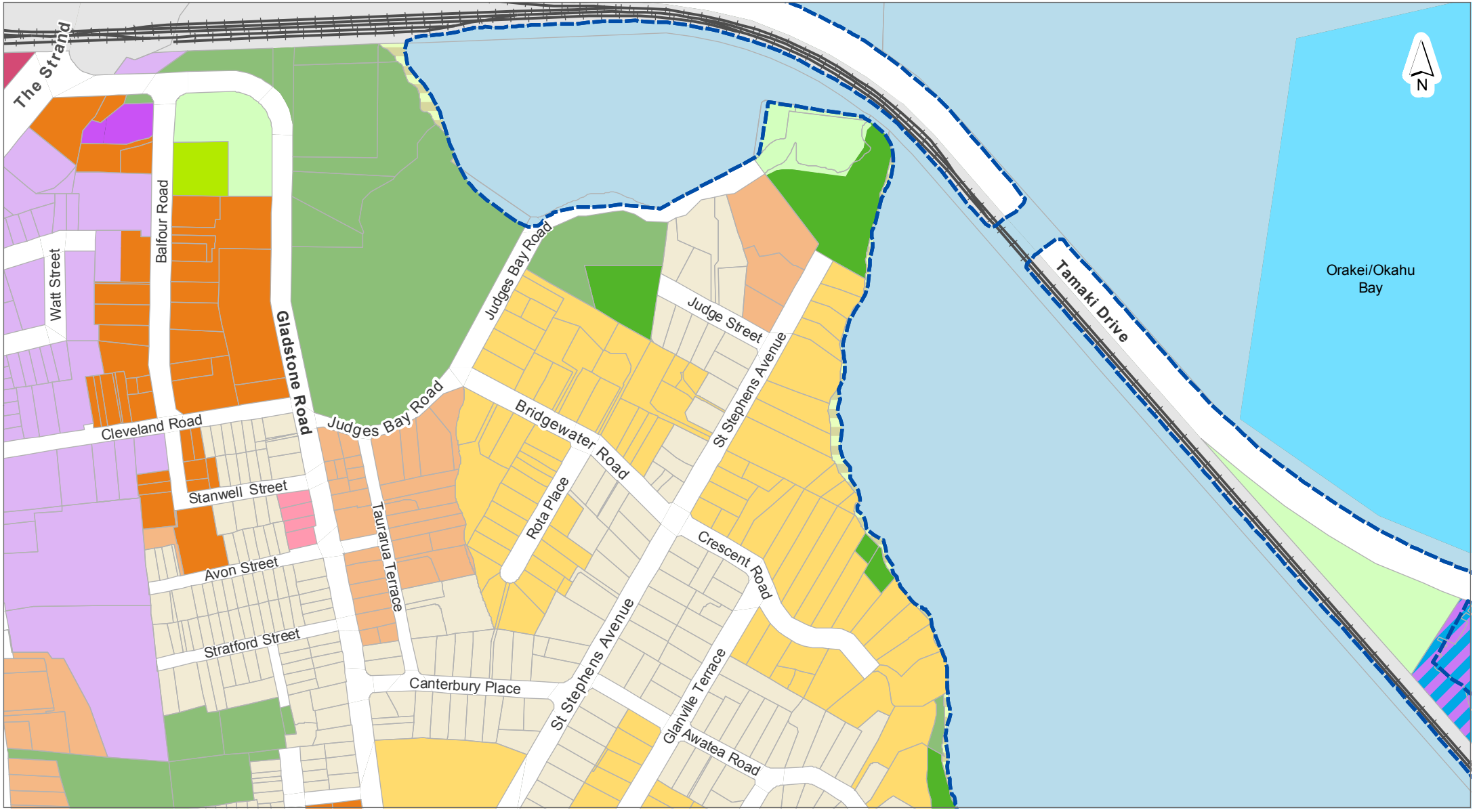
Scale @ A4
= 1:5,000

Date Printed:
14/09/2016

Auckland Council
Te Kaunihera o Tāmaki Makaurau

Attachment “D”

Part of the zoning map decisions version showing the zoning of Judges Bay



Decisions Version

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Meters

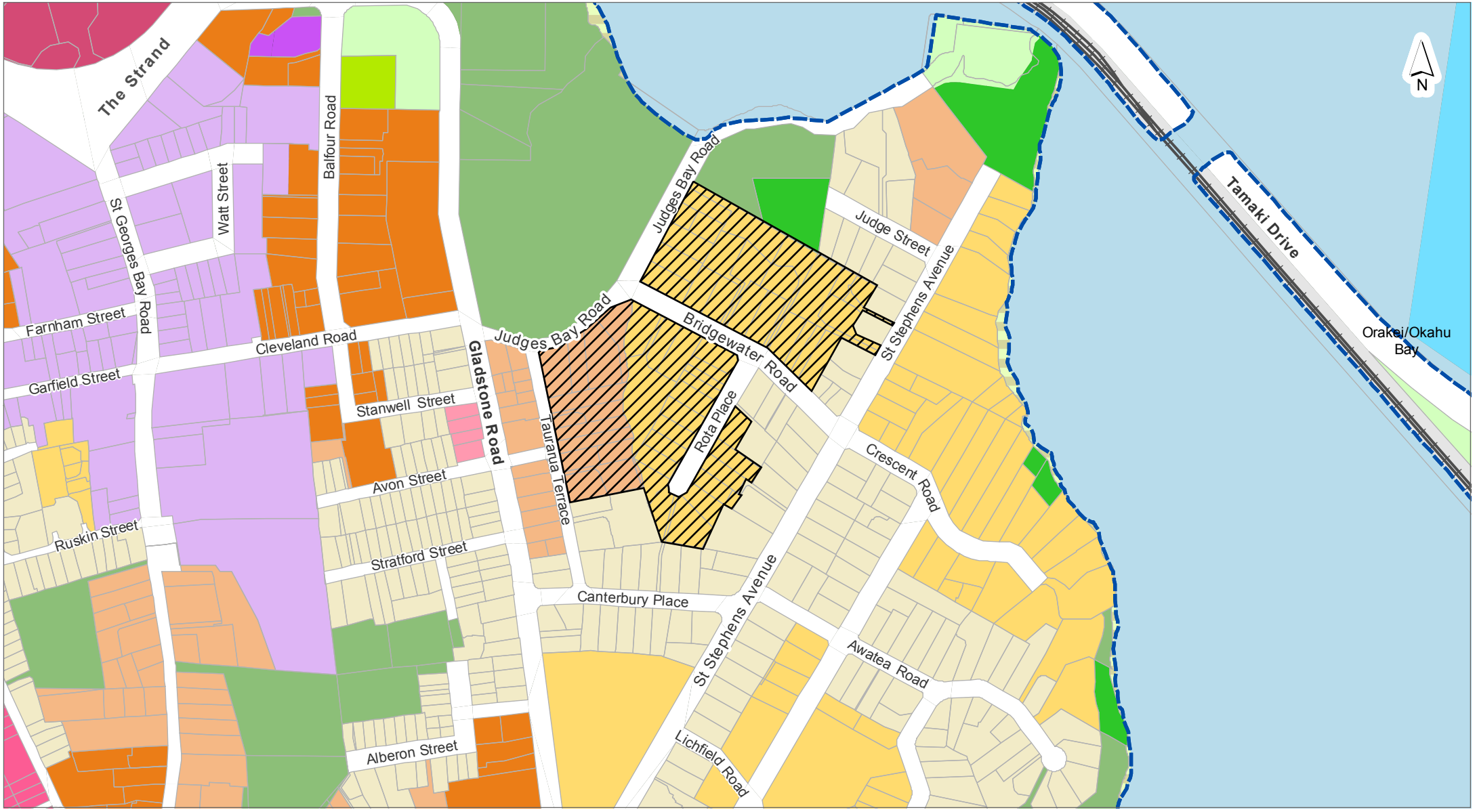
Scale @ A4
= 1:5,000

Date Printed:
14/09/2016

Auckland Council
Te Kaunihera o Tāmaki Makaurau

Attachment “E”

Part of the zoning map decisions version with the requested re-zoning sought by the appeal shown in black diagonal



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Date Printed:
14/09/2016

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