

UNITARY PLAN UPDATE REQUEST MEMORANDUM

TO Celia Davison, Manager Planning, Central South Unit

FROM Jimmy Zhang, Planner, Central South Unit



DATE 23 June 2021




SUBJECT **Plan Modification to the Auckland Unitary Plan(AUP)
Operative in part (15 November 2016)**



This memorandum requests an update to Auckland Unitary Plan Operative in part

Reason for update – Plan Change 61: Waipupuke to be made operative in part	
Chapter	Chapter I Precincts AUP GIS Viewer
Section	South – I44X Waipupuke Precinct
Changes to text (shown in underline and strikethrough)	New Waipupuke Precinct – refer to Attachment 3 for text, precinct plans and Appendix 1. Note: where the text says ‘subject to appeal’, please put in the side bar text the appeal number: ENV-2022-AKL-000021
Changes to diagrams	N/A
Changes to spatial data	Rezone 56 hectares of Future Urban Zoned land in Drury West to a mix of Business: Neighbourhood Centre zone, Residential: Terrace Housing and Apartment Buildings zone, Residential: Mixed Housing Urban zone and Open Space: Informal Recreation zone. Refer to Attachment 2 for zoning changes. Apply the Stormwater Management Area – Flow 1 (SMAF 1) Control over the rezoned land. Refer to Attachment 2 for addition of SMAF 1 overlay. Apply a precinct over the rezoned land. Refer to Attachment 2 for precinct boundary.
Attachments	Attachment 1: PC61 Environment Court Consent Order Attachment 2: Updates to GIS Viewer Attachment 3: PC61 text and precinct plans Attachment 4: Clause 20A

Prepared by: Jimmy Zhang Planner	Text Entered by: Harry Barnes Planning Technician
Signature: 	Signature: 

Maps prepared by: Mitesh Bhula Geospatial Specialist	Reviewed by: Craig Cairncross Team Leader
Signature: 	Signature: 
Signed off by: Celia Davison Manager Planning – Central South	
Signature: 	

**Attachment 1: PC61 Environment
Court Consent Order**

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision [2022] NZEnvC 095

IN THE MATTER OF an appeal under clause 14 of Schedule 1
of the Resource Management Act 1991
(the Act)

BETWEEN LOMAI PROPERTIES LIMITED
(ENV-2022-AKL-21)

Appellant

AND AUCKLAND COUNCIL

Respondent

Court: Environment Judge J A Smith, sitting alone pursuant to s 279 of
the Act

Date of Order: 7 June 2022

Date of Issue: 7 June 2022

CONSENT DETERMINATION

A: Under section 279(1)(b) of the Resource Management Act 1991, the
Environment Court, by consent, orders that:

- (1) the Lomai Properties Limited appeal be resolved in part, with PC61
approved with modifications as set out in **Appendix A**.
- (2) There is one aspect of the appeal that remains outstanding in relation
to the road noise (acoustic attenuation) provisions in PC61. The road
noise (acoustic attenuation) provisions in PC61 that remain subject to



appeal are referenced by placeholders “[subject to appeal]” in **Appendix A.**

(3) The road noise (acoustic attenuation) provisions in PC61 will be the subject of further discussions between the parties. Hearing time may be required to resolve those provisions. In the meantime, the Court approves the set of interim road noise provisions included in **Appendix A.**

(4) The parties are to report on resolution of the noise attenuation issue by **2 September 2022.** If not resolved parties are to agree to a timetable to hearing.

B: Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This consent order relates to appeal by Lomai Properties Limited (**Lomai**) against the decision of Auckland Council (**the Council**) to decline Proposed Private Plan Change 61 (**PC61**) to the Auckland Unitary Plan (**AUP**).

Background

[2] PC61 proposes the rezoning of 56 hectares of Future Urban Zoned land in Drury West in the area generally bounded by Jesmond Road and Future Urban Zoned land to the east, Oira Road to the west, Future Urban Zoned land to the north and Karaka Road/State Highway 22 to the south. The proposed zoning includes a mix of business, residential and open space zoning.

[3] PC61 was publicly notified on 28 January 2021. The Council’s s 42A report recommended that PC61 be approved with modifications.

[4] The Council decision (**the Decision**) declined PC61. The Decision was notified on 16 December 2021. In their decision the hearing panel set out very clearly

the reasons why PC61 was declined, and the changes that they would have made to PC61 if it were to be approved with modifications. In particular, the hearing panel found the Development Staging and Transport provisions to be unworkable, not reliable and not effective.

[5] This made the entire plan change insupportable given that the Development Staging and Transport provisions were critical for ensuring PC61 would deliver the necessary transport upgrades to mitigate its effects on the surrounding road network.

[6] Lomai appealed the decision to the Court on 22 February 2022, seeking that PC61 is granted.

Parties to the appeal

[7] The Council (in its capacity as a submitter), Auckland Transport, Waka Kotahi NZ Transport Agency, Watercare Services Limited, and Kāinga Ora joined the appeal in accordance with s 274 of the RMA. Elly S Pan also joined the appeal pursuant to s 274 but subsequently withdrew her interest on 4 May 2022. The Environment Court noted the withdrawal, with no issue as to costs, on 6 May 2022.

Agreement reached

[8] By joint memorandum dated 10 May 2022, Lomai, the Council (in its capacities as the Respondent and submitter), Auckland Transport, Waka Kotahi NZ Transport Agency, Watercare Services Limited and Kāinga Ora filed a draft consent order to resolve the majority of the appeal by consent.

[9] On 16 May 2022, the Court directed the parties to file a further joint memorandum providing further detail explaining the agreement reached between the parties and providing analysis under s 32AA to justify the agreed changes to the PC61 provisions.

[10] Following this request, the parties filed a second joint memorandum dated 1 June 2022, which was supported by an affidavit from planning consultant Mr Vijay Lala dated 31 May 2022.

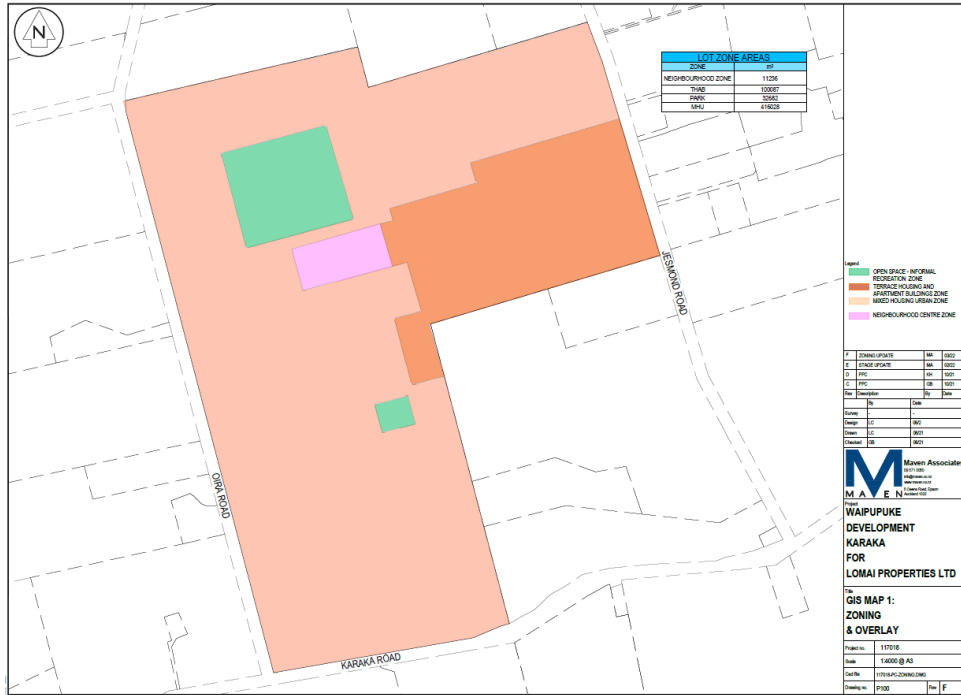
Agreement reached

[11] Following direct discussion and Environment Court assisted mediation, on 27 April 2022, the parties agreed to resolve the majority of the appeal. The exception is a road noise (acoustic attenuation) matter that is discussed below. The agreement by the Council (as Respondent) was conditional on receiving approval from the Planning Committee. That approval was subsequently obtained.

[12] That agreement is to:

- (a) Re-zone a 56ha block of land to the north of State Highway 22, west of Jesmond Road and east of Oira Road (known as Waipupuke) from Future Urban Zone to the following zones:
 - (i) Residential – Terrace Housing and Apartment Buildings (**THAB**);
 - (ii) Residential – Mixed Housing Urban (**MHU**);
 - (iii) Business – Neighbourhood Centre; and
 - (iv) Open Space – Informal Recreation.

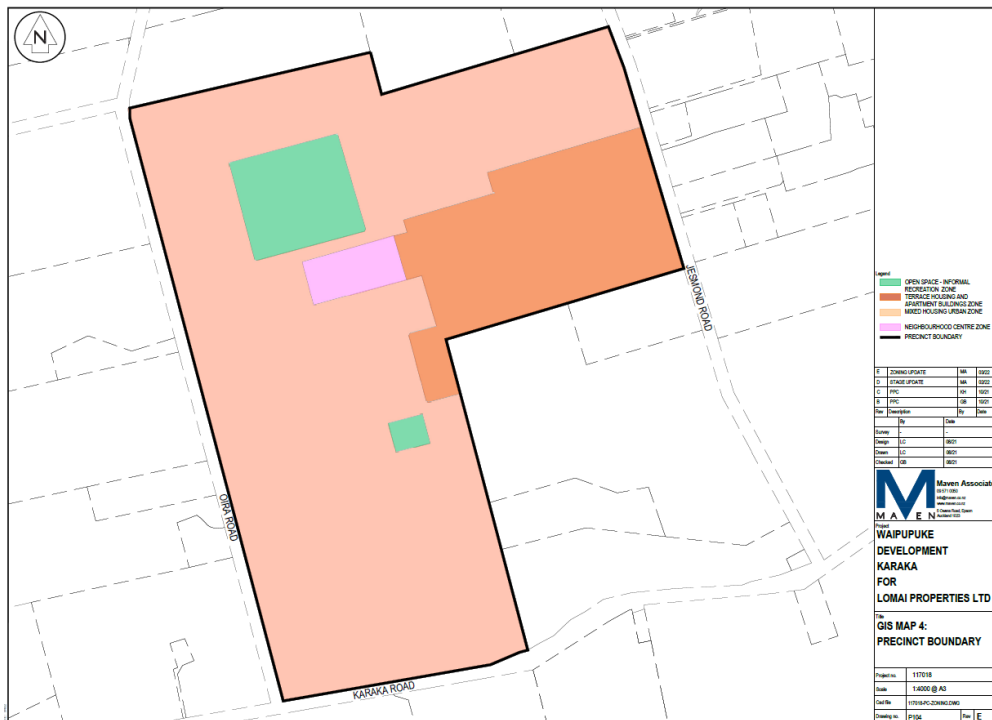
These zones are shown in the map below:



- (b) Apply an “SMAF1” overlay onto the area, as shown in the map below. The “SMAF1” overlay refers to “stormwater management area control – Flow 1” and triggers the need for development to comply with specific stormwater management requirements.



(c) Apply a precinct over the land subject to PC61, as shown in the map below. The Waipupuke precinct specifies necessary transport infrastructure upgrades and recognises specific activities.



(d) The parties advise that proposed precinct provisions will ensure that subdivision and development occurs in an appropriate way responding

to the particular features of the Waipupuke site. This includes provisions that:

- (i) recognise mana whenua values and achieve positive environmental outcomes for the health and well-being of the land, waterways and people;
- (ii) ensure the development of urban activities is undertaken in a comprehensive and integrated way (recognising the importance of the Neighbourhood Centre zone, and 3-hectare suburban park as a focal point);
- (iii) enable the establishment of an accessible, safe and well-connected transport network that is established for all modes within and adjacent to the Precinct, and connects appropriately to the surrounding transport network;
- (iv) ensure that stormwater discharged from the Precinct avoids or mitigates adverse effects on receiving environments;
- (v) provide for connections within the Precinct and to roads and land adjacent to the Precinct;
- (vi) provide for the establishment of infrastructure necessary to service any activity, development and/or subdivision within the Precinct (including transport, wastewater and water supply) in a coordinated and timely way; either prior to or at the same time as development and/or subdivision;
- (vii) ensure that the required transport infrastructure upgrades are implemented to avoid or mitigate the adverse traffic effects of activities, development and/or subdivision on the existing and future transport network;
- (viii) ensure that any activity, development and/or subdivision implements the required transport network upgrades, connections

and elements as shown on the Precinct Plans and Appendix 1 Road Function and Required Design Elements Table; and

- (ix) avoid or mitigate adverse traffic effects on the safe and efficient operation of the existing and future SH22 and arterial road network, including Jesmond Road.

[13] There is one discrete matter, relating to the noise attenuation provisions, that has not been fully agreed between the parties. This is discussed later in this decision.

Amendments addressing the Commissioners' concerns

[14] The Decision broadly supported the rezoning proposed by PC61. However, a number of specific issues identified by the independent hearing panel (which considered PC61 on behalf of the Council) led to the decline of the private plan change request. These matters have subsequently been addressed in the mapping and provisions agreed by the parties as follows.

Appropriate transport triggers

[15] While the Decision found that PC61 could appropriately mitigate its adverse infrastructure (primarily transport) effects, this was predicated on there being appropriate development staging and transport upgrade provisions.¹ Further work was undertaken by the parties on the triggers for transport upgrades.

[16] Table IX.6.6.1 “Transport Network Infrastructure Upgrades and Measures”, which is part of standard IXXX.6.6, sets out the transport network infrastructure upgrades and measures that are required to be implemented before particular thresholds of activity, development or subdivision are enabled based on an identified sequencing of staged development (Waipupuke Precinct Plan 1 Zoning and Stages). Any activity, development or subdivision that does not provide the required transport infrastructure upgrades in Standard IXXX.6.6 and Table IX.6.6.1 will be a non-complying activity (in accordance with Rule IXXX.4.1(A5)).

¹ Commissioners’ Decision on Proposed Private Plan Change 61 to the Auckland Unitary Plan, dated 15 December 2021 [141].

[17] Non-complying activity status is appropriate for the reasons outlined by Mr Lala in his affidavit², namely due to:

- (a) the potential significant adverse traffic effects on the existing and future transport network if the required transport infrastructure upgrades are not implemented and coordinated with growth and provided at the time specified in PC61;
- (b) the fact that it is not anticipated that any activity, subdivision and development can or should occur without the required transport infrastructure upgrades; and
- (c) the need for greater scrutiny for the above reasons.

[18] In addition, as Mr Lala states in his affidavit, given “the importance of coordinating growth with transport infrastructure upgrades, the objective and policy provisions use the ‘avoid’ term”.³ For example, policy (8) uses the term “avoid” ensuring that any activity, subdivision and development does not proceed prior to the required transport network infrastructure upgrades identified in Table IX.6.6.1 being implemented and operational.

[19] The parties agree these triggers are appropriate to ensure that the required transport infrastructure upgrades are implemented to support the development enabled by the different stages of PC61. They also agree they will also avoid or mitigate the adverse traffic effects of activities, development and/or subdivision enabled by PC61 on the existing and future transport network. The upgrades required by the provisions were agreed to by all parties including both Waka Kotahi and Auckland Transport.

Amendments to the Terrace Housing and Apartment Buildings Zone

[20] The Decision did not support the proposed distribution of the THAB zone as part of proposed PC61. In particular, the Decision did not support the proposed

² At [5.13].

³ At [5.15].

THAB zone at the southern part of the site (as proposed in the notified version of PC61).

[21] The parties have agreed a scaled back distribution of the THAB zone, adjoining and primarily to the east of the proposed Neighbourhood Centre Zone. The proposed THAB zoning at the southern part of the site has been removed and will be zoned MHU instead. The extent and location of the THAB zone aligns with the Structure Plan.

[22] Overall, the parties agree the location and extent of the THAB zone will:

- (a) appropriately align with the location of the Neighbourhood Centre;
- (b) support the Jesmond Road transport corridor, including its future use as a Frequent Transit Network public transport route (and the proposed internal transport network for the PC61 site); and
- (c) be more closely aligned with the zoning indicated in the Drury-Opāheke Structure Plan (Structure Plan).

Neighbourhood centre zone

[23] In the Decision, and generally at the hearing, there was support for the inclusion and location of the proposed Neighbourhood Centre zone.⁴ The notified version of PC61 proposed to zone 1.8ha as Neighbourhood Centre.

[24] The parties have agreed to re-zone approximately 1.1ha as Neighbourhood Centre, which is considered to be of a scale and function more closely aligned with the AUP zone purpose. The parties have also agreed that the AUP Neighbourhood Centre provisions should generally apply, rather than being augmented by specific precinct provisions. In particular, specific precinct specific height controls had been proposed for this zone - these have now been removed in favour of the standard AUP provisions.

⁴ Commissioners' Decision on Proposed Private Plan Change 61 to the Auckland Unitary Plan, above n 1, at [198]-[213].

Need for bespoke precinct provisions

[25] The Decision did not support the extensive use of bespoke precinct provisions and found that many of the provisions sought in PC61 were appropriately managed by those already in the AUP. The amended PC61 has removed several provisions where these were already provided for in the AUP. The version of PC61 before the Court primarily relies on the Auckland-wide provisions in relation to notification and other specific matters.

[26] The parties advise that the proposed precinct provisions have been significantly refined and are more targeted to the management of the development enabled by PC61 for the Waipupuke site. In particular the specific precinct rules now proposed by the parties relate to:

- (a) mana whenua cultural identity markers as a permitted activity;
- (b) construction of stormwater management structures within stormwater control areas;
- (c) requiring compliance with standards regarding:
 - (i) arterial road and SH22 access;
 - (ii) development staging and transport network infrastructure requirements;
 - (iii) road function and required design elements table;
 - (iv) precinct plans; and
- (d) the number of dwellings within the Waipupuke Precinct.

[27] There were two specific issues that were raised in the Decision relating to precinct specific provisions, which the parties also identified:

- (a) the activity status for service stations and fast-food restaurants. The notified version of PC61 provided for service stations and fast-food outlets located within the THAB zone and fronting State Highway 22 as

a restricted discretionary activity. In the Decision the independent commissioners noted that they would not have agreed to that provision.⁵ Accordingly, the parties have removed this from the agreed version of PC61.

- (b) Provision for a ‘Medical and Specialist Facility’. This activity was previously proposed as a permitted activity in the Neighbourhood Centre zone in the Waipupuke Precinct. This was not supported in the Commissioner’s Decision, and accordingly has been deleted in the version of PC61 agreed by the parties.⁶

Open space zoning

[28] As notified, PC61 proposed Open Space zoning for 2 pocket parks, 2 neighbourhood parks, 1 suburban park and 1 civic space. The Decision states that the commissioners would have zoned the “Suburb Park and Southern Neighbourhood Park... as Open Space-Informal Recreation.”⁷ This is the zoning that has now been agreed by the parties.

[29] For completeness, the parties record that the preference of the Council (as submitter) was that the final zoning and boundaries of the two open space areas should be determined after subdivision occurs and land is vested / acquired. Lomai’s preference was that the land be zoned as Open Space now as part of PC61 because of the flow on consequences to the design of the development as a whole.

[30] Lomai and the Council as submitter advised the Court that in this particular instance, and as an exception to usual practice, the land in question can be zoned as Open Space now as part of PC61. The parties advised the Court that the agreement reached was on the following on the following basis:

⁵ At [252].

⁶ At [226]-[247].

⁷ At [225].

- (a) Lomai acknowledges that the Council is under no obligation to acquire the proposed neighbourhood park and suburban park land and that any acquisition of the land or part of it remains subject to:
 - (i) due diligence by the Council to ensure compliance with Council open space policy and to confirm they are fit for intended purpose; and
 - (ii) as well as Council and Local Board approval.
- (b) If the Council does not purchase either of these areas, or if less land than that zoned Open Space is required / acquired by the Council for either park, the Lomai will incorporate the “left over” land within its development and the land will be rezoned accordingly.
- (c) Unless the Council agrees otherwise, this rezoning will occur via a private plan change which the Lomai will progress at its expense.

The agreement and the relevant AUP objectives and policies

[31] The primary purpose of PC61 is to rezone rural land (currently zoned Future Urban) to live urban zoning to enable urban development to occur at the Waipupuke site. The parties advise that the provision of this quantum of urban zoned land, combined with the proposed supporting infrastructure, which will be delivered in accordance with the PC61 provisions, assists Auckland Council in achieving Objectives 1 and 3 of the National Policy Statement for Urban Development 2020 (**NPS-UD**).

[32] While the Structure Plan is not a formal RMA document, PC61 will also assist the Council to realise the development that it signals. This was also reflected at paragraph [72] of the Council’s Decision on PC61 where the Commissioners stated:⁸

We have placed considerable weight on the DOSP [the Structure Plan]. This is due to what we understand was a comprehensive and robust Council process; carried out under the LGA 2002 processes. This was to address the

⁸ At [72].

requirements in the RPS that a structure planning process was necessary prior to 'live zoning' FUZ land.

[33] Moreover, as detailed in Mr Lala's affidavit, he concludes PC61 gives effect to the Urban Growth and Form objectives and policies of the AUP including:

- (a) Policies B2.2.2(4)-(6) which seek to enable higher residential intensification close to public transport, social facilities and employment opportunities while supporting a hierarchy of centres within the region; and
- (b) Policy B2.2.2(7) which relates to a quality compact urban form that enables rezoning within the Rural Urban Boundary.

[34] The parties also consider PC61 to align with the AUP objectives and policies regarding infrastructure, transport and energy, including:

- (a) Objective - B3.2.1(5) which requires infrastructure planning and land use planning to be integrated to service growth efficiently.
- (b) Policy - B3.2.2(1) which enables the efficient development, operation, maintenance and upgrading of infrastructure.

[35] The above position aligns with the finding in the Decision that "[PC61] would have given effect to the National Policy Statement on Urban Development (NPS-UD) and the Regional Policy Statement in terms of B2 – Urban Growth and Form and B3 – Infrastructure, transport and energy".⁹ The caveat to that statement was that the development staging and transport provisions would have needed to be improved.

[36] The parties submit that the proposed approach to development staging agreed is both workable and will ensure the delivery of the necessary infrastructure to support the development of the PC61 site.

⁹ At [3].

Section 32AA evaluation

[37] Section 32AA of the Resource Management Act 1991 (**RMA**) requires a further evaluation for any changes to a proposal since the initial s 32 evaluation report.

[38] The parties' initial consent documentation on 10 May 2022 did not directly address this mandatory requirement.

[39] At a Judicial Telephone Conference on the 16 May I directed that the parties were to file a further joint memorandum and joint statement/affidavit, providing an analysis under s 32AA to justify the agreed changes. Mr Lala's affidavit, filed on 1 June 2022, provided analysis of the amendments agreed by parties in accordance with s 32AA. The joint memorandum filed also addressed the justification for PC61 and the concerns addressed in the Decision.

[40] The changes agreed by the parties to the notified version of PC61 relate to:

- (a) Zoning;
- (b) Transport;
- (c) Stormwater;
- (d) Wastewater/Water supply;
- (e) Notification provisions; and
- (f) Acoustic attenuation.

[41] Mr Lala's analysis is summarised below.

Zoning

[42] The zoning approach in PC61 has been amended to address the issues raised in the Decision and better align with and reflect the Structure Plan. Mr Lala explains the proposed zoning will enable an appropriate level of medium and higher density housing options combined with open space and local commercial and shopping opportunities.

[43] The provision of the proposed urban zoned land, combined with the infrastructure and roading upgrades required by PC61, is in accordance with

Objectives 1 and 3 of the NPS-UD, and will give effect to higher order AUP objectives and policies (in particular B2.2.2(4) – (7)).

Transport

[44] The parties have agreed on a comprehensive suite of provisions to address transport effects. This includes:

- (a) Objectives;
- (b) Policies;
- (c) Activity Rules;
- (d) Standards;
- (e) Matters of Discretion – More than 2,000 dwellings;
- (f) Assessment Criteria – More than 2,000 dwellings;
- (g) Special Information Requirement – Transport Assessment Report;
- (h) Appendix 1 – Road Function and Required Design Elements Table; and
- (i) Waipupuke Precinct Plan 3 Transport.

[45] The objectives and policies seek to ensure an accessible, safe and well-connected transport network is developed within the precinct¹⁰, as well as ensuring appropriate connection to the wider transport network, and that activities, development and subdivision not in compliance with the thresholds in Table IX.6.6.1 are ‘avoided’.¹¹

[46] The associated rules and standards have appropriate and robust development triggers to ensure that development does not occur before the required upgrades to the transport network, to manage the effects of that development.

¹⁰ Objective (3), policy (5).

¹¹ Objectives (5) and (8), policies (6), (8), (9) and (11).

[47] Both the parties and Mr Lala consider the proposed objectives are the most appropriate way to achieve the purpose of the RMA as they will ensure that roading improvements are coordinated with subdivision and development.

[48] As discussed in further detail by Mr Lala the provisions are directive to ensure that the required transport infrastructure upgrades and measures are implemented to avoid or mitigate adverse traffic effects on the existing and future transport network, and that the upgrades precede development and subdivision of the land.

[49] Overall, the suite of transport provisions within PC61 are considered to provide a comprehensive and integrated framework which will ensure the following:

- (a) The staging of subdivision and development is integrated and coordinated with the delivery of required transport upgrades as identified in Table IX.6.6.1;
- (b) Temporary construction traffic management for the implementation of the SH22 / Oira Road intersection upgrade and Oira Road frontage upgrade approved by Auckland Transport and Waka Kotahi to enable up to 95 dwellings and prior to any activity, development and/or subdivision in the Business Neighbourhood Centre Zone;
- (c) The upgrade of the Oira Road/SH22 intersection to a 3 leg dual laned roundabout and approaches;
- (d) The upgrade of Oira Road between SH22 and the northern boundary of the Precinct to a Collector Road Standard, including walking and cycling facilities along the eastern side and the road pavement;
- (e) A pedestrian and cycle connection on the northern side of SH22 between Oira Road and Jesmond Road;
- (f) The upgrade of the Jesmond Road/SH22 intersection with walking and cycling connections;

- (g) The construction of the East-West Collector from Oira Road to Jesmond Road, and its intersection with Jesmond Road with either signals or roundabout;
- (h) The upgrade of Jesmond Road between SH22 and the northern boundary of the Precinct, including walking and cycling facilities along the western side and the road pavement; and
- (i) A temporary pedestrian and cycle connection along the western side of Jesmond Road from the northern boundary of the Waipupuke Precinct to the Drury Secondary School (if the school is operational).

[50] The parties consider that this approach is an efficient and effective way to meet the purpose of the RMA.

Stormwater

[51] PC61 objective (4) requires that stormwater discharge from the Precinct avoids or mitigates adverse effects on receiving environments. This is supported by policy (7):

- (7) Require subdivision and development to enhance water quality and protect the health of stream environments including by:
 - a. Being consistent with any stormwater management plan approved by the network utility operator;
 - b. Applying water sensitive design approach including treatment train measures within the Precinct to achieve water quality and hydrology mitigation; and
 - c. Incorporating biodiversity enhancement planting of riparian margins of protected streams identified on Precinct Plan 2.

[52] Mr Lala considered the proposed approach is appropriate, efficient and effective as it aligns with the region-wide Network Discharge Consent (**NDC**) which manages stormwater discharges via catchment across the Auckland Region. The conditions of consent of the NDC enable new development such as PC61 to prepare

a Stormwater Management Plan that is then adopted under the NDC as the method by which stormwater discharges are subsequently managed.

[53] He also explains the proposed provisions align with and are complementary to the existing AUP provisions and will assist in achieving the higher level AUP stormwater objectives and policies, including Objective E10.2 (1) and Policies E10.3 (1) – (3).

Wastewater/Water Supply

[54] Provision of appropriate water and wastewater infrastructure is integral to an effective urban development. Proposed objective 6 and policy 10 seek to ensure that infrastructure is established in a coordinated and timely way; either prior to or at the same time as development and/or subdivision.

[55] Mr Lala explains the provisions ensure subdivision and development will be coordinated with sufficient wastewater and water supply infrastructure in a timely way. The approach is consistent with the relevant AUP RPS objectives and policies including Objective - B3.2.1(5) and Policy - B3.2.2(1).¹²

[56] Mr Lala considers this appropriate in this instance as there are no existing trunk wastewater and water supply connections to the Precinct. However, network connections are currently being constructed to the north of the Precinct.

[57] On the basis of this evidence and agreement I conclude the proposed provisions are efficient and effective in ensuring that subdivision or development will occur at the same time or after the required infrastructure and are therefore are the most appropriate to achieve the purpose of the RMA.

¹² Objective - B3.2.1(5) Infrastructure planning and land use planning are integrated to service growth efficiently; Policy - B3.2.2(1) – Enable the efficient development, operation, maintenance and upgrading of infrastructure.

Notification and other activity specific provisions

[58] The notified version of PC61 proposed a more bespoke precinct approach to providing for activities within the Waipupuke Precinct. This was supported by notification provisions specific to the precinct.

[59] The specific precinct provisions have largely been removed from PC61, including the specific notification provisions, and the normal tests for notification under the RMA will apply. This will ensure a consistent approach to plan interpretation and is therefore considered the most efficient and effective approach to achieving the purpose of the RMA.

Road Noise (Acoustic Attenuation) – interim provisions

[60] The parties are still considering whether acoustic attenuation provisions are required within the Precinct to protect all activities sensitive to noise within 75m of the road boundary of SH22 or Jesmond Road from adverse effects arising from the arterial road traffic noise associated with the operation of SH22 and Jesmond Road. Interim provisions are proposed to apply until this appeal point can be resolved.

[61] The parties consider the proposed interim noise provisions to be an appropriate planning response in this instance, as the acoustic attenuation concern is a confined issue and applies to specific geographic areas that can be ring-fenced from the rest of the PC61 provisions. Enabling housing now will better meet the objectives of the AUP and NPS-UD, which seek to provide for additional urban development capacity, as it will enable housing development.

[62] I conclude this is a constrained issue which can await resolution or hearing in the next few months. The issue needs to be resolved well prior to building construction.

Uncertain or insufficient information

[63] The parties agree that this is not a situation where there is uncertain or insufficient information such that the risk of acting or not acting needs to be evaluated.

Reasoning for the Council's changed position

[64] As outlined above, the decision was appealed by Lomai Properties Limited, and amendments have been proposed to PC61, by agreement of the parties, to address the issues raised in the PC61 Decision, including the following:

- (a) removal of the precinct specific zone activity rules, except those that the commissioner on the hearing panel supported;
- (b) re-write of the development staging and transport upgrade triggers;
- (c) extent of THAB and MHU Zone;
- (d) Neighbourhood Centre Zone;
- (e) Open Space Zoning;
- (f) remove Medical and Specialist Facility provisions;
- (g) remove specific provisions for service stations/fast food outlets;
- (h) remove proposed scheduled building;
- (i) water/wastewater;
- (j) stormwater;
- (k) notification provisions; and
- (l) acoustic mitigation.

Related appeals before the Court

[65] Five private plan changes have been proposed in the Drury area. In addition to PC61, these are Proposed Private Plan Changes 48-51. The same panel of independent hearing commissioners considered and made decisions on all five of the

Drury private plan changes.¹³ Private Plan Changes 48-51 were all approved with modifications.

[66] The decision on Private Plan Change 51 has been appealed to the Environment Court by Waka Kotahi NZ Transport Agency.¹⁴ That appeal does not seek to overturn the decision to approve the private plan change request (with modifications) but focuses on specific matters relating to the road noise attenuation provisions within the PC51 Precinct. The parties record that further discussions concerning the road noise attenuation provisions in PC61 and PC51 are likely to encompass matters of consistency of drafting.

[67] Decisions on Private Plan Changes 48-50 (in Drury East) were notified on 5 May 2022. To date no appeals have been lodged in relation to the decisions on those private plan changes. The appeal period closes on 17 June 2022.

[68] The Court is aware from newspaper articles that the Commissioner decisions for Drury East are to be appealed by the Council seeking decline. While this is not addressed in the memorandum or affidavit, I must assume the Council held these concerns when agreeing to these Changes. While the Court would usually seek further explanation, I am satisfied that the land in this case is subject to different issues being on the western side of the motorway and closer to existing housing development.

[69] In reaching agreement in relation to the provisions of PC61, the parties advised the Court they were cognisant of the broader planning context in the Drury area and the need for consistency across the plan changes.

[70] At a strategic level, PC61 was developed in accordance with the Structure Plan. As set out in the s 42A report prepared for the hearing (and quoted with support in the Decision):

The structure plan is intended to be the foundation to inform future plan changes to rezone the land and is a requirement under the AUP before Future Urban zone areas can be urbanised and 'live' zoned.

¹³ Commissioners Greg Hill (Chairperson), Karyn Kurzeja and Mark Farnsworth.

¹⁴ ENV-2022-AKL-100 - *Waka Kotahi NZ Transport Agency v Auckland Council*.

[71] The Structure Plan identified the land that is the subject of PC61 to be development ready from 2022. I conclude that the agreed version of PC61 aligns with the strategic planning approach developed for the broader Drury area.

Interim approach to noise attenuation

[72] There is only one matter that remains outstanding between the parties. This relates to the most appropriate mechanism by which to protect activities sensitive to noise developed within 75m of the SH22 and Jesmond Road boundaries from adverse effects arising from the road traffic noise associated with the operation of those roads.

[73] The provisions that relate to this issue were excluded from the version of PC61 put before the Court by the parties, and placeholders were included with the standard AUP reference “[Subject to Appeal]”. The Council as Respondent advised that the appeal and all associated documents would be available on a link to the AUP Plan Modifications section.¹⁵

[74] Despite PC61 not being fully resolved, the parties submitted that this matter should not hold up consent documentation to resolve the appeal in part, enabling the majority of PC61 to be approved with modifications. This would allow steps to be taken to enable PC61 operative to become operative in part to enable the construction of much needed housing.

[75] The parties advised the Court of their ongoing intention to continue discussing the noise attenuation provisions and noted that a hearing may be required before the Court if agreement is not reached.¹⁶

Interim position proposed

[76] To preserve the position in relation to activities sensitive to noise developed within 75m of the road boundaries of SH22 and Jesmond Road, the parties agreed an

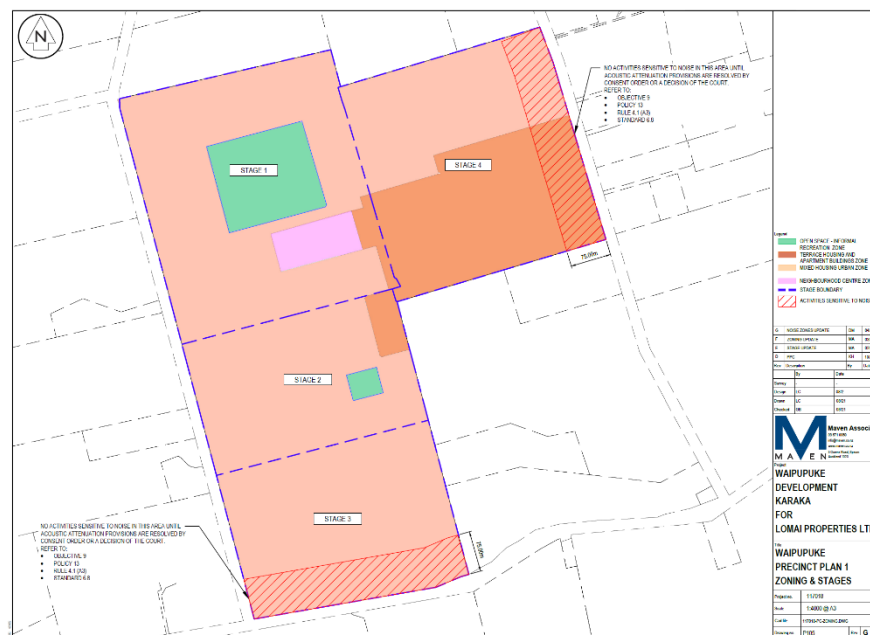
¹⁵ The provisions that remain the subject of appeal are IXXX.2 Objective (7), IXXX.3 Policy (12), Table IXX.4.1 Precinct Rules (A8), IXXX.6.7 Noise Attenuation, IXXX.7.1 Matters of discretion (5), IXXX.7.2 Assessment Criteria (5). The precinct description may also require consequential amendment.

¹⁶ Kāinga Ora, Waka Kotahi and Auckland Transport note that their section 274 notices, as they relate to potential noise attenuation provisions, remain live.

interim objective, policy, activity rule and standard for all activities sensitive to noise and accompanying precinct description text.

[77] The purpose of the interim provisions is to avoid and prevent the occurrence of all noise sensitive activities within 75m of the road boundary of SH22 or Jesmond Road until the extant aspects of the appeal and related section 274 notices are resolved. The 75-metre distance included in the rules has been identified to be consistent with the provisions of Plan Change 51: Drury 2 Precinct that was recently approved and is located a short distance from the PC61 Land. Although the parties advised that this distance may be the subject of further discussion.

[78] Precinct Plan 1, shown below, depicts the areas subject to the proposed interim provisions:



[79] Section 76(4)(c) of the RMA is clear that a rule may apply for “stated periods or seasons”. In this case the interim provisions are intended to apply for a specific period of time as stated within the drafting of the provisions. This approach is consistent with the use of interim provisions which are used elsewhere in the Auckland Unitary Plan, for example Rule I214.4(4) (Wynyard Precinct).

[80] There is little case law on the ability to include interim provisions in a district plan. A “sunset” provision was considered in *Muir v Western Bay of Plenty District Council* [2000] NZRMA 353 (HC). In that case the Council was trying to change the activity

status of subdivision to be a non-complying activity until the proposed plan provisions became operative. This activity status differed from the operative rule (controlled) and the proposed rule (controlled). This approach was proposed by the Council to enable it to collect “DIF payments”.

[81] The High Court did not consider that this was a permissible approach and stated that:¹⁷

A rule in a proposed plan has to be one that would be effective if the plan was operative. The provision in the rule that rural subdivision applications shall be a non-complying activity cannot be part of an operative plan, having not been approved.

[82] Although they may be superseded in the future, the interim provisions proposed by the parties are intended to become operative as part of PC61 more broadly. The *Muir* example can be distinguished from the proposed approach put forward by the parties. In this case I conclude it is appropriate for interim provisions to be included within PC61 given the issue will be resolved by consent or Court decision within a reasonable period.

Possible future use of s 292

[83] The parties also signalled to the Court that they may request that the Court use its jurisdiction under section 292 of the RMA to remove the interim provisions when the noise attenuation issue is resolved. The Court will consider any such application on its merits should an application be made.

Consideration

[84] The Court has read and considered the appeal, the joint memorandum of parties dated 10 May 2022, the second joint memorandum of the parties dated 1 June 2022 and the affidavit of Vijay Lala dated 31 May 2022.

¹⁷ *Muir v Western Bay of Plenty District Council* [2000] NZRMA 353 (HC) at [30].

[85] I note that this determination does not represent the outcome of a full hearing by the Court, rather an agreement reached between parties represented by experienced counsel. Nevertheless, I am required to set out the reasoning under s32AA that justifies the change of position. The reasons for the changes are clear and reflect concerns of the Commissioners decision. I am satisfied from Mr Lala's affidavit that there is a sound planning rationale for the changes and the grant of PC61 as amended.

[86] Under s 32 I conclude that the amended PC61 will be the most appropriate way within jurisdiction to achieve the objectives, policies and provisions of the AUP. I am satisfied with the parties' assurance that PC61 aligns with the AUP objectives and policies, particularly those of infrastructure, transport and energy.

[87] Importantly I conclude that the amended PC61 addresses the concerns in the Commissioners Decision. At its core, PC61 enables urban development to occur at the Waikpupuke site, which I accept gives effect to AUP objective B3.2.1.5 and policy B3.2.2(1). Moreover, the parties have established that PC61 will assist the Council in achieving objectives 1 and 3 of the NPS-UD by enabling urban development and proposing supporting infrastructure.

[88] The parties have also appropriately considered and addressed the issue of the unresolved noise attenuation provisions. By suggesting an agreed interim provision, the parties have recommended a mechanism that allows for the agreed provisions to take effect, while final attenuated noise provisions still undergo discussions.

[89] In my view, the parties have demonstrated that they have considered appropriate alternatives to address noise attenuation while ensuring that PC61 can continue to progress. Moreover, the parties' proposal to remove the interim provisions once the final wording is agreed to illustrate that the parties have considered well-reasoned processes for when this issue arises in the future. I conclude that reporting to this court on progress will avoid this matter languishing unresolved.

[90] I am also satisfied that the parties have demonstrated that the agreement addresses each concern raised by the Commissioners in the Decision and have sufficiently explained as above how the modified conditions in PC61 address them.

Outcome

[91] The Court therefore makes this order under s 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order; and
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

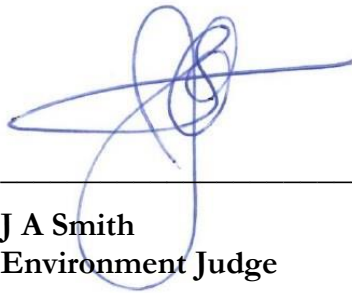
[92] I conclude the agreed amendments are the most appropriate way to achieve the purpose of the Act and the objectives in the Plan. Overall, I consider the sustainable management purpose and the other relevant requirements of the Act are broadly met.

[93] Accordingly, the Court orders, by consent:

- (a) the Lomai Properties Limited appeal be resolved in part, with PC61 approved with modifications as set out in **Appendix A**.
- (b) There is one aspect of the appeal that remains outstanding in relation to the road noise (acoustic attenuation) provisions in PC61. The road noise (acoustic attenuation) provisions in PC61 that remain subject to appeal are referenced by placeholders "[subject to appeal]" in **Appendix A**.
- (c) The road noise (acoustic attenuation) provisions in PC61 will be the subject of further discussions between the parties. Hearing time may be required to resolve those provisions. In the meantime, the Court approves the set of interim road noise provisions included in **Appendix A**.

- (d) The parties are to report on resolution of the noise attenuation issue by 2 September 2022. If not resolved parties are to agree a timetable to hearing.

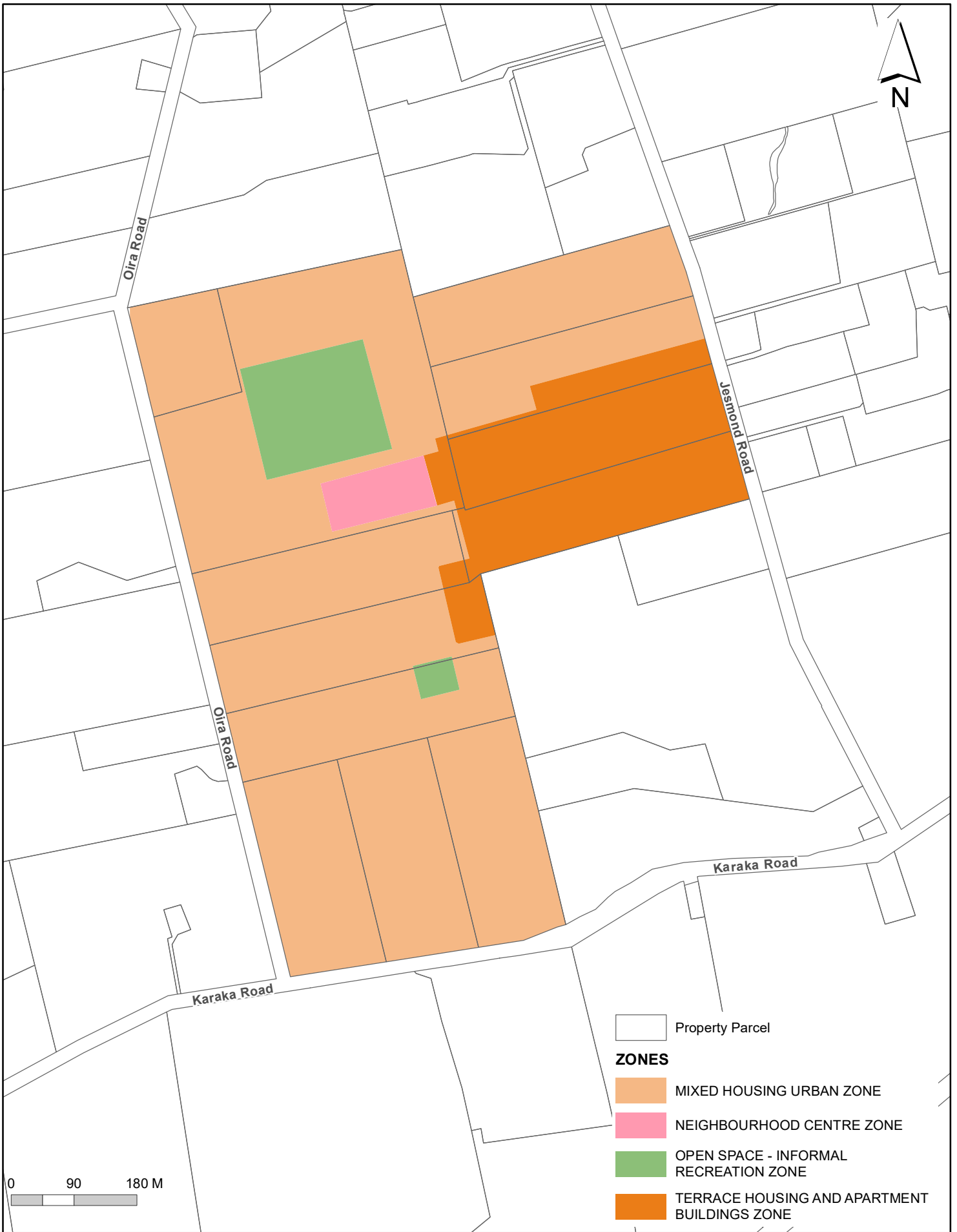
[94] Under s 285 of the Resource Management Act 1991, there is no order as to costs.



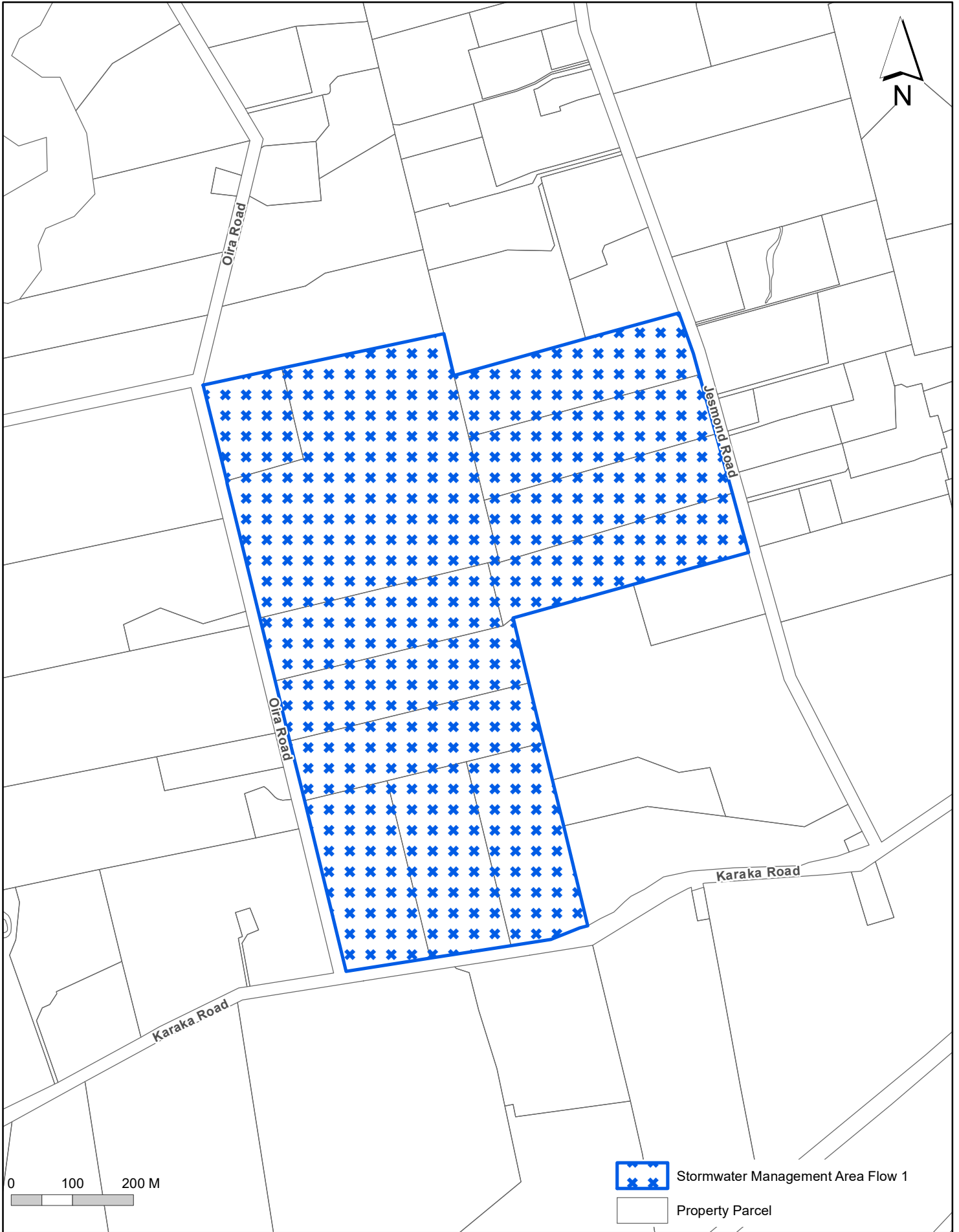
J A Smith
Environment Judge





Attachment 2: Updates to GIS Viewer



Waipupuke Zones



-  Stormwater Management Area Flow 1
-  Property Parcel

Waipupuke Stormwater Management Area Flow 1 Overlay

**Attachment 3: PC61 text and
precinct plans**

I447. Waipupuke

I447.1. Precinct Description

WAIPUPEKE

PEOPLE - NATURE - LIFE

TANGATA - TAIAO – MAURI

Waipupuke – where the streams meet, is the name given to the Precinct by mana whenua. In conjunction with the name, a tohu symbol (logo) has been developed for Waipupuke to represent its spiritual significance. The Waipupuke symbol represents a connection between the tributaries of the Oira and the Ngakaroa streams. Both streams feed into the Drury Creek and then into the Pahurehure Inlet which feeds into the Manukau Harbour. Therefore, what happens on Waipupuke affects the hauora (health) of the Manukau and therefore the health of the people.

The centre of the site can also be interpreted as the ‘pupuke’ (to swell up). This is the part of the site where flooding historically occurred (‘swelled up’). Water, which is symbolised in the 3 branching kowhai patterns, sustained our tupuna (ancestors), fed our streams, and provided an abundance of mahinga kai (food) for harvesting. The mauri (life force) of the water in those days was strong and tikanga (customs, practices and ritual) ensured this continued. A key objective for this development is to revitalise the mauri in the waterways and to regenerate (as the mauri upholds creation) the land, through binding physical and spiritual elements of all things together. It was also the mode of transport via waka for trade to navigate through a cultural landscape where the waterways were like the modern roading networks.

In a modern context, the tohu symbol also represents a sustainable 3 waters strategy, while seeking to achieve better outcomes than the minimum standards, and best practice for water supply, wastewater and stormwater management.

The Waipupuke Precinct comprises approximately 56 hectares of undulating land bound by State Highway 22 (SH22) (south), Jesmond Road (East) and Oira Road (west). All references to SH22 in the Precinct are also to Karaka Road should the state highway gazette no longer exist. The Ngakaroa and Oira tributaries reach into the site. A 3-hectare suburban park supported by a neighbourhood park in addition to an integrated network of stormwater control areas (identified on Precinct Plan 2) form the open space and stormwater network within Waipupuke.

Urbanisation of the land will provide for housing diversity and choice based around a neighbourhood centre. Higher density residential zoning is located closer to Jesmond Road within walking distance of planned or future public transport routes. This will enable greater efficiency and integration of land use and transport networks.

An east-west collector road between Jesmond Road and Oira Road will provide a key connection through the Precinct. The collector road network extends through the Precinct, enabling access for all transport modes, and provides a future connection to the adjacent land to the east as identified on Precinct Plan 3.

The Precinct provisions ensure the implementation of the roading pattern shown in Precinct Plan 3 and that associated infrastructure upgrades/measures are undertaken in a planned and coordinated manner to support development enabled within the Precinct. These infrastructure upgrades also enable connections to wider planned transport network infrastructure projects including the Drury West rail station, the Jesmond Road Frequent Transit Network and SH22 upgrade. In particular, these provisions include:

- Temporary construction traffic management for the implementation of the SH22 / Oira Road intersection upgrade and Oira Road frontage upgrade approved by Auckland Transport and Waka Kotahi to enable up to 95 dwellings and prior to any activity, development and/or subdivision in the Business Neighbourhood Centre Zone.
- The upgrade of the Oira Road/SH22 intersection to a 3 leg dual laned roundabout and approaches.
- The upgrade of Oira Road between SH22 and the northern boundary of the Precinct to a Collector Road Standard, including walking and cycling facilities along the eastern side and the road pavement.
- A pedestrian and cycle connection on the northern side of SH22 between Oira Road and Jesmond Road.
- The upgrade of the Jesmond Road/SH22 intersection with walking and cycling connections.
- The construction of the East-West Collector from Oira Road to Jesmond Road, and its intersection with Jesmond Road with either signals or roundabout.
- The upgrade of Jesmond Road between SH22 and the northern boundary of the Precinct, including walking and cycling facilities along the western side and the road pavement.
- A temporary pedestrian and cycle connection along the western side of Jesmond Road from the northern boundary of the Waipupuke Precinct to the Drury Secondary School (if the school is operational).

Further detail of the transport upgrades is provided in Table I447.6.6.1 and relevant requirements are also set out in Appendix 1 Road Function and Required Design Elements Table.

Acoustic attenuation provisions are proposed within the Precinct to protect activities sensitive to noise from adverse effects arising from the arterial road traffic noise associated with the operation of SH22 and Jesmond Road, but remain subject to appeal. Interim provisions are accordingly included in the Precinct in order to prevent noise sensitive activities within 75m of the road boundary of SH22 and Jesmond Road as identified on Precinct Plan 1 until that appeal is resolved or determined. The interim provisions are objective I447.2(9), Policy I447.3(13), Activity I447.4.1(A3) and Standard I447.6.8. The interim provisions remain in force until the proposed acoustic attenuation provisions are resolved by consent order or a Court decision that is beyond challenge and will cease to have effect thereafter.

The zoning of the land within the Waipupuke Precinct is Business – Neighbourhood Centre, Open Space – Informal Recreation, Residential - Terrace Housing and Apartment Buildings and Residential – Mixed Housing Urban. All relevant overlay, Auckland-wide and zone provisions apply in this precinct unless otherwise specified below.

I447.2. Objectives

- (1) Mana whenua values are recognised and positive environmental outcomes are achieved for the health and well-being of the land, waterways and people.
- (2) The Precinct is developed for urban activities in a comprehensive and integrated way which recognises the importance of the Neighbourhood Centre zone and 3-hectare suburban park as the focal point for the precinct.
- (3) An accessible, safe and well-connected transport network is established for all modes within the Precinct and to the surrounding transport network which enables travel choice including public transport services, pedestrian, cycle, vehicle access and egress.
- (4) Stormwater discharge from the Precinct avoids or mitigates adverse effects on receiving environments.
- (5) A road network servicing access to and within the Precinct enabling connections to roads and land adjacent to the Precinct.
- (6) Infrastructure necessary to service any activity, development and/or subdivision within the Precinct (including transport, wastewater and water supply) is established in a coordinated and timely way; either prior to or at the same time as development and/or subdivision.
- (7) **[subject to appeal]**
- (8) Adverse effects on the safe and efficient operation of the existing and future SH22 and arterial road network are avoided or mitigated, including restricted vehicle access to Jesmond Road and the avoidance of vehicle access to SH22.
- (9) Interim objective: All activities sensitive to noise within 75m of the road boundary of SH22 or Jesmond Road are avoided and shall not occur until the acoustic attenuation provisions within the Precinct are resolved by consent order or a Court decision that is beyond challenge.

All relevant overlay, Auckland-wide and zone objectives apply in this Precinct in addition to those specified above. The Precinct objectives prevail where there is a conflict between objectives in the Precinct and the Auckland-wide and zone objectives.

I447.3. Policies

- (1) Reflect a strong cultural narrative within the Precinct through cultural identity markers and artwork and provide high quality public open spaces, revegetated

riparian margins and effective stormwater management to achieve positive Mana whenua outcomes.

- (2) Support the local community through the provision of local commercial and recreation opportunities.
- (3) Provide a variety of residential dwelling types that will enable housing choices that meet community needs.
- (4) Retain the protected streams identified on Precinct Plan 2 and enhance their 10m wide riparian margins through;
 - (a) the removal of harmful species and vegetation;
 - (b) replacement planting with predominantly native vegetation;
 - (c) the requirement for a riparian planting plan that achieves positive ecological outcomes; and
 - (d) ongoing maintenance.
- (5) Implement the transport network connections and elements as shown on the Precinct Plans and Appendix 1 Road Function and Required Design Elements Table, including the following:
 - (a) The layout, function and hierarchy of roads;
 - (b) Separated pedestrian and cycle facilities and linkages within the Precinct and to adjacent land;
 - (c) Connections to the surrounding transport network, including public transport facilities and services and connections to schools;
 - (d) Connections within the Precinct and to land/roads adjacent to the Precinct;
 - (e) Upgrade the frontages of existing rural standard roads to an urban standard;
 - (f) Key intersections; and
 - (g) Open space areas.
- (6) Ensure that any activity, development and/or subdivision:
 - (a) does not precede the required transport upgrades, including intersections, connections and upgrade of rural standard roads to an urban standard; and
 - (b) is undertaken in a manner that promotes the safe and efficient operation of the existing and future surrounding transport network to the Precinct for all modes and avoids or mitigates adverse effects on the network.
- (7) Require subdivision and development to enhance water quality and protect the health of stream environments including by:

- (a) Being consistent with any stormwater management plan approved by the network utility operator;
 - (b) Applying water sensitive design approach including treatment train measures within the Precinct to achieve water quality and hydrology mitigation; and
 - (c) Incorporating biodiversity enhancement planting of riparian margins of protected streams identified on Precinct Plan 2.
- (8) Avoid any activity, development and/or subdivision that is not in compliance with the activity, development and/or subdivision thresholds in Table I447.6.6.1.
- (9) Restrict vehicle access to Jesmond Road and avoid vehicle access to SH22 to support the effective, efficient and safe operation of the arterial road network.
- (10) Coordinate subdivision and development with the provision of sufficient wastewater and water supply networks.
- (11) Assess the operational performance of the SH22/Oira Road and SH22/Jesmond Road intersections for any residential dwelling resource consent application after 2,000 dwellings have been consented within the Precinct to ensure the safe and efficient operation of the transport network.
- (12) **[subject to appeal]**
- (13) Interim policy: Avoid and prevent the occurrence of all activities sensitive to noise within 75m of the road boundary of SH22 or Jesmond Road.

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All relevant overlay, Auckland-wide and zone policies apply in the Precinct in addition to those specified above. The Precinct policies prevail where there is a conflict between policies in the Precinct and the Auckland-wide and zone policies.

I447.4. Activity table

All relevant overlay, Auckland-wide, and zone activity tables apply unless the activity is listed in Activity table I447.4.1 below.

Table I447.4.1 specifies the activity status of land use and subdivision activities in the Waipupuke Precinct pursuant to sections 9(3) and section 11 of the Resource Management Act 1991.

Table I447.4.1 Activity table

Activity		Activity status
Community		
(A1)	Mana Whenua Cultural Identity Marker	P
Development		
(A2)	The construction of stormwater management structures within the Stormwater Control Areas identified on Precinct Plan 2	RD

(A3)	Interim activity: Any activity sensitive to noise within 75m of the road boundary of SH22 or Jesmond Road (as indicated on Precinct Plan 1).	NC
Transport		
(A4)	Any activity, development and/or subdivision that does not comply with Standard I447.6.4 – Arterial Road Access	NC
(A5)	Any activity, development and/or subdivision that does not comply with Standard I447.6.6 (1) Development Staging & Transport Network Infrastructure Requirements and Table I447.6.6.1	NC
(A6)	Any land use and/or subdivision consent application enabling dwellings, after 2,000 dwellings have been consented within the Precinct	RD
(A7)	Any activity, development and/or subdivision that does not comply with Standard I447.6.2 Road Function and Required Design Elements Table and Precinct Plan 3	D
(A8)	[subject to appeal]	

I447.5. Notification

- (1) Any application for resource consent for an activity listed in Table H12.4.1 Activity table above will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (2) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).

I447.6. Standards

- (1) The standards in the relevant zones, overlays and Auckland-wide provisions apply in this precinct, unless otherwise specified below.
- (2) The zone and Auckland-wide standards relating to the standards below do not apply to the activities listed in activity tables above.
- (3) All references to SH22 in the Precinct are also to Karaka Road should the state highway gazette no longer exist.

I447.6.1. Yards

Purpose:

- To enable the efficient use of unutilised side yards.
 - (1) Side Yards: Side yards within the Business-Neighbourhood Centre zone, Residential-Terrace House and Apartment Building zone and the Residential-Mixed Housing Urban zone do not apply to those parts of site boundaries where there is an existing common wall between two buildings on adjacent sites or where a common wall is proposed.

I447.6.2. Compliance with Road Function and Required Design Elements and with Precinct Plan 3

Purpose:

- To ensure that any activity, development and/or subdivision complies with Appendix 1 Road Function and Required Design Elements Table and Precinct Plan 3.
 - (1) Any activity, development and/or subdivision and the construction of roads and upgrades to roads must comply with:
 - (a) Appendix 1: Road Function and Required Design Elements Table; and
 - (b) Precinct Plan 3.

I447.6.3. Protected Streams and Margins

Purpose:

- To ensure a 10m riparian margin is preserved for vegetation and ecological enhancement.
 - (1) No buildings or structures (other than stormwater control/management structures) shall be located within 10m either side (measured from the top of the stream bank) of the protected streams identified on Precinct Plan 2.
 - (2) Riparian margins of the protected streams identified on Precinct Plan 2 shall be planted to a minimum width of 10m measured from the top of the stream bank. A riparian planting plan must be prepared to demonstrate compliance with this standard and must include:
 - (a) Appropriate plants for the locality – AUP Appendix 16.2.1(b)
 - (b) The location and extent of planting on a plan – AUP Appendix 16.3.1(b)
 - (c) Site planting - AUP Appendix 16.3.1(d)
 - (d) Maintenance of planting - AUP Appendix 16.3.1(e)
 - (e) A predominance of native species
 - (f) Be prepared, implemented and maintained by suitably qualified persons

I447.6.4. Arterial Road and State Highway Access

Purpose:

- To restrict direct vehicle access from individual sites and road intersections onto Jesmond Road
- To avoid direct vehicle access from individual sites and road intersections to SH22
- To achieve the effective, safe and efficient operation of the arterial road network and existing and future transport network for all modes; and

- To avoid or mitigate adverse safety and operational effects on the transport network including SH22 and Jesmond Road.
 - (1) No road intersections shall be permitted directly onto Jesmond Road except for the proposed collector road as indicated on Precinct Plan 3. This collector road connection shall not be constructed until the Jesmond Road/SH22 intersection is upgraded and operational.
 - (2) No private vehicle access from any property shall be permitted directly onto Jesmond Road, except for one vehicle access within the Single Vehicle Access Frontage identified on Precinct Plan 3.
 - (3) No road intersections or private vehicle access from any property shall be permitted directly onto SH22.

I447.6.5. High Contaminant Yielding Materials

Purpose:

- To maintain water quality by limiting the release of contaminants from building materials to streams.
 - (1) New buildings, and additions to buildings must be constructed using inert cladding, roofing and spouting building materials that is, avoiding the use of high contaminant yielding building products which have:
 - (a) exposed surface(s) or surface coating of metallic zinc of any alloy containing greater than 10% zinc; or
 - (b) exposed surface(s) or surface coating of metallic copper or any alloy containing greater than 10% copper; or
 - (c) exposed treated timber surface(s) or any roof material with a copper-containing or zinc-containing algaecide.

I447.6.6. Development Staging & Transport Network Infrastructure Requirements

Purpose:

- To ensure staging of subdivision and development is integrated with the delivery of the required transport infrastructure upgrades identified in Table I447.6.6.1.
- To ensure that the required transport infrastructure upgrades are implemented to avoid or mitigate the adverse traffic effects of any activity, development and/or subdivision on the existing and future transport network.
- To ensure that the required transport infrastructure upgrades are implemented in an integrated and planned manner, and coordinated with development in the Precinct.
- To ensure an efficient, safe and effective transport network, with infrastructure and service connections for all modes to and through the Precinct.

(1) Activities, development and/or subdivision within the stages identified on the Precinct Plans must not exceed the thresholds specified in Column 1 in Table I447.6.6.1 below until the transport network infrastructure upgrades and measures identified in Column 2 have been implemented, constructed and are operational. This does not apply to site preparation works and earthworks within the Precinct.

I447.6.6.1. Transport Network Infrastructure Upgrades and Measures

Column 1		Column 2
Activity, development and / or subdivision thresholds for transport network infrastructure upgrades and measures		Transport network infrastructure upgrades and measures required
(A1)	<p>Prior to any activity, development or subdivision enabling 1 – 95 dwellings in Stages 1-3 and Prior to any activity, development and/or subdivision in the Business Neighbourhood Centre Zone</p>	<p>Temporary construction traffic management for the implementation of the SH22 / Oira Road intersection upgrade and Oira Road frontage upgrade approved by Auckland Transport and Waka Kotahi.</p>
(A2)	<p>Prior to any activity, development or subdivision enabling more than 95 dwellings in Stages 1-3 and Prior to any activity, development or subdivision in the Business Neighbourhood Centre Zone</p>	<ul style="list-style-type: none"> - Upgrade of SH22/Oira Road intersection to a 3 leg dual laned roundabout with two lane approaches and exits on SH22 and two lane approach and single lane exit on Oira Road. - Oira Road Upgrade to a Collector road standard from SH22 to the northern boundary of the Waipupuke Precinct, including the road pavement on both sides of the road and walking and cycling facilities along the eastern side. - A pedestrian and cycle connection between Oira Road and Jesmond Road on the northern side of SH22.
(A3)	<p>Prior to any activity, development and/or subdivision in Stage 4</p>	<ul style="list-style-type: none"> - All upgrades required for (b) above. - Jesmond Road/SH22 intersection upgrade, including new signalised intersection (or roundabout) with walking and cycling connections with the Drury West Rail Station, Waipupuke Precinct and Drury 2 Precinct. - New intersection of Jesmond Road/Waipupuke East-West Collector Road (Road 1 in Precinct Plan 3), including requirement to connect East-West Collector Road to Jesmond Road with either signals or

		<p>roundabout.</p> <ul style="list-style-type: none"> - Jesmond Road upgraded from SH22 to the northern boundary of the Waipupuke Precinct, including road pavement on both sides of the road and walking and cycling facilities along the western side. - A temporary pedestrian and cycle connection along the western side of Jesmond Road from the northern boundary of the Waipupuke Precinct to the Drury Secondary School if the school is operational.
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I447.6.7. [subject to appeal]

I447.6.8. Activities Sensitive To Noise – Interim Standard

Activities sensitive to noise shall not occur or be located within 75m of the road boundary of SH22 or Jesmond Road (as indicated on Precinct Plan 1) until the acoustic attenuation provisions within the Precinct are resolved by consent order or a Court decision that is beyond challenge.

I447.7. Assessment – Restricted Discretionary Activities

I447.7.1. Matters of discretion

The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary activity resource consent application, in addition to the matters specified for the relevant restricted discretionary activities in the zone, overlay and Auckland wide provisions:

- (1) Stormwater Management Structures in a Stormwater Control Area
 - (a) Stormwater management
 - (i) Function
 - (ii) Capacity
 - (iii) Design
 - (iv) Operation and maintenance, including safe access.
 - (b) Landscaping and planting.
 - (c) Effects on the use of proposed open space.
 - (d) Effects on health and safety.
 - (e) Potential downstream flood effects.
- (2) Protected Streams and Margins
 - (a) Stream ecology.

- (b) Base flow.
 - (c) Management of water flow.
 - (d) Offset mitigation.
 - (e) Offset mitigation.
 - (f) Riparian planting.
 - (g) Overland flow.
 - (h) Providing for growth and development.
- (3) High Contaminant Yielding Materials
- (a) Stormwater quality.
- (4) Any land use and/or subdivision consent application enabling dwellings, after 2,000 dwellings have been consented within the Precinct
- (a) Transport effects and the safe and efficient operation of the existing and future surrounding transport network for all modes including public transport and active modes.
 - (b) Traffic network design, safety, efficiency and functionality.
 - (c) Trip generation and traffic volumes.
 - (d) Road and intersection performance.
 - (e) Alternative Travel Modes.
 - (f) Travel Demand management measures.
 - (g) Accessibility and connectivity to public transport services and facilities.
 - (h) Transport connections to adjacent land.
 - (i) Other transport or roading improvements.
- (5) **[subject to appeal]**

I447.7.2. Assessment criteria

The Council will consider the relevant assessment criteria identified below for restricted discretionary activities, in addition to the assessment criteria specified for assessment of the relevant restricted discretionary activities in the zone, Auckland wide or overlay provisions.

- (1) Stormwater Management Structures in a Stormwater Control Area
 - (a) The design and efficacy of stormwater infrastructure devices.

- (b) Stormwater management calculations that confirm the design and capacity of the stormwater management structure is fit for purpose and satisfies the requirements of the any SMP.
- (c) A Landscape Plan that identifies the landscaping proposed, a planting plan and maintenance plan to ensure quality visual amenity outcomes.
- (d) An Operation and Maintenance Plan for the design of the structure proposed.
- (e) The extent to which interference with public use and enjoyment of proposed open space is minimised where stormwater detention and retention ponds and wetlands are proposed to be located in or adjacent to public open space.
- (f) Whether safe and direct access can be provided to enable the maintenance of stormwater detention and retention ponds and wetlands.
- (g) Whether there will be health and safety effects associated with stormwater detention and retention ponds and wetlands and the extent to which these can be mitigated through measures such as fencing.
- (h) An assessment of storm events from 10 year – 100 year ARI to determine any attenuation measures required within the Precinct.

(2) Protected Streams and Margins

The extent to which:

- (a) Streams can be retained through re-alignment and raising of stream beds to integrate with land contouring;
- (b) Ten metre riparian native planting will be provided along each side of any re-aligned stream;
- (c) Where streams are proposed to be reclaimed with no vertical or horizontal re-alignment, the degree and extent of off-setting, and compensation;
- (d) Management of water flow is achieved to prevent flooding of residential sites;
- (e) Base flows to the head of retained streams affected by any reclamation of a permanent stream are maintained;
- (f) Reclamation achieves the minimum road grade requirements.
- (g) Development potential will be lost without reclamation works, balanced against the ecological value of the stream to be reclaimed.
- (h) Development potential will be lost without reclamation works, balanced against the ecological value of the stream to be reclaimed.

- (i) Development potential will be lost without reclamation works, balanced against the ecological value of the stream to be reclaimed.
 - (j) Development potential will be lost without reclamation works, balanced against the ecological value of the stream to be reclaimed.
- (3) High Contaminant Yielding Materials
- (a) Proposed water quality treatment measures.
 - (b) The extent to which runoff from buildings and additions to buildings is mitigated through a treatment approach.
- (4) Any land use and/or subdivision consent application enabling dwellings, after 2,000 dwellings have been consented within the Precinct
- (a) The extent to which the proposal avoids or mitigates transport effects and ensures the safe and efficient operation of the existing and future surrounding transport network for all modes including public transport and active modes.
 - (b) The extent to which the following affect the operation and capacity of the transport network:
 - (i) Trip Generation and traffic volumes of the existing and future surrounding transport network including additional traffic numbers and directional movements along Jesmond Road and SH22.
 - (ii) Traffic network design, safety, efficiency and functionality, including the extent to which the delay in providing the upgrades and transport improvements compromises the safety and efficiency of the transport network.
 - (iii) Road and Intersection Performance.
 - (iv) Travel Demand Management measures.
 - (v) Accessibility and connections to public transport facilities and services.
 - (vi) Travel modes choice including public transport and active modes, provision of cycle and pedestrian networks.
 - (vii) Connections with adjacent land.
 - (viii) Other transport or roading improvements in addition to those required in this Precinct.

(5) **[subject to appeal]**

I447.8. Special information requirements

- (1) Transport Assessment Report

Any new road intersection or upgraded existing road intersection with Oira Road, Jesmond Road or SH22, shall be supported by a Transport Assessment Report (including forecast transport modelling and land use assumptions), prepared by a suitably qualified transport engineer and independent Road Safety Audit confirming the location and design of any road and its intersection(s) supports the safe and efficient function of the transport network.

I447.9. Precinct Definition

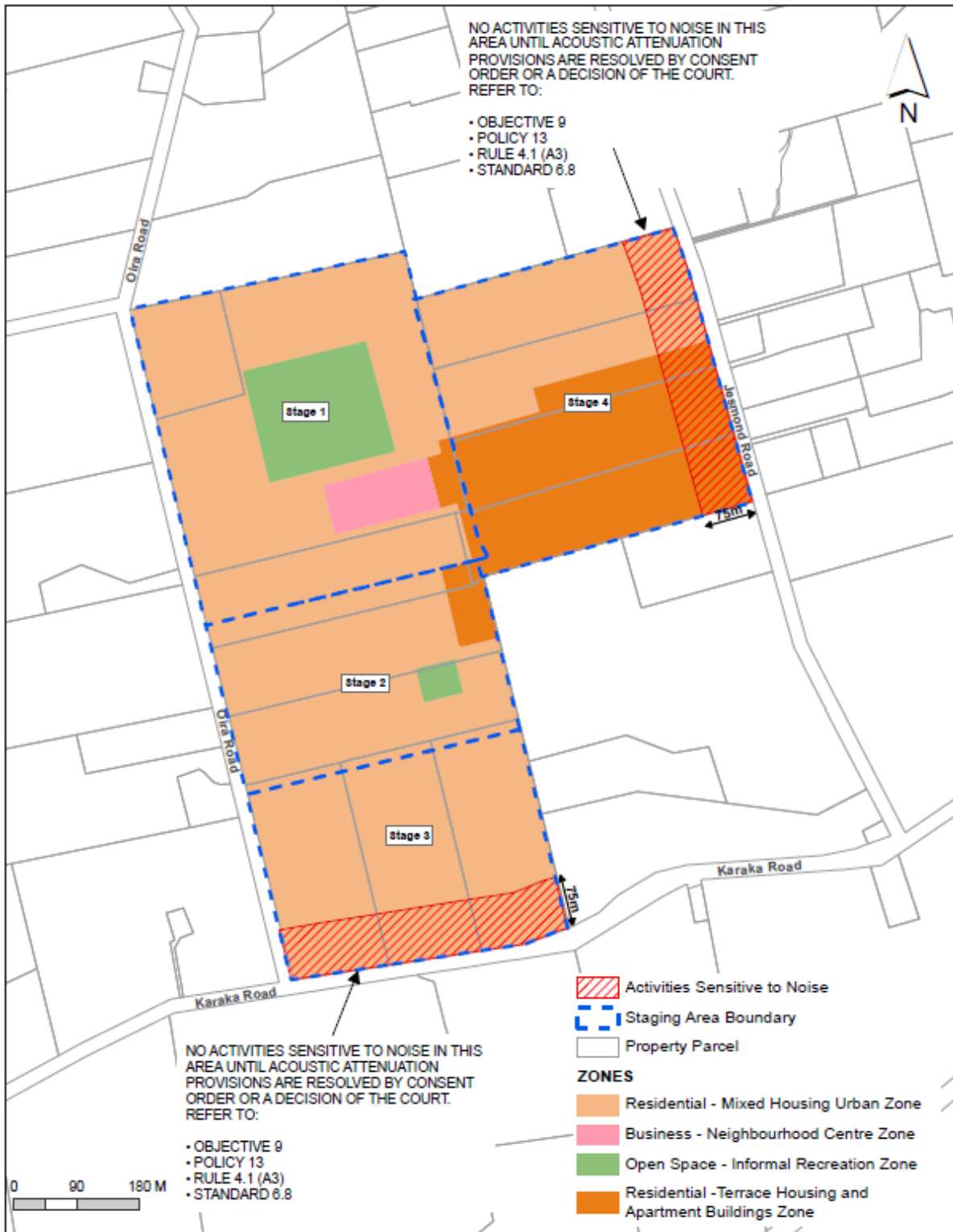
Mana Whenua Cultural Identity Marker

Includes

- Pouwhenua
- Carvings
- Waka
- Architectural detailing
- Facial representations
- Bone or stone symbols
- Monuments.

I447.10. Precinct Plans

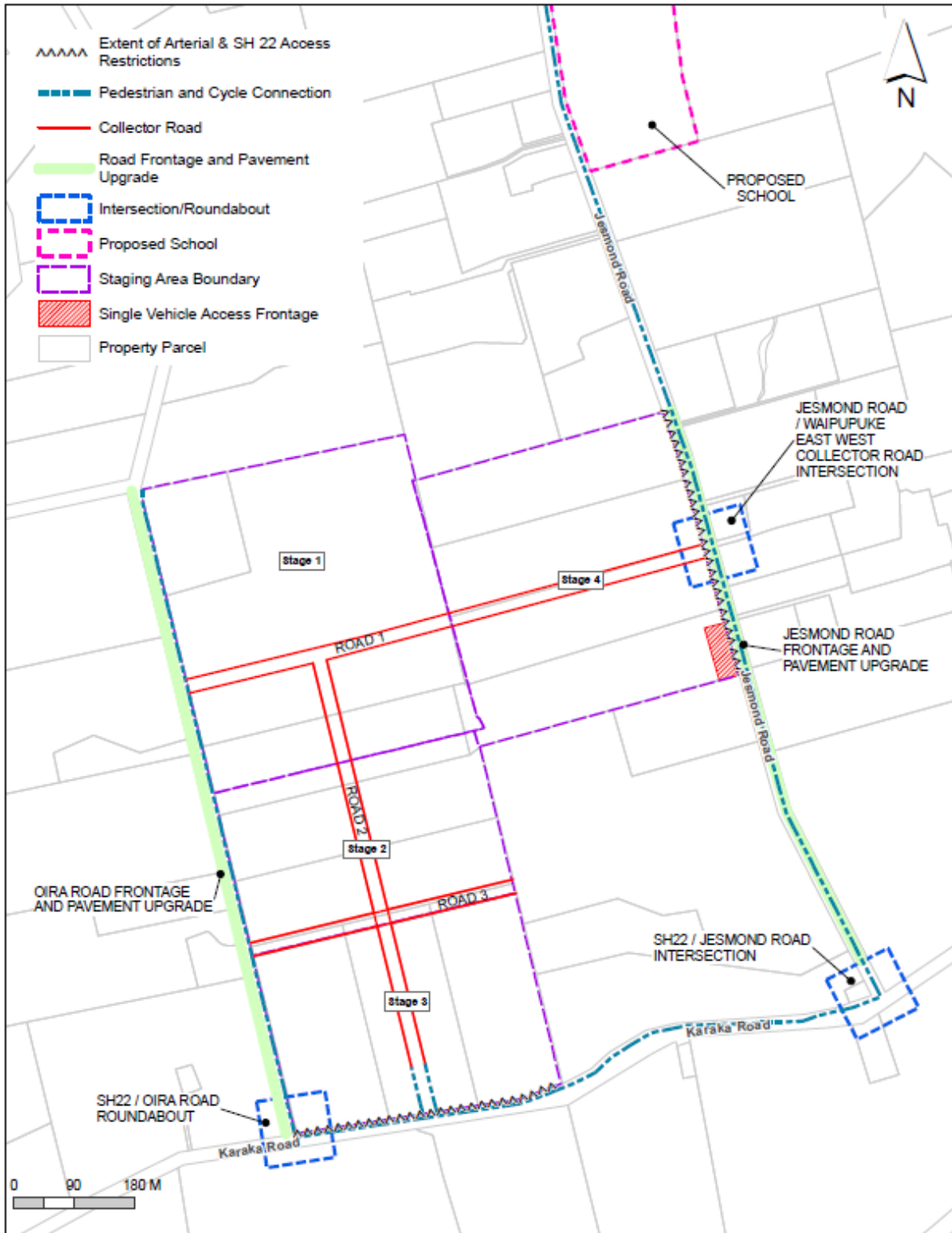
I447.10.1. Waipupuke Precinct Plan 1 Zoning and Stages



I447.10.2. Waipupuke Precinct Plan 2 – Controls



I447.10.3. Waipupuke Precinct Plan 3 Transport



Appendix 1 Road Function and Required Design Elements Table

Road Name (refer to Precinct Plan)	Proposed Role and Function of Road in Precinct Area	Minimum Road Reserve (subject to note 1)	Total number of lanes	Speed Limit (Design)	Access Restrictions	Bus Provision (subject to note 3)	On Street Parking	Cycle provision (subject to note 2)	Pedestrian provision
Jesmond Road - Arterial Road (Interim Profile with separated active transport provisions)	Arterial	30m	2 lanes (2 x 3.5m) Note: 2 additional traffic lanes to be provided at a later time to enable FTN	50 km/hr	Yes	Yes	No	Yes Separated on the western side of Jesmond Road only	Yes On the western side of Jesmond Road
Oira Road - Collector Road with separated active transport provisions	Collector	22m	2 lanes (2 x 3.5m)	40	Yes	Yes	Yes	Yes, Separated on the eastern side of Oira Road only	Yes On the eastern side of Oira Road only
Road 1: East-West Collector Road with separated active transport provisions	Collector	21m (subject to note 4)	2 lanes (2 x 3.5m)	40	Yes	Yes	Yes	Yes, Separated on both sides	Yes, Both sides
Road 2: North - South Collector Road with separated active	Collector	21m (subject to note 4)	2 lanes (2 x 3m)	40	Yes	No	Yes	Yes Separated on both	Yes Both sides

I447 Waipupuke Precinct

transport provision								sides	
Road 3: East-West Collector Road with separated active transport provision	Collector	21m (subject to note 4)	2 lanes (2 x 3m)	40	No	No	Yes	Yes, Separated on both sides	Yes Both sides

Note 1: Typical minimum width which may need to be varied in specific locations where required to accommodate batters, structures, stormwater treatment, intersection design, significant constraints or other localised design requirements.

Note 2: Type of Cycle Provision i.e. separated path, to be confirmed at the Engineering Plan Approval stage, based on nature and character of the Road.

Note 3: Carriageway and intersection geometry capable of accommodating buses.

Note 4: Typical minimum cross section must be designed to accommodate the necessary transport elements and network utilities within the road reserve and to be confirmed at Engineering Plan Approval stage.

Attachment 4: Clause 20A

Memo

Date 29/06/2022

To: Celia Davison, Manager Planning, Central South Unit
 From: Jimmy Zhang, Planner, Central South Unit




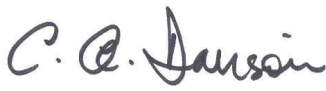
Subject: Plan Modification: Clause 20A modification to Auckland Unitary Plan

Corrections are required to the Auckland Unitary Plan (Operative in Part) 2016 (the AUP).

I seek your approval of this plan modification pursuant to clause 20A, first schedule, Resource Management Act 1991.

You have delegated authority, as a tier four manager, to make a decision to correct an error to an operative plan under clause 20A. Schedule 2A of the Auckland Council Combined Chief Executives Delegation Register authorises all powers, functions, and duties under RMA's first schedule (except clause 17 which cannot be delegated) to tier four positions.

Rule or Section of Unitary Plan	Chapter I Precincts South - I447
Subject Site (if applicable)	56 hectares of Future Urban Zoned land in Drury West in the area generally bounded by Jesmond Road and Future Urban Zoned land to the east, Oira Road to the west, Future Urban Zoned land to the north and Karaka Road/Stateh Highway 22 to the South.
Legal Description (if applicable)	
Nature of change	<p>A Clause 20A modification is required to correct I447 in the AUP.</p> <p>Discussion</p> <p>Corrections are required to the consent order which approved PC61 with modifications. The changes are intended to correct the following:</p> <ul style="list-style-type: none"> • Numbering errors; and • ensures a consistent numbering style throughout the text.
Effect of change	<p>The corrections noted above:</p> <ul style="list-style-type: none"> • is to correct minor errors; and • is neutral (it would not affect the rights of some members of the public).
Changes required to be made (text/in-text diagrams)	Amend I447 in the Operative in Part version. Refer to Attachment A .
Changes required to be made (maps)	N/A
Attachments	Attachment A: Corrections to text (strikethrough/underlines)

<p>Prepared by: Jimmy Zhang Planner, Central South Unit</p>	<p>Text Entered by: Harry Barnes Planning Technician</p>
<p>Signature: </p>	<p>Signature: </p>
<p>Maps prepared by: N/A Geospatial Analyst</p>	<p>Reviewed by: Craig Cairncross Team Leader, Central South Unit</p>
<p>Signature: N/A</p>	<p>Signature: </p>
<p>Decision: I agree/disagree to authorise the Clause 20A modification using my delegated authority</p> <p>Celia Davison Manager Planning - Central South Unit Date:</p>	
<p>Signature: </p>	

Attachment A: Corrections to text
(~~strikethrough~~/underlines)

1447.6.6.1. Transport Network Infrastructure Upgrades and Measures

<p>Column 1</p> <p>Activity, development and / or subdivision thresholds for transport network infrastructure upgrades and measures</p>	<p>Column 2</p> <p>Transport network infrastructure upgrades and measures required</p>
<p>(a)(A1) Prior to any activity, development or subdivision enabling 1 – 95 dwellings in Stages 1-3 and Prior to any activity, development and/or subdivision in the Business Neighbourhood Centre Zone</p>	<p>Temporary construction traffic management for the implementation of the SH22 / Oira Road intersection upgrade and Oira Road frontage upgrade approved by Auckland Transport and Waka Kotahi.</p>
<p>(b)(A2) Prior to any activity, development or subdivision enabling more than 95 dwellings in Stages 1-3 and Prior to any activity, development or subdivision in the Business Neighbourhood Centre Zone</p>	<ul style="list-style-type: none"> - Upgrade of SH22/Oira Road intersection to a 3 leg dual laned roundabout with two lane approaches and exits on SH22 and two lane approach and single lane exit on Oira Road. - Oira Road Upgrade to a Collector road standard from SH22 to the northern boundary of the Waipupuke Precinct, including the road pavement on both sides of the road and walking and cycling facilities along the eastern side. - A pedestrian and cycle connection between Oira Road and Jesmond Road on the northern side of SH22.
<p>(c)(A3) Prior to any activity, development and/or subdivision in Stage 4</p>	<ul style="list-style-type: none"> - All upgrades required for (b) above. - Jesmond Road/SH22 intersection upgrade, including new signalised intersection (or

		<p>roundabout) with walking and cycling connections with the Drury West Rail Station, Waipupuke Precinct and Drury 2 Precinct.</p> <ul style="list-style-type: none"> - New intersection of Jesmond Road/Waipupuke East-West Collector Road (Road 1 in Precinct Plan 3), including requirement to connect East-West Collector Road to Jesmond Road with either signals or roundabout. - Jesmond Road upgraded from SH22 to the northern boundary of the Waipupuke Precinct, including road pavement on both sides of the road and walking and cycling facilities along the western side. - A temporary pedestrian and cycle connection along the western side of Jesmond Road from the northern boundary of the Waipupuke Precinct to the Drury Secondary School if the school is operational.
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I447.7.1. Matters of discretion

...

(1) Stormwater Management Structures in a Stormwater Control Area

...

(d) Effects on health and safety.

(f) (e) Potential downstream flood effects.

...

(3) High Contaminant Yielding Materials

(i) (a) Stormwater quality.

...

I447.7.2 Assessment criteria

...

(4) Any land use and/or subdivision consent application enabling dwellings, after 2,000 dwellings have been consented within the Precinct

...

(b) The extent to which the following affect the operation and capacity of the transport network:

...

~~(vi)~~ (vi) Travel modes choice including public transport and active modes, provision of cycle and pedestrian networks.

(vii) Connections with adjacent land.

...