

Date: Monday, 30 May 2022

**Government's new housing rules:
what it means for Auckland**

**Local Board Not Supplied and
Outside Auckland**

**WRITTEN FEEDBACK Vol. 6
(7846 - 7860)**

Sub #	Submitter Name	Organisation	Local Board	Volume
7846	Suzanne Speer	Eden Epsom Residential Protection Society Inc	Not supplied	6
7848	Peter Bankers	Grey Power	Not supplied	6
7849	Jane Moody		Not supplied	6
7850	Jemima Peebody		Not supplied	6
7851	Allan Matson	Civic Trust Auckland	Not supplied	6
7852	Luke Niue	Group of Parnell Residents; Parnell Community Committee	Not supplied	6
7853	C Waldron		Not supplied	6
7854	Colin Hardacre		Not supplied	6
7856	Lisa Prager	The Westmere Heritage Protection Association	Not supplied	6
7857	Raewyn Alexander		Not supplied	6
7858	Linda Hill		Not supplied	6
7859	Julia Woodhouse		Not supplied	6
7860	Darryl Ojala	The Westmere Heritage Protection Association	Not supplied	6

Government's new housing rules: What it means for Auckland

Feedback must be received by **Monday 9 May 2022**

Over the past few years, central government has taken a much stronger role in planning for the growth of New Zealand's largest and fastest growing cities. This means new rules enabling more higher-density housing.

These are directed by the government's National Policy Statement on Urban Development 2020 (NPS-UD) and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the Act).

These government requirements will enable taller and more higher-density housing, such as apartments, terraced housing and townhouses across our city, with the highest densities in areas close to public transport and centres with shops, jobs and community services.

While the NPS-UD focuses on housing of six storeys or more in and around our largest urban centres (including the city centre) and around rapid transit stops (like train and busway stations), the Act requires Medium Density Residential Standards (MDRS) that enable housing of up to three storeys to be built on most residential sites across the city.

The NPS-UD also allows us to limit intensification where there are features or constraints to enabling the scale of development that would normally be allowed on properties or across particular areas. These are called qualifying matters.

The requirements from the NPS-UD and the MDRS combined will mean medium and high-density housing can be built across much of Auckland's urban area. This means there will be changes to the rules in the Auckland Unitary Plan (our planning rulebook) for how properties can be developed.

The changes set out in the NPS-UD and the Act are not optional. By law, we must change the Auckland Unitary Plan to put these new rules in place. However, the NPS-UD allows us to make a limited number of decisions to help shape the future of our city such as:

- The distances of 'walkable catchments' where buildings of six storeys or more are required
- The size of the areas around our suburban town and local centres where additional height and density of buildings can occur, and what the building heights and density limits are
- Additional 'qualifying matters' (a feature or characteristic which can reduce the three-storey and six-storey building height limits) that will apply in Auckland.

We have prepared a preliminary response to the NPS-UD and the Act, that shows how we think they could apply to Auckland. A summary of this preliminary response is explained in our consultation document available on akhaveyoursay.nz/housing, and the planning maps are shown in the draft NPS-UD map viewer (link to map viewer available on akhaveyoursay.nz/housing)

We want your feedback on the parts of the preliminary response listed above. Your feedback will help inform a plan change. We are required to publicly notify this plan change by 20 August 2022. You can then make a submission on the plan change, so that your views are considered during the statutory decision-making process.

We strongly encourage you to read the consultation document and supporting information before answering the following questions. For more details, go to akhaveyoursay.nz/housing.

We encourage you to give feedback online at akhaveyoursay.nz/housing or you can:

Scan and Email your completed form to:

unitaryplan@aucklandcouncil.govt.nz

Post your completed form to:

Unitary Plan Team
Freepost Authority Number 190197
Auckland Council
Private Bag 92300, Victoria Street West
Auckland, 1142

Your details

Your name and feedback will be included in public documents. All other personal details will be kept private.

First name: _____ Last name: EDEN EPSOM RESIDENTIAL PROTECTION SOCIETY INC.

Email address or postal address: suzanne@speer.co.nz

Your local board: Albert-Eden

Is your feedback on behalf of an organisation or business? (If yes, this confirms you have authority to submit on the organisation's behalf)

☒ **Yes** ☐ ☐ Name of organisation/business: EDEN EPSOM RESIDENTIAL PROTECTION SOCIETY INC

These questions are optional but will help us understand which groups of the community are engaging with us.

What gender are you?

☐ Male ☐ Female ☐ Another gender (please specify): [N/A](#)

What age group do you belong to? NA

☐ Under 15 ☐ 15-17 ☐ 18-24 ☐ 25-34 ☐ 35-44
☐ 45-54 ☐ 55-64 ☐ 65-74 ☐ 75+

Which ethnic group(s) do you feel you belong to? (Please select as many as apply) [N/A](#)

☐ Pākehā/NZ European ☐ Other European ☐ Māori
☐ Cook Islands Māori ☐ Samoan ☐ Tongan
☐ Indian ☐ Chinese ☐ Southeast Asian
☐ Other (please specify): _____

Your feedback (all questions are optional)

Requirements for intensification

Intensification inside walkable catchments

A walkable catchment (required by the NPS-UD) is the area around a train or busway station, or a large urban centre within which an average person will walk to that location.

The government requires councils to identify walkable catchments around the city centre, metropolitan centres and rapid transit stops (train or busway stations) where buildings of six storeys or more must be enabled.

We are proposing:

- a 15-minute walk (around 1200 metres) from the edge of the city centre.
- a 10-minute walk (around 800 metres) from the edge of the metropolitan centres and around rapid transit stops, such as a train station or stop along the Northern and Eastern Busways.

These are subject to modifying factors such as landscape, for example steep hills, and physical barriers including motorways.

1. What do you think of our proposed walkable catchment of 1200 metres from the edge of the city centre? Do not support - I think it should be closer

- ☐ Support
- ☐ Do not support – I think it should be further
- ☐ Do not support – I think it should be closer
- ☐ Other
- ☐ I don't know

Tell us why

1200 metres is not an easily walkable distance when it is usually along major roads with major intersections to cross as a pedestrian both of which are physical barriers.

Does not recognise limited walking ability of the elderly and young children and their parents.

Higher density should not impact and detract from Special Character Areas as in Freemans Bay.

2. What do you think of our proposed walkable catchment of 800 metres from the edge of the metropolitan centres? Do not support - I think it should be closer

- ☐ Support
- ☐ Do not support – I think it should be further
- ☐ Do not support – I think it should be closer
- ☐ Other
- ☐ I don't know

Tell us why

400 metres is a better walkable catchment as this accounts in walking time for physical barriers such a major roads and major intersections and inclement weather

Higher density should not impact on the Special Character Areas like North Epsom.

Does not recognise limited walking ability of the elderly and young children and their parents.

3. What do you think of our proposed walkable catchment of 800 metres around rapid transit stops? Do not support – I think it should be closer

- ☐ Support
- ☐ Do not support – I think it should be further
- ☐ Do not support – I think it should be closer
- ☐ Other
- ☐ I don't know

Tell us why

Closer is a better walkable catchment as this accounts in walking time for physical barriers such a major roads and major intersections and inclement weather

Higher density should not impact on the Special Character Areas.

Does not recognise limited walking ability of the elderly and young children and their parents

Intensification around town and local centres

Central government has told us that we need to enable building height and density (for example terrace housing and apartment buildings) in and around our neighbourhood, local and town

centres that matches the level of commercial activity and community services in each centre (such as jobs, shops and businesses). This is achieved by applying the Residential – Terrace Housing and Apartment Buildings Zone.

Town centres are larger suburban centres in Auckland that provide for a wide range of shops, services and activities for their surrounding districts. They are often spread across a couple of city blocks, and along main roads. Some examples are Glenfield, Glen Eden, Parnell and Papatoetoe town centres.

Local centres include a larger number of smaller suburban centres that serve local areas and neighbourhoods. Local centres might have 20 or 30 shops and some small offices.

4. What do you think of our proposal to apply the Terrace Housing and Apartment Buildings Zone to residential areas up to around 400 metres from large town centres with high accessibility? Support

- ☐ Support
- ☐ Do not support – I think it should be further
- ☐ Do not support – I think it should be closer
- ☐ Other
- ☐ I don't know

Tell us why

An easily walkable distance from these facilities.

5. What do you think of our proposal to apply the Terrace Housing and Apartment Buildings zone to residential areas up to around 200 metres from small town centres or large local centres with high accessibility? Other

- ☐ Support
- ☐ Do not support – I think it should be further
- ☐ Do not support – I think it should be closer
- ☐ Other
- ☐ I don't know

Tell us why

The THAB Zone should not be applied in these locations because 6 + storeys for the THAB zone is often far higher than the existing buildings in the small town centres /large local centres which are often subject to Special character overlays which can recognise their two storey character.

Qualifying matters

The government allows for some qualifying matters - exemptions to modify three-storey and six-storey building heights. Qualifying matters are a characteristic which can be used to protect sites of cultural, historic, or ecological significance or to avoid development in areas with natural hazards.

The government has already identified a number of qualifying matters and allows us to include other qualifying matters relevant to our city.

To include our own qualifying matters, we must provide robust evidence to justify why it should reduce building heights and density in a particular area in light of the government's direction to enable more housing.

Special Character Areas

'Special character areas' are older parts of the city that have special architectural or other built character value. They are covered by the Special Character Area Overlay in the Auckland Unitary Plan.

Many of Auckland's older residential suburbs were built around the early public transport network and emerging town centres. This is where our special character areas are located. The government is now directing us to enable increased housing density (e.g. buildings of six-storeys or more) within walkable catchments of town centres and public transport networks, and up to three storey buildings elsewhere.

The government has not included special character areas as a qualifying matter. However, we are proposing to include identified areas of special character as a qualifying matter that reduces limits on building heights and density to ensure the character values of these areas are retained.

6. What do you think of our proposal to include identified special character areas as a qualifying matter? Do not support - I think all existing character areas should be a qualifying matter

☐

Support

☐

Do not support - I think all existing special character areas should be a qualifying matter

☐

Do not support - I do not think special character areas should be a qualifying matter

☐

Other

☐

I don't know

Tell us why

Please see attached comprehensive submission by the Society

To answer the next two questions, you will need to view the draft planning maps shown in the NPS-UD map viewer. The maps show areas of special character that are identified as a qualifying matter (in blue) and that are not a qualifying matter (in red). You can find a link to the map viewer on akhaveyoursay.nz/housing

7. What do you think of the proposed residential special character areas that we have identified? Do not support – I think there are further areas of that should be identified as a qualifying matter

☐

Support

☐

Do not support - I think there are further areas of that should be identified as a qualifying matter

☐

Do not support - I think there are areas identified that should not be a qualifying matter

☐

Do not support - I think no special character areas should be identified as a qualifying matter

☐

Other

☐

I don't know

Tell us why

Please see attached comprehensive submission by the Society

8. What do you think of the proposed business special character areas that we have identified? Support

- ☐ Support
- ☐ Do not support – I think more areas or parts of areas should be identified as a qualifying matter
- ☐ Do not support – I think less areas should be identified as a qualifying matter
- ☐ Do not support – I think no areas should be identified as a qualifying matter
- ☐ Other
- ☐ I don't know

Tell us why

Identified business special character areas like the local Mt Eden shopping centre on Mt Eden Road are an important element in the identity of a community.

Infrastructure constraints

We are looking to identify areas in Auckland with long-term significant infrastructure constraints as a qualifying matter. As with special character areas, this is not a qualifying matter that is listed in the NPS-UD or the Act.

This may include areas where water supply and wastewater networks may not be adequate to cope with more growth and are very costly and/or difficult to upgrade, or stormwater infrastructure is not adequate and very costly and/or difficult to provide, or where access to transport infrastructure is not adequate and very costly and/or difficult to provide.

By including this as a qualifying matter, it would reduce the limit on building heights and density that would otherwise be enabled.

We have not yet determined how we would apply this qualifying matter as the NPS-UD and the Act do not provide any specific support. At this stage, we want feedback on whether to consider this as a qualifying matter or not. If we include it as a qualifying matter, we will show the extent and location of any changes to height and density requirements in our plan change in August 2022.

9. What do you think of our proposal to include areas in Auckland with long-term significant infrastructure constraints as a qualifying matter? Support

- ☒ Support
- ☐ Do not support
- ☐ Other
- ☐ I don't know

Tell us why

Due regard must be had to the limited capacity of significant infrastructure constraints to avoid continued pollution of our natural environment caused by the overloading of old combined stormwater and sewage pipes.

Other qualifying matters

We are also proposing to include a number of other overlays and controls in the Auckland Unitary Plan as qualifying matters that limit the height and density of development on sites or across areas to retain the values they reflect. A description of these proposed qualifying matters and how they are proposed to be protected or kept is shown in the consultation document and information sheets available on akhaveyoursay.nz/housing.

These additional qualifying matters include:

- Ridgeline Protection Overlay
- Local Public Views Overlay
- Auckland War Memorial Museum Viewshaft
- Stockade Hill Viewshaft
- Character buildings in City Centre zone and Queen Street Valley Precinct
- Some of the existing built form controls in City Centre (e.g. allowing sunlight into public places, Aotea Square height control).

10. Do you have feedback on any other qualifying matters? (please be clear which proposal you are talking about)

Support the inclusion of all of the above as qualifying matters

Would you like to subscribe to any of the following (tick all that apply):

- You can also visit AK Have Your Say at [akhaveyoursay.nz](https://www.akhaveyoursay.nz) to find out about, or register to receive regular updates on, consultation activities happening across Auckland

The personal information that you provide in this form will be held and protected by Auckland Council in accordance with our privacy policy (available at aucklandcouncil.govt.nz/privacy and at our libraries and service centres) and with the Privacy Act 1993. The privacy policy explains how we can use and share your personal information in relation to any interaction you have with the council, and how you can access and correct that information. You should familiarise yourself with this policy before submitting this form.

From: Suzanne Speer

Sent: Monday, 9 May 2022 11:06 PM

To: Unitary Plan <unitaryplan@aucklandcouncil.govt.nz>

Subject: SUBMISSION and Survey Feedback on akhaveyoursay.nz/housing by the EDEN EPSOM RESIDENTIAL PROTECTION SOCIETY INC. - Government's new housing rules:What it means for Auckland

Please find attached the Eden Epsom Residential Protection Society Inc.'s submission/feedback on the Government's new housing rules:What it means for Auckland.

We have also attached a link that includes our submission and its attachments.

https://1drv.ms/u/s!AumUI2t2_yJfjAncKTb3XDDA3F3u?e=4GyuaL

The link includes:

1. The Eden Epsom Residential Protection Society's survey feedback
2. The Eden Epsom Residential Protection Society's submission
3. Attachment to submission - Environment Court decision - [2022] NZEnvC 060 Eden-Epsom Residential Protection SocietyInc. v Auckland Council
4. Attachment to submission - Evidence by Heike Lutz (heritage architect) given in above Environment Court hearing
5. Attachment to submission - Evidence by Jeremy Salmond (heritage architect) given in above Environment Court hearing

6. Attachment to submission - Evidence by Bridget Gilbert (landscape architect) given in above Environment Court hearing

Thank you

Suzanne Speer
for the Eden Epsom Residential Protection Society Inc.



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9 May 2022

Unitary Plan Team
Auckland Council
Private Bag 92300, Victoria Street West
Auckland 1142

Email: unitaryplan@aucklandcouncil.govt.nz

Dear Sirs,

**Re : SUBMISSION TO COUNCIL'S PRELIMINARY RESPONSE
TO GOVERNMENT'S NEW HOUSING RULES
AND
SPECIFIC COMMENTS ON THE MATTER OF SPECIAL CHARACTER
AND ON WALKABLE DISTANCES/CATCHMENTS AS THESE INFLUENCE
NEW PROPOSED SPECIAL CHARACTER AND ZONING BOUNDARIES
IN THE NORTH EPSOM AREA**

1. This submission is prepared by the **Eden Epsom Residential Protection Society Inc.** The Society is supported by more than 100 households in the Eden Epsom area.

Geographic area addressed by this submission

2. The Society is aware that there are other residential groups providing submissions on special character from across the city. Therefore, we have confined our comments to the area the Society is most concerned with and knowledgeable about which is generally known as North Epsom. Broadly the North Epsom area is defined by easily recognisable boundaries :
 - in the south to Epsom Avenue (with the large open space of the Teachers Training College and surrounding reserves, tennis courts, bowling club and Auckland Normal Intermediate School further south);
 - in the east is Gillies Avenue which is an arterial road creating a well-defined break in development patterns between generally higher density areas to the east vs. generally low density single-housing area with special character to the west;
 - in the west to the Owens Road – Stokes Road – Epsom Avenue junction and following Owens Road around to Mountain Road;
 - in the north up Mountain Road to the large open space of Government House and across Albury Avenue to Gillies Avenue.

MAP A identifies the Society's area of interest, the North Epsom SCA, and is illustrated on page 8.

3. The North Epsom area has current zonings under the AUP of predominantly Residential - Single House or Mixed Housing Suburban. A high proportion of the area has a special character overlay that recognises its garden suburb characteristics from development during the late 1800's and early 1900's. The AUP in Schedule 15 identifies key characteristics of this garden suburb including that it is predominantly low density residential with generally single and double storey houses on a variety of larger lot sizes with street setbacks and landscaped front yards. Also, there is lower building coverage with housing styles that are diverse in character, but notably the diversity coherently defines this Special Character Area.
4. New proposed zonings are a mix of Two-Storey Single Dwelling Zone with special character, or the new Residential - Mixed Housing Urban Zone – Modified (MDRS Zone) that includes some parts of the previous special character area now proposed to be dropped.
5. The Society's essential submission is that the Council's suggested special character area through North Epsom should be broadened to include other adjacent properties found within the existing Special Character Area Overlay (SCAO) and underlying Residential - Single House Zone so as to reflect a more cohesive and integrated special character area. The Society recognises that it is a matter for individual property owners to submit otherwise if they choose to.
6. The Society's research discussed below shows that the walkable distance from the Newmarket Metropolitan Centre Zone should be reassessed. The Society's submission is that in its area of interest this should logically follow along main roads like Mountain Road and Owens Road as clear and simply boundaries.

Recent 2022 Environment Court decision supporting retention of special character in this area

7. We would point out that the Society has a good working knowledge of Council's special character provisions and has been actively involved in protecting these provisions through various Council hearings and also before the Environment Court. It is significant that the Society has recently successfully defended the special character in its area of interest against an application by Southern Cross Hospitals by way of a private plan change for development of a major hospital that was declined by the Environment Court (refer: Decision [2022] NZ EnvC 060). This case dealt with the existing hospital on 3 Brightside Road and three sites on 153, 151 and 149 Gillies Avenue. There are many valuable findings in this court decision that have direct relevance to the value of the special character area found throughout our study area, and we will be referring to some of the major findings. This decision is attached for easy reference.
8. Importantly the Court refused to allow a hospital zone, it upheld the Single House Zone, and it refused to remove the SCAO. This decision was not available at the time Council's present proposals were prepared and the decision should be given serious consideration in a reassessment about the value of special character in this area.

Topics covered by this submission

9. This submission will cover the following topics:

- (i) The importance of residential special character areas and particularly their importance when found within cohesive integrated areas
 - Collective importance is more significant than just one site
 - Special Character comprises only a very small part of the City's housing
 - Special character is a finite, non-renewable and declining resource
 - Special Character within a cohesive integrated area provides better protection from sporadic demolition and intensification
 - Overall context of assessing special character
- (ii) The Society's definition for a larger cohesive and integrated "North Epsom special character area" rather than fragmented into several sub-areas
 - Defining a cohesive integrated special character area
 - Assessment covering the entire North Epsom special character area
 - Recognition of "character supporting properties" as significant contributors to the overall character and amenity found in special character areas
- (iii) Anomalies in Council's assessment base which support the need for a reassessment
- (iv) Walkable distances and catchments
- (v) Important provisions to be included in new residential zones standards especially regarding small scale non-residential activities
 - and also provisions for ongoing protection to special character areas
- (vi) Conclusion

The importance of residential special character and particularly their importance within cohesive integrated areas

10. We support Council's decision to provide for special character as a qualifying matter that can allow the council to modify/limit required building heights and density and also allows an exemption to the NPS-UD walkable distance policy. After all, special character is an amenity value that is required to be given regard to in achieving the purpose of the Resource Management Act, as set out in Section 7(c).

Collective importance more significant than just one site

11. Special character areas are generally recognised for their value in respecting a linkage to past development patterns and styles in the city, including special architectural or other built character values that have a collective importance. The idea of collective important is significant because it is not just one dwelling/building here and there that creates special character; rather, it is a collection of several dwellings/buildings in close proximity that share a high degree of common characteristics and amenity that define a special character area.
12. Council background information has pointed out that it has been some 30 years since a comprehensive survey was completed to identify special character areas of value. To this end, Council has now completed a site specific survey covering all residential sites that currently comprise the special character estate... around 21,000 dwellings.
13. This is a useful reference base, and the findings need to be interpreted and applied in a practical manner and within some key contextual guidelines.

Special Character comprises only 3% of the City's housing, and it is declining

14. It cannot be understated that special character dwellings comprise a very small part of Auckland's total housing stock. Council research has identified that the total special character estate has around 21,000 dwellings worth only 3% of the city's total housing stock. This is small.
15. To then apply any degree of higher density development standards to such a small base clearly results in very little tangible benefit.
16. For example, Council's special character assessment as it stands today suggests that around 75% should be retained and 25% could be dropped. On this basis, in simple terms the city might see around 5,000 dwellings downgraded that mostly fall within the MDRS zone standards enabling the 3 x 3 development minimum. This suggests around +10,000 new dwellings in due course if the downgraded sites are redeveloped (eg. 3 dwellings per site x 5,000 sites, less 1 existing dwelling per site = say, +2 net new dwellings per site).

By comparison, Council has recently confirmed future growth capacity under the existing AUP at around +900,000 dwellings. In this context, redevelopment potential from downgraded special character dwellings might add +1% to this capacity.

And when future growth capacity is added assuming the current rezoning standards, this will at least double future capacity to around 2 million dwellings, probably more (We understand Council's estimates on dwelling capacity is expected for release when the formal plan changes is released in August 2022). In this context, the potential contribution from redeveloping downgraded special character dwellings is 0.5% or less of capacity.

17. Assuming current housing growth at around 20,000/pa (according to the latest new dwelling consents records at April 2022), and assuming implementation of the new zoning density controls, this means there will be close to +100 years development capacity in the city.
18. Clearly the redevelopment potential from a relative few special character dwellings adds very little to future dwelling capacity, yet the downgrading in special character dwellings will continue the trend in fragmenting and destroying the cohesiveness and integrity of what special character areas remain.

Special Character is a finite, non-renewable and declining resource

19. Special character dwellings are a finite and non-renewable resource that is slowly decreasing in absolute numbers due to sporadic demolition and redevelopment pressures. The current survey of special character dwellings highlights the changes that have occurred overtime, clearly showing a reduction in many areas to mere fragments of what they once were.
20. So over time, usually occurring just one site at a time, the special character estate has been progressively diminished. This is a classic demonstration of "cumulative effects" compounding into a significant negative impact which has left large gaps in the special character estate and undermined cohesive character in local areas.
21. Such adverse effects do not achieve the strong directive in the **RPS objective B5.3.1(2)** for **maintaining and enhancing** the special character of an area. Instead, this progressive erosion of character invites further development pressure with an undue level of risk that development will not be in keeping with the Special Character Area.

This is especially so in areas where special character is now proposed to be removed and replaced mostly with the introduction of the modified residential MHU Zone (the MDRS Zone). This new zone will enable a town house topology that will result in a significant dominant change in an area's character due to an increase in coverage, increase in building height, removal of trees, and allowable building envelopes pushed close to boundaries.

22. Referring to the recent Environment Court decision, in paragraph 173 the court endorsed the idea of a finite resource in the Epsom North special character area where it stated that character sites within it cannot choose to locate elsewhere unlike most other forms of development which are flexible in their locational requirements. In other words, once lost, a Special Character site is gone forever and with it comes further erosion to the local area's cohesiveness.
23. Clearly there are no new special character areas of the late 1800's and early 1900's origin being created, so the resource is indeed finite and unfortunately its future trend is all one way being a progressive reduction in the size of the special character estate.

24. Further, in support of protecting special character areas, the Environment Court recognised the importance of specific “directive language” found in the RPS Objectives and Policies, where:

- At B5.3.1(2) is stated : “The character and amenity values of identified special character areas **ARE** maintained and enhanced.”
- At B2.4.2(5) is stated : “**AVOID** intensification in areas (a) where there are natural and physical resources that have been scheduled in the Unitary Plan in relation to ... historic heritage or special character.”
- At B2.4.2(10) is stated : “**REQUIRE** non-residential activities to be of a scale and form that are in keeping with the existing and planned built character of the area.”

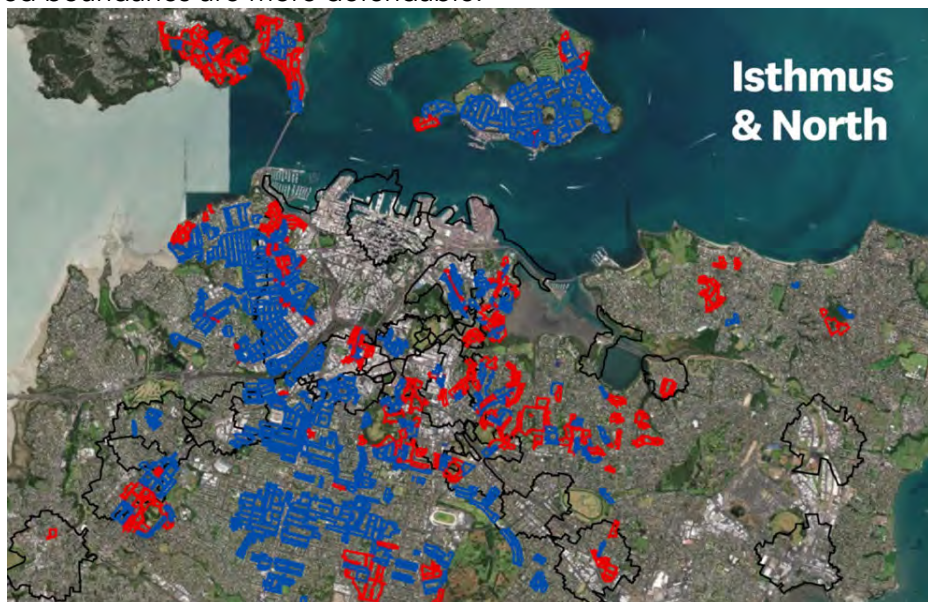
The Court decision in paragraph 94 recognised the “strongly directive language” used in these objectives and policies and noted “this should be accorded significant weight over other policies that are framed less directly or more flexibly” [para.153].

25. In other words, the Council is obliged to maintain and enhance the values and to avoid intensification in special character areas, and is obliged to require non-residential activities be in keeping with the scale and form of surrounding residential character.

Special Character within a cohesive integrated area provides better protection

26. The best way forward to help preserve and protect the special character estate is to look closely at larger well-defined areas that demonstrate a cohesive integrated whole in its character. There are a few such areas around the city, but unfortunately not many. The Society’s defined area is one such area.

27. Well-defined cohesive areas are more defensible than fragmented areas, when supported by strong objectives, policies and rules. The primary challenge facing special character areas is fragmentation through demolition and intensification. This erodes an area’s cohesiveness and integrity, as demonstrated by Council’s research findings from the recent special character survey. Council’s summary map showing suggested special character areas to retain vs. drop confirms the highest losses (areas in RED) generally occur in smaller fragmented areas whereas larger areas within well-defined boundaries are more defensible.



28. As discussed above, the idea of collective importance within a cohesive integrated area is significant because it is not just one dwelling/building here and there that creates special character; rather, it is a collection of several dwellings/buildings in close proximity that share a high degree of common characteristics and amenity that in-turn define a special character area.

Overall Context for assessing special character

29. The context for assessing residential special character is clear:

- It is a very small part of all housing across the city today at 3% and declining
- It is a finite and non-renewable resource that is slowly declining
- The prospect of some suggested special character properties being dropped in favour of higher density development contributes at a de minimus level to future housing capacity at <0.5%
- The recognition of larger special character areas within well-defined boundaries are more defensible to ongoing degradation.

30. Also, we have taken note of Council's suggestion made at a recent webinar meeting that if the small number of possible new dwellings achievable from downgrading some special character dwellings must be accounted for, one alternative consideration is to transfer such development capacity to other areas of higher density development capacity. We support this idea and believe very careful investigation of this option should be undertaken. This would have the effect of maintaining theoretical development capacity while also maintaining the finite resource of the already small special character estate.

The Society's definition for a cohesive and integrated "Epsom North special character area" rather than fragmentation into several smaller sub-areas

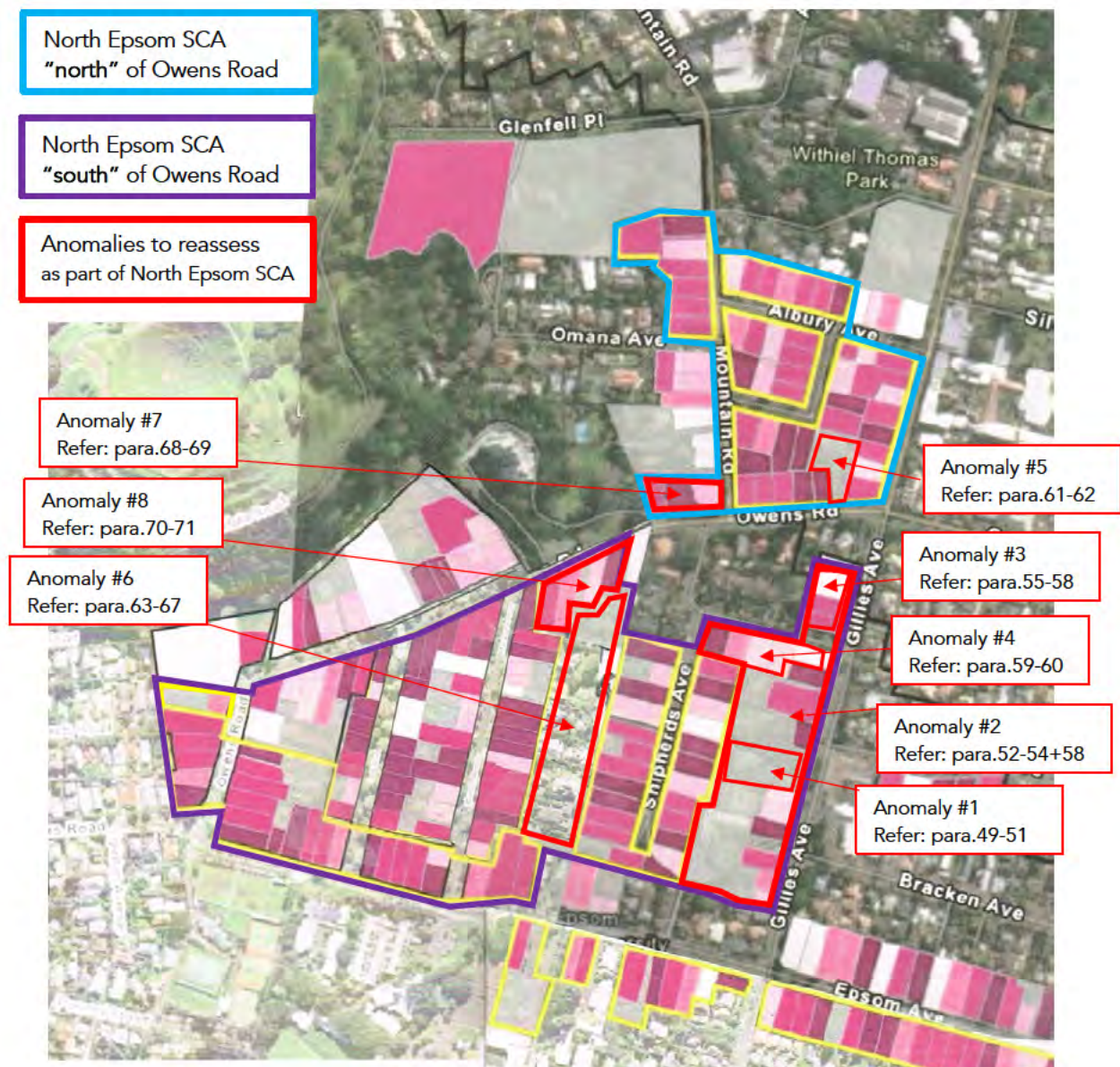
31. Paragraph 2 above has set out the Society's definition of the North Epsom special character area (North Epsom SCA), an area that is well defined and confined by key land features as illustrated in MAP A below.

32. We have cross-related our definition of the North Epsom SCA with Council's investigation work as set out in several special character Findings Reports. The Findings Reports of relevance include:

- Maungawhau South (covering Owens Road and parts of Epsom Avenue);
- Cecil Road and Marama Avenue (found between Owens Road and Epsom Avenue);
- Gillies Avenue (covering that area north of Owens Road as far north as Government House and between Mountain Road and Gillies Avenue, and also to the south of Owens Road through the Shipherds Avenue area including Brightside Road and Gillies Avenue "west" frontage almost to Epsom Avenue).

33. MAP A below combines the Council's Findings Reports for the Society's area of interest in North Epsom to create a base map, on top of which is overlayed the boundary definition to the North Epsom Special Character Area and also notes about anomalies needing reassessment.

MAP A – NORTH EPSOM SPECIAL CHARACTER AREA



Defining a cohesive integrated special character area

34. Effectively the Society's definition of the North Epsom SCA brings together Council's base work with the addition of some adjacent properties previously identified as special character so as to create a more comprehensive and integrated area that spans a well-recognised special character area including over 170 properties. Please note that there are no new properties being added into special character.
35. An important perspective to defining a special character area is recognition of its cohesive and integrated nature. Thinking specifically about the Society's defined area, the Environment Court decision in paragraph 99 stated that this area is recognisable as having an established character which is summarised as follows in the decision :

In the Overlay Isthmus B1 –

- "(a) Is a demonstration of an early period of residential development in Auckland from the late 19th and early 20th century;
- (b) Illustrates patterns of residential development that occurred as transport networks improved;
- (c) Is characterised by low housing densities, larger sections, bigger homes set well back on the lots, and wide streets;
- (d) Is characterised by a range of housing styles from the period above;
- (e) Is characterised by an abundance of planting, including private gardens and street tree planting;
- (f) Demonstrates the contributing factors to the Isthmus B Overlay that include the built form and landscaping components; this is important because both buildings and landscape are integral to the defined character."

In the Overlay Isthmus A – "the latter is characterised by regular and consistent lot sizes with buildings set close to the street and limited landscaping and setbacks" [page 20, footnote 21 in the decision].

36. We have attached in the appendices the expert evidence given to the Environment Court that was accepted by the Court in demonstrating the importance of retaining the area as a whole. This evidence includes statements by the following experts:
- Ms Heike Lutz, heritage architect
 - Mr Jeremy Salmond, heritage architect
 - Ms Bridget Gilbert, landscape architect

Assessment covering the entire North Epsom special character area

37. We believe the Society's North Epsom SCA is a good example of a cohesive and integrated area within well-defined boundaries. Within these boundaries is found a special character area that fully meets Council's criteria :

- for at least 66% of properties having high-standard special character values and being outside walkable catchments (the proposed special character area south of Owens Road is outside a walkable catchment and has an overall rating of 70% with high-standard special character properties);
- for at least 75% of properties having high-standard special character values and being inside walkable catchments (the proposed special character area north of Owens Road is inside a walkable catchment and has an overall rating of 76% with high-standard special character properties);

38. We have reached this conclusion by applying Council's methodology and rating system "as is" to properties within the Society's defined area of interest using details found in the various Findings Reports relevant to the North Epsom SCA as noted in para.#32 above.

(i) Regarding the total number of properties assessed and included in the North Epsom SCA, this adds up to 174 :

- Gillies Avenue north of Owens Road	49
- Gillies Avenue south of Owens Road	41
- Maungawhau South	37
- Cecil + Marama	<u>47</u>
TOTAL 174	

(ii) The breakdown in the property ratings, again using Council's ratings "as is", is the following:

	<u>6/5</u>	<u>4/3</u>	<u>2/1/0</u>
- Gillies Avenue north of Owens Road	37	3	9
	(76%)		
- Gillies Avenue south of Owens Road	27	2	12
	(66%)		
- Maungawhau South	26	9	2
	(70%)		
- Cecil + Marama	35	5	7
	(74%)		
TOTAL	125	19	30
	(72%)	(11%)	(17%)
vs.			
TOTAL PROPERTIES	174		
	(100%)		

39. Overall, the North Epsom SCA includes 174 properties, not a small or insignificant number. Of these, those rated as either 6 or 5 by Council's assessment standards in its Findings Reports account for :

- 72% of all properties throughout the North Epsom SCA
... and importantly ...
- 76% of those properties north of Owens Road that are within a defined walkable catchment
- 70% of those properties south of Owens Road that are outside a defined walkable catchment.

40. We believe there is strong merit in maintaining the entire area as an identified special character area because it is well-defined by major land features that provides defensible boundaries and it has within it many highly rated properties spread throughout the area that collectively exceed Council guidelines for maintaining special character areas.

- Additionally, there are many properties that fill a "character supporting role" that add significant depth and breadth to the quality of special character found in the area and these should also be recognised; these fall in the 4 or 3 rating categories; this accounted for another 11% of all properties.
- While just 17% have low to nil values.

Recognition of "character supporting properties" as a criterion

41. We believe the assessment methodology for residential dwellings should include "character supporting properties" in the overall evaluation of special character. This approach would be consistent in concept with what has been applied in the commercial special character centres where recognition is specifically given to "character supporting buildings".

42. "Character supporting" is a valuable part of an area's overall nature and identity. It demonstrates an expanded depth and breadth to the special character values beyond simply the high quality properties.

43. This is particularly so when you consider that many dwellings in the 4 and 3 ratings are actually character homes that have undergone careful renovation under the direction of Council's heritage planners. Yet in spite of this high investment into the special character estate, the current ratings system downgrades many of these renovated houses to no more than 3 or 4.

44. According to Council's current methodology, scores of 5 or 6 in the residential assessment ratings are described as "strongly contributing" to the special character values of an area. But we believe there is also benefit to be derived from recognising the value of "character supporting" properties as significant contributors to the overall nature of a special character area.

45. Particularly dwellings rated 3 and 4 clearly demonstrate the presence of a good to high level of special character features and should be considered character supporting. When added together, the collective presence of properties in the 3+4+5+6 ratings confirms the depth and breadth of special character generally found in an area.
46. Sites with "character supporting values" in the North Epsom SCA includes 19 properties rated 4 or 3 and this equates to 11% of all assessed properties. Even if a weighted value was applied at something less than the full value attributed to the 5 and 6 rated properties, this still adds in a very positive way to respecting the overall special character rating for the Epsom North SCA, lifting it well above its already high rating of 72%. This idea should also be applied in other areas where appropriate.
47. It is also notable that the entire North Epsom SCA is highly influenced by the nearby presence of the maunga (Maungawhau / Mt Eden) which informs and influences the character of the area. This is a factor clearly identified and explained in the various Findings Reports describing the area. This forms part of the landscape value of the area which is then reflected in the relatively large lots sizes and highly landscaped properties in the North Epsom SCA.
48. **OVERALL, the Society's submission is that:**
- the North Epsom SCA is a very cohesive area of high quality special character that should be respected and this is supported by Council's own assessment when applied across the Society's area of interest in North Epsom.
 - recognition of "character supporting properties" is important in identifying the true depth and breadth of special character found in an area.
 - the adoption of overly stringent or arbitrary assessment criteria and boundaries should not be permitted to control outcomes and fragment otherwise cohesive areas.

Anomalies in Council's assessment base which support the need for a re-evaluation

49. Recognising the time constraints placed on Council planners, the need to adopt a desktop approach has resulted in some anomalies that strongly indicate a re-evaluation is essential. The following comments apply specifically to the Gillies Avenue Findings Report
50. Firstly, the property at 171 Gillies Avenue is currently identified as a rear-section or vacant. This is incorrect; the property is a large lot extending between Gillies Avenue and the rear of Shiphers Avenue properties (within the SCA). A high-quality special character house is found in the middle of the site with large front and rear grounds. There is full frontage to Gillies Avenue with many mature trees along the frontage providing selected glimpses of the house.

51. Attached are photographs of this property from the road frontage, and also of the house as seen from looking up the adjacent ROW to the north. As a front site, the property at 171 Gillies Avenue should be recognised with a high-quality rating of 6/ 5.



Front site at 171 Gillies Avenue

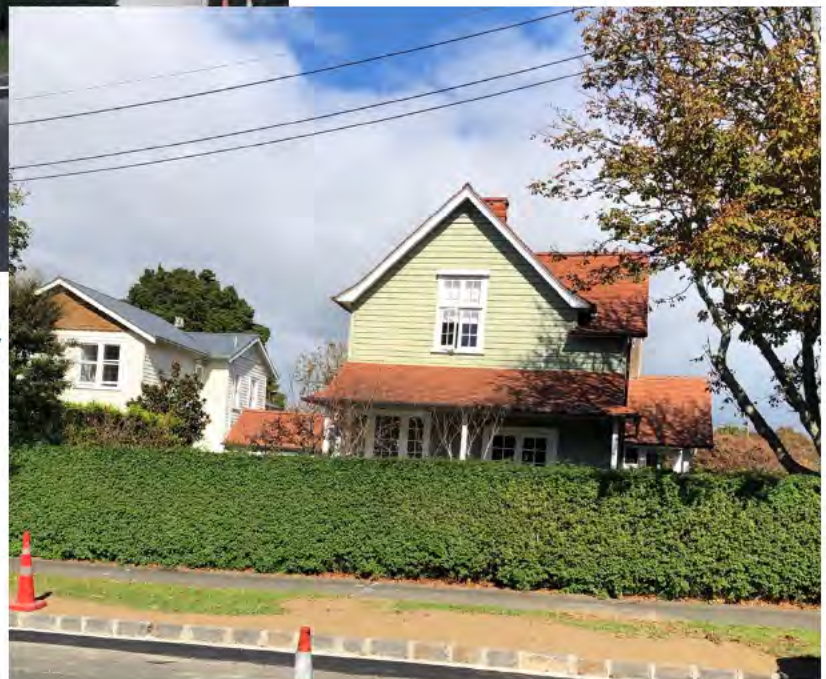
52. We would call to your attention that the issue of visibility of a dwelling is not in itself a determining factor about whether or not it contributes to special character. The Environment Court decision supported this where in paragraph 112 the Court summarised discussion on this issue by stating that visual concealment of a property did not detract from the importance of a property in its contribution to the Special Character Area.

53. Secondly, the Gillies Avenue western face, broadly between Albury Avenue in the north and near Epsom Avenue in the south, should be recognised for its importance as an identifiable line of demarcation between higher density residential to the east (towards Manukau Road) and lower density residential to the west (inside the North Epsom SCA). It is also recognisable as an important “gateway” into North Epsom SCA
54. It is notable that the Environment Court decision recognised the influence of Gillies Avenue and the differences between the west and east sides of this busy road corridor [paragraphs 186-187].
55. The western side of Gillies Avenue presents a cohesive and integrated special character face to the North Epsom SCA, broadly between Albury Avenue in the north and near to Epsom Avenue in the south, spanning a distance of some 800 metres. In general, the entire Gillies Avenue face presents a high level of quality special character properties. While there are a limited number of non-residential activities along this frontage, these activities are almost exclusively accommodated in converted special character dwellings and continue to have a domestic scale and be contributors to special character.
56. Thirdly, the Southern Cross Hospital properties at 149-151-153 Gillies Avenue are noteworthy. We would particularly make mention of the importance of the two properties near the intersection of Gillies Avenue and Brightside Road. These are 151 and 153 Gillies Avenue. They are an integral part of the Environment Court hearing and decision. Notably, experts for both parties in the hearing were in agreement on the high special character value of these properties. This is recognised in the Council Findings Report by rating these properties at 5.
57. Comment is also merited about the boarding house at 149 Gillies Avenue adjacent to the above properties. While not of the same standard as the above two properties, valuable character supporting features are recognisable. The court evidence of Ms. Heike Lutz, heritage architect acting for the Society (copy attached) was accepted by the court as the preferred evidence in this matter. The court decision noted this key point : “loss of the SCA on the three properties [149, 151, 153 Gillies Avenue] would be highly detrimental... [with] significant adverse effects from the loss of the SCA in the neighbourhood” [para.127].
58. Importantly, the Environment Court decision went on to specifically agree with some other key points in the assessment of Ms. Lutz, noting that:
- “the three sites are not an anomaly” [para.134],
 - “the effects of removal of the SCA would be cumulative and would leave a ‘large gap’ in the SCA on the west side of Gillies Avenue” [para.135],
 - “but worse, significantly increased building coverage and heights would further impact the special character of the area significantly”, and “ the effects of removing the SCA as stated by Ms. Lutz would be ‘almost inevitable’” [para.136].

59. Accordingly, properties fronting the western side of Gillies Avenue, broadly between Owens Road and Epsom Avenue (as identified on MAP A) need to be specifically recognised as SCA qualifying properties with an appropriate change in zoning to Two-Storey Single Dwelling Zone. Including recognition of 171 Gillies Avenue at a high-quality rating, there are 12 properties assessed in this sub-area with 8 having a 6 or 5 rating = 66% = a qualifying area.
60. Fourthly, the Brightside Road southern face has historically been identified as special character and this should continue. There are five properties here located between the high-quality special character sub-areas of Shipherds Avenue and Gillies Avenue western frontage. We have identified these properties in MAP A. Two properties closest to Shipherds Avenue (6 and 8 Brightside Rd) are two-storey single dwellings on large lots; one has a 6 rating, one a 4 rating. The other three properties are older two-storey multi-units built in the 1950s and 1960s. These units are typical of the heterogeneity in character found throughout many special character areas, an attribute identified in the Environment Court decision [para.112] where it is stated: "The Isthmus B1 provisions are 'significantly about heterogeneity'".
61. What is important it that these properties fall between high-quality special character sub-areas, offer some special character features, and should not be fragmented out from that surrounding special character. All of these properties should continue to have special character recognition consistent with properties immediate around them.



Properties at 6 Brightside Road (above),
and at 8 Brightside Road (right)



62. Fifthly, the property at 37 Owens Road is currently identified as a rear-section or vacant; this is incorrect. The property is a large lot over 2400m² extending between Owens Road and Sharpe Road. In fact, this property is a through-property with access off both Owens Road and Sharpe Road although Owens Road is the predominant access with a road frontage over 7metres in width (so technically this is a front site). Properties surrounding the site are high-quality special character dwellings within the SCA. The subject site has a high-quality special character house in the middle of the site with large grounds surrounding. Attached are photographs of this property from the Owens Road frontage, including a clear view of the quality home behind front gates and an aerial photograph of the property definition.

63. As a front site, the property at 37 Owens Road should be recognised with a high-quality rating of 6 or 5.



Front site at 37 Owens Road

64. Sixthly, there is a large anomaly in zoning between the high-quality special character sub-sectors of Shipherds Avenue and Marama Road, being a long narrow band of rear sites identified with the MDRS Zone. We have identified this area in MAP A. These sites are accessible only from a private road off Shipherds Avenue (known as Shipherds Close), or via ROWs off Owens Road or Epsom Avenue. All sites are occupied by two storey single dwellings.
65. By placing a MDRS zoning on these rear sites, the net effect of this action is the imposition of a higher density area directly into the heart of a high-quality special character area. For example, the west side of Shipherds Avenue directly fronting the proposed MDRS Zone has 12 properties of which 10 are high-quality 6 or 5 ratings =83%. While along the east side of Marama Avenue directly fronting the proposed MDRS Zone are 19 properties of which 14 are high-quality 6 or 5 ratings = 74%.
66. It is illogical and poor planning to have a cohesive area of very high special character with the Two-Storey Single Dwelling Zone bisected and fragmented by a narrow strip of MDRS Zone that are all rear sites. We note, for example, that a similar range of rear sites is found along both Marama Avenue and Cecil Road and in these positions there is no change in zoning, exactly as it should be. Accordingly, all properties enjoy a Two-Storey Single Dwelling Zoning with special character overlay.
67. It makes no sense to retain the special character over front sites and then to allow substantially higher densities immediately "over the back fence" on rear sites. This leads to an obvious detraction from amenities of the protected properties and to fragmentation of what has been intended as a cohesive special character area. This is inconsistent with how rear sites surrounded by special character have been treated elsewhere and must be reconsidered and reversed.
68. The zoning to the MDRS Zone strip between Marama Avenue and Shipherds Avenue should be changed to Two-Storey Single Dwelling Zone with a special character overlay. These properties are all two-storey single-dwelling rear sites completely surrounded by high quality special character and should be accorded the same recognition as the adjacent front sites.
69. Seventhly, there are three properties fronting Owens Road on the north side immediately adjacent Mountain Road and the already recognised special character area to the north of Owens Road which should be included. These sites are 53, 55 and 57 Owens Road and have previously been recognised as special character, identified on MAP A. It is notable that the property at 57 Owens Rd (known as The Stables) is a recognised heritage house which should be included in special character. The adjacent property at 55 Owens Road has a 6 rating. The property at 53 Owens Road is a newer home with several exterior design elements that are complimentary to surrounding properties including the preservation of mature landscaping; it should not be excluded and fragment the other two high-quality properties.

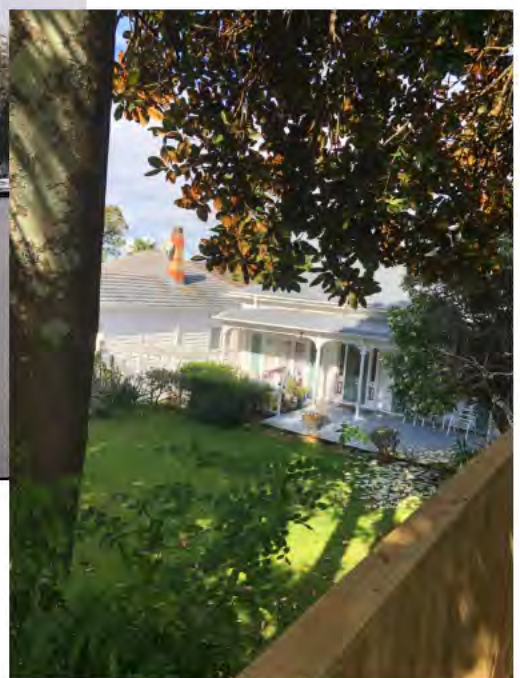
70. Attached are photographs of the properties at 57, 55 and 53 Owens Road. These three properties should be included in the identified special character area to the north of Owens Road. Notably, their inclusion in the North Epsom SCA maintains the overall high rating of 76% in the special character area north of Owens Road.



Properties at 57 and 55 Owens Road (above) ...
... and at 53 Owens Road with 55 in the background (below)



71. Eighthly, there are four properties fronting Owens Road on the south side extending east from Marama Avenue. These sites are 56, 54, 50 and 48 Owens Road and have previously been recognised as special character. identified on MAP A. Particularly notable about these properties is the excellent display of mature landscaping and trees along the road frontage. Property 56 closest to Marama Avenue has a 4 rating, 54 has a 4 rating, 50 a 3 rating, and 48 has a 6 rating. Collectively, these properties are major contributors to the Owens Road streetscape and general special character nature. Importantly, Owens Road frontage is a key linkage between adjacent areas of high-quality special character found east in Mountain Road – Shipherds Avenue – Gillies Avenue west face, and areas found west in the Marama Avenue – Cecil Road – Owens Road and Epsom Avenue areas. Also worthy of note, immediately across the street from these properties is 75 Owens Road – The Pines, a distinctive landmark with mature streetscaping mirroring that found along 56 – 48 Owens Road.
72. Attached is a photograph of 48 Owens Road which is a very high-quality dwelling in this sub-area, and also showing the mature streetscape along the full length of these four properties; there is also an inset of 56 Owens Road which has a 5 rating. These properties should continue to be identified as special character. Their inclusion into the North Epsom SCA to the south of Owens Road maintains the overall high rating of 70% across all the special character area south of Owens Road and strongly contributes to the linkage and cohesiveness of the overall SCA.



Property at 48 Owens Road with the
streetscape of 50, 54 and 56 Owens Road (above),
...and 56 Owens Road dwelling (right)

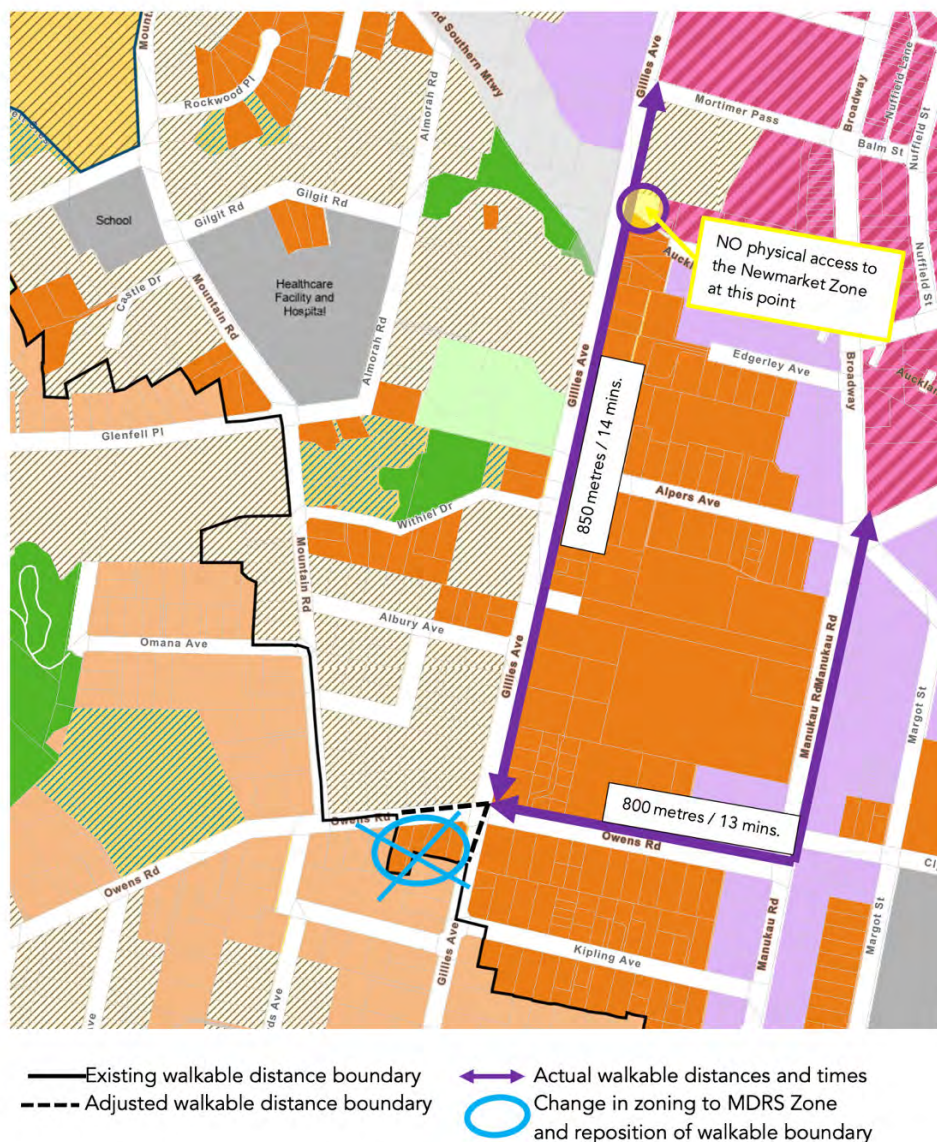
Walkable Distances/Catchments

73. The Society does not accept that the location of the walkable distance boundary affecting the North Epsom area. In particular, our detailed research discussed below **shows that the walkable distance boundary of 800 metres should stop on the eastern side of Gillies Avenue at Owens Road.** Moreover, taking the walkable distance from the outer edge of the Newmarket Metropolitan Centre Zone is artificial and does not reflect real accessibility to shops and services that are only accessible at further distances again.
74. Members of our Society have undertaken actual walking measurements to verify both walking distances and actual elapsed walking times. The measurements were done from the northeast corner of Gillies Avenue and Owens Road. This was done making use of two iWatch chronometers with distance functions that rely on GPS coordinates as well as using a stopwatch to measure elapsed time. Two iWatch devices were used to cross-check findings; the results were the same. The outcome showed:
- (a) Walking along Gillies Avenue :
 - 850 metres – 14 minutes walking to Mortimer Pass being the start of the Newmarket metropolitan centre zone, but noting this enables no access to any types of shops/services
 - it is another 250 metres down Mortimer Pass – 4 minutes walking, to the corner of Broadway where the southern entry to the Westfield Centre is located
 - (b) Walking down Owens Road to Manukau Road and then along Manukau Road to the far side of Great South Road being the start of the Newmarket metropolitan centre zone, but noting this enables no access to any shops/services
 - 800 metres – 13 minutes walking to Manukau Rd/Great South Road/Alpers Ave being the closest edge to the Newmarket metropolitan centre but noting this only provides access to car sales yards
 - it is another 250 metres along Broadway to Mahuru Street just beyond the motorway flyover – 4 minutes walking, before shops and services begin.
75. Our research demonstrates that more detailed work is needed to reassess walking distances and the current location of the walkable distance boundary should be moved to reflect real walking distances and times.

In particular, our research confirms that taking the northeast corner of Gillies Avenue/Owens Road as a reference point, this position is at the extreme edge of a defined walkable catchment in terms of distance and it is well outside this catchment in terms of walking time because it is 850/800 metres and 14/13 minutes walking time to the nearest metropolitan centre being Newmarket depending on the route taken.

- This definition identifies that part of the North Epsom SCA to the north of Owens Road between Mountain Road and Gillies Avenue falls within a walkable boundary.
- While that part of the North Epsom SCA to the south of Owens Road falls outside a walkable boundary.

MAP B – WALKABLE DISTANCES



76. Notably, the above comments assume acceptance of an 800 metres. The feedback survey questionnaire for making submissions included Question 2 – should this distance be closer? Our response is, yes, it should be closer. We say it should be 400 metres as we discuss below.

77. This is because, firstly, the purpose of having such a distance is to try and identify a practical distance that people will actually make use of in everyday life to in-turn focus higher density housing for more people to have access to this convenience. In this regard, it is notable from the fieldwork done by members of the Society that separate from actual travel distances to the closest point of a metropolitan centre, there is the practical issue about whether this actually provides real accessibility to goods and services and transport hubs such as the Newmarket Rail Station situated near the middle of the Newmarket Metropolitan Centre.

In the instance of our measurements between Gillies Avenue/Owens Road and the closest points of the Newmarket metropolitan centre zone, it is clear that reaching the edge of the Newmarket zone has no resemblance to actually being able to access goods/services which require further walking.

78. Secondly is the question of verification that 800 metres is indeed a useful walking distance. In this regard, it is noteworthy that we were able to find some research about practical walking distances. A very useful reference is "Melbourne Victoria, 2010, Pedestrian Access Strategy", which showed:

- **Research was based on an actual pedestrian walkers survey**
- **The outcome was that less than 400 metres is ideal, and that this distance accounted for 75% of all pedestrian trips**

An ideal walking distance of 400 metres accounting for a strong majority of actual pedestrian trips surveyed is far short of 800 metres.

79. **We believe that better research is needed to actually verify what distance is practical and realistic to pedestrian movement, and also that any distance factor ultimately confirmed needs to have flexible interpretation to ensure that it actually provides real access to goods and services in a centre in the context of providing practical value.**

Terrace House and Apartment Building Zone - Modified on properties outside a walkable catchment as applied to a small pocket of just 5 properties on the southwest corner of Gillies Avenue/Owens Road intersection

80. In respect of the walking distances and identified walking catchment, it is very appropriate that the boundary of Gillies Avenue in the general vicinity of Owens Road is recognised as a significant demarcation between zones, where the higher density Terrace House and Apartment Building Zone - Modified can apply to properties on the east of Gillies Avenue (being within the walkable catchment criteria) and lower density zones should apply to the west side of Gillies Avenue (being outside a walkable catchment).

81. Bearing in mind the above information about walkable distances and catchments and the Society's submission to relocate the walkable distance boundary in this area, we note that there is a small area of land at the southwest corner of Gillies Avenue/Owens Road intersection that has a proposed Terrace House and Apartment Building Zone [the location is identified on MAP B above, in the blue circle].
82. This zoning proposal covers only 5 sites with a high-density zoning and it is inappropriate in this location for several reasons:
- the land is outside a defined walkable catchment and does not justify a high-density zoning;
 - Gillies Avenue as an arterial road is a very good reference point for zone boundaries because it sets "clearly identifiable and defensible boundaries" rather than arbitrary boundaries placed around individual properties;
 - there already exists well-defined differences in existing development standards between the east side of Gillies Avenue (already higher density residential) vs. the west side (having a consistent presence of lower density residential and special character); this fact was noted as significant in the Environment Court decision in paragraphs 186 and 187;
 - the proposed Terrace House and Apartment Building Zone would be directly across the street from a high-quality special character area with a Two-Storey Single Dwelling Zone (the North Epsom SCA north of Owens Road); this immediate area has an overall special character rating of 76% for properties with 6 or 5 ratings;
 - the proposed Terrace House and Apartment Building Zone would also be in very close proximity to special character properties just to the south running along the west side of Gillies Avenue (explained in para.53 to 59 in the text above);
 - the corner of Gillies Avenue/Owens Road is one of the primary "gateways" into an identifiable special character area which is the North Epsom SCA;
 - it is poor planning practice to jump a major land feature like the Gillies Avenue arterial road and insert a very small area of land with a zoning completely contrary to that which immediately surrounds it.
83. For all the above reasons, the indicative zoning of Terrace House and Apartment Building Zone on the southwest corner of Gillies Avenue/Owens Road intersection should be re-assessed and treated as an MDRS Zone.

Important Objectives, Policies and Rules to be included in New Residential Zone Provisions and also in Special Character Area Provisions

84. During Council's webinars on the proposed changes, the public was invited to make comment on matters of objectives, policies and rules. While Council is still working out many of the development controls in the new zones, in our opinion there are some big-picture matters which are essential to be maintained and carried over into the new zones particularly as this relates to non-residential/commercial activities in residential zones.

Non-residential activities in residential zones

85. Particularly important are matters relating to non-residential activities in the new Two-Storey Single Dwelling Zone (previously the Single House Zone (SHZ)), and in the MDRS Zone (previously the Mixed Housing Suburban Zone (MHS) and the Mixed Housing Urban Zone (MHU)).
86. All these zones are still distinctly lower-density, even with new changes, compared to the Terrace House and Apartment Building Zone. As such, protection of a lower density residential living environment is essential and an important part of this is the control of commercial activities intruding into residential areas.
87. With reference to existing provisions in the AUP, we believe the following are **IMPORTANT MATTERS TO BE RETAINED AND CARRIED FORWARD** into new residential zone provisions. These include:

FIRSTLY, at the big-picture level, the contradiction between non-residential and residential activities is clearly respected in the AUP, where at Chapter A – Introduction are found these key points :

- (a) At A1.1, about the purpose of the Plan :
 - *It provides the regulatory framework to help make Auckland a quality place to live, attractive to people and businesses, and a place where environmental standards are respected and upheld.*
- (b) At A1.6.4, about zones :
 - *Zones manage the way in which areas of land... are to be used, developed or protected. The spatial application of zones generally identifies where similar uses and activities are anticipated.*

SECONDLY, in the RPS at section B2 about urban growth, is found Policy 2.4.2(10)

Residential neighbourhood and character

- (10) *Require non-residential activities to be of a scale and form that are in keeping with the existing and planned built character of the area.*

THIRDLY, in the district plan provisions giving effect to the RPS :

- (i) In the Residential - Single House Zone (SHZ)
 - H3.2 – Objectives states:

“(4) Non-residential activities provide for the community’s social, economic and cultural wellbeing, while being in keeping with the scale and intensity of development anticipated by the zone so as to contribute to the amenity of the neighbourhood.”
 - H3.3 – Policies at (7) are relevant

“(7) Provide for non-residential activities that:

- H3.4.1 – Activity Table includes under Commerce items (A16) to (A20), and also under Community items (A21) to (A29), include a list of specific activities and size limits to such activities.
- (ii) In the Residential – Mixed Housing Suburban Zone (MHS)
- H4.2 – Objectives at (4),
 - and also at H4.3 - Policies at (9)
 - and also at H4.4.1- Activity Table at Commerce (A15) to (A17), and at Community (A18) to (A26)
- ... these are largely the same as found in the SHZ, explained above
- (iii) In the Residential – Mixed Housing Urban Zone (MHU)
- H5.2 – Objectives at (4),
 - and also at H5.3 - Policies at (8)
 - and also at H5.4.1- Activity Table at Commerce (A15) to (A17), and also at Community (A18) to (A26)
- ... these are largely the same as found in the SHZ, as explained above

88. Overall, it is notable that the key provisions covering non-residential commercial activities are the same in all of the existing lower density residential zones. These provisions confirm that non-residential activities are to be very limited in type and size, intended to serve a local community (not a citywide catchment), and should be in keeping with the scale of development anticipated by the zone so as to contribute to the amenity of the neighbourhood.

89. At no time has there been any suggestion of large-scale commercial activities being suitable in these residential zones, and this is for good planning reasons:

- zones generally identify **where similar uses and activities** are anticipated
- environmental standards for residential zones are not the same as those standards in commercial/business areas, and these differences need to be respected and upheld.

90. **Therefore, the same existing restrictive provisions for non-residential activities should be incorporated into the new residential zones of the Two-Storey Single Dwelling Zone and the MDRS Zone so as to maintain the amenity of neighbourhoods.**

Provisions in Special Character Areas

91. At the very outset of the RPS, under Issue 3 – built heritage and character, is section B5.3.1 – Special Character – Objectives

- (2) *The character and amenity values of identified special character areas **are** maintained and enhanced.*

92. Also in the RPS, under Issue 2 – urban growth and form, is Policy B2.4.2(5) which states :

(5) **“AVOID** intensification in areas :

(a) where there are natural and physical resources that have been scheduled in the Unitary Plan in relation to ... historic heritage or special character.”

93. Both statements in the RPS are an “instruction” not an option.... “special character areas ARE maintained and enhanced”, and “AVOID intensification in...historic heritage or special character”. The Environment Court decision is very clear about the directive nature that these objectives and policies must have in any assessment work relating to residential special character areas [paragraph 42].

94. Other relevant policies rules include B5.3.2 – Special Character – Policies

(4) *Maintain and enhance the character and amenity values of identified special character areas by all of the following:*

(a) ... about new buildings

(b) ... about restricting demolition

(c) ... about relationships between the built form and streetscape and landscape

(d) ... about avoiding, remedying or mitigating cumulative effects

95. The objectives and policies to special character areas must be retained in their very strong directive language. Our recent experience in the Environment Court has shown how important these are and that they are meaningful in terms of achieving the objective of maintaining and enhancing special character areas.

96. **The same restrictive provisions and directive language should be carried forward in any amendments to the RPS about development in special character areas.**

CONCLUSIONS

97. The Society supports the Council’s decision to treat special character as a qualifying matter for the purposes of the changes required by the recent changes to the RMA and the NPS:UD. It submits that a reassessment of those changes should be made and that the location and extent of the SCAO and the equivalent of the current underlying Residential – Single House Zone should be retained in the North Epsom area identified in this submission.

98. The main reasons for this are the existence of significant errors or anomalies in the assessment to date and the impact of the attached decision of the Environment Court which bears importantly on special character considerations in this area and which was not available when the assessment was made.

99. In terms of evaluating the proposed changes, special character must be considered a qualifying matter that influences residential building height and density. It is quite clear through the Environment Court decision noting that the RPS objective B5.3.1(2) "*the character and amenity values of identified special character areas **ARE** maintained and enhanced*", and also the RPS Policy B2.4.2(5) to "**AVOID** intensification in areas (a) where there are... historic heritage or special character" are prepared in directive language that should have predominant status in decision making about these areas.
100. An overly stringent or arbitrary approach should not be adopted to the assessment work given the importance of these objectives and policies and the importance of avoiding needless fragmentation through a site- by- site analysis which is too rigid and amplifies fragmentation rather than encouraging cohesive and integrated special character areas that help protect an already very small special character estate.
101. An overriding consideration must be that special character areas are a scarcity. They comprise an extremely small part of all residential areas around the city, and offer de minimus potential in terms of creating new dwellings and adding to city intensification. Additionally, special character areas are a finite, non-renewable and declining resource and its "maintenance and enhancement" is not helped by indiscriminate removal of special character status.
102. In support of this, we believe it is very important that positive recognition be given to "character supporting properties" that demonstrate the depth and breadth of special character features found in an area. Accordingly, Council's methodology should be amended to specifically recognise gradings 3 and 4 (character supporting) be taken into account in an overall grading of an area besides simply 5 and 6 gradings. This is consistent with Council's approach to assessing special character commercial areas.
103. The Environment Court in its recent decision concerning the North Epsom SCA held that more intense development within the area would be strongly discordant with the AUP's Regional Policy Statement's need to "maintain and enhance" this special character area as required under Objective B5.3.1 (2) [paragraph 149]. In other words any fragmentation of the area resulting in higher buildings of a more intense scale than permitted in the special character area with no requirement that new development be in line with the objectives and policies of D18.3 will result in the loss of the very attributes that make up the special character area [paragraph 136 - 140]. The Court went on to state specifically that " ... almost all the attributes currently offered would be significantly lost. In summary, there would be a significant increase in building coverage, subdivision patterns, large lot sizes, and generally a considerable change in the built form that would be visibly dominant and change the character of the sites...." [paragraph 140].

104. The Society believes it is important that the North Epsom SCA, as defined by the Society, be identified as a cohesive and integrated area displaying a high level of special character features. This is a large area within well-defined boundaries, recognising a well-known special character area, and making it more defensible from sporadic demolition and intensification.
105. The significant anomalies in the present assessment base for special character properties within the North Epsom SCA justify a reassessment and comprehensive detailed are found at paragraphs 49-72 above.
106. It is the Society's submission that the walkable distance boundary needs to be reassessed in the area of the Gillies Avenue/Owens Road intersection. Maximum walkable distances from the Newmarket Metropolitan Centre Zone fall to the north and east of this intersection and the boundary should more logically follow along identifiable roads of Mountain Road and Owens Road and not carve out individual properties. This is justified by the actual walking distances and times we have identified. This boundary amendment is simpler for administration and public understanding and provides a clear demarcation in expected development capacity. Our submission in this respect assumes that the 800 metre distance adopted at present is appropriate. Our suggestion based on the research referred to at paragraph 78 is that it should be closer to 400 metres. An actual survey of people's preferences could be useful to obtain more accurate data about what is reasonable and practical as has happened overseas.
107. There are several standards in the existing AUP regarding commercial and community activities permitted in residential areas that should be retained and carried forward into the new residential zones; this includes RPS issues as well as district plan objectives, policies and rules. These are detailed at paragraphs 87-90 above.
108. The RPS objectives and policies regarding special character areas should be retained and carried forward including their very strong directive language.
109. Intensification is best directed to the CBD and metropolitan centres rather than the fragmentation and ultimate destruction of irreplaceable areas of special character.

We thank you for your careful attention to the information provided in this submission. We would also appreciate the opportunity to meet with Council Officers to clarify details.

Yours sincerely,

Hon. Tony Randerson, QC
President

Eden Epsom Residential Protection Society Inc.

Robert Speer, M.A. Geography / M.Planning Practice
Vice President

Appendices

1. Copy of Environment Decision - Decision [2022] NZ EnvC 060
2. Copies of evidence -
 - H Lutz, heritage architect
 - J Salmond, heritage architect
 - B Gilbert, landscape architect

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision [2022] NZEnvC 060

IN THE MATTER OF

an appeal under clause 14(1) of Schedule
1 of the Resource Management Act
1991 against a decision on Proposed
Plan Change 21 to the Auckland Unitary
Plan

BETWEEN

EDEN-EPSOM RESIDENTIAL
PROTECTION SOCIETY
INCORPORATED

(ENV-2020-AKL-079)

Appellant

AND

AUCKLAND COUNCIL

Respondent

AND

SOUTHERN CROSS HOSPITALS
LIMITED

Requestor

AND

KAINGA ORA – HOMES AND
COMMUNITIES

s274 Party

AND

TUPUNA MAUNGA O TAMAKI
MAKĀURAU AUTHORITY

s274 Party

Court: Alternate Environment Judge L J Newhook
Environment Commissioner R M Bartlett
Environment Commissioner J Baines

Hearing: 9, 10, 11 June 2021, written submissions filed 25 June 2021
Last event: Advice to parties as to general outcome, 17 December 2021

Appearances: M Savage and R Enright for the Appellant
B Tree, S de Groot and C Woodward for the Requestor



D Hartley for Auckland Council
C Kirman for Kāinga Ora

Date of Decision: 13 April 2022

Date of Issue: 13 April 2022

DECISION OF THE ENVIRONMENT COURT ON PROPOSED PLAN CHANGE

A: Request for plan change refused.

B: Costs reserved

REASONS

Introduction

[1] The Society had appealed a decision of a majority of independent hearing commissioners approving Proposed Private Plan Change 21 (**PPC21**) to the Auckland Unitary Plan operative in part (**AUP**). The plan change was to enable expansion and intensification of development of an existing private hospital at 3 Brightside Road Epsom, including onto three adjoining residential lots on Gillies Avenue purchased by the requestor Southern Cross Hospitals Limited.

[2] At the start of the substantive appeal hearing on 8 June 2021, the Court placed five core questions before the parties, the first two of which it advised should be the subject of submissions by the parties at the outset, and an urgent decision of the Court, against the possibility such could inform the relevance (or not) of some topics in the substantive enquiry.

[3] The two urgent questions orally advised by the Court were:

- a) Does the National Policy Statement-Urban Development (**NPS-UD**) apply yet? It is operative, but does it drive PPC21; are we required to move ahead of decision-making by the Council on implementation of directive and urgent policies?

b) If it does drive PPC21 how and in what ways would it drive it?

[4] There was a third urgent question that would have called for resolution if the first two questions had been answered affirmatively. In the event we did not need to address the third question.

[5] The NPS-UD had been gazetted on 20 July 2020 and became operative on 20 August. It effectively replaced the 2016 NPS on Urban Design Capacity.

[6] In an oral decision delivered on 9 June 2021, the second day of the hearing¹ we held that we were not required to give effect in this case to objectives and policies in the NPS-UD not requiring “planning decisions” at this time.

[7] The two remaining core questions about the extent of directiveness (or otherwise) of policies in the Regional Policy Statement, and whether alternatives required to be addressed, will be discussed in the section that follows our record of the facts in the case.

Agreed facts and plan provisions

[8] This proved to be a case in which the volumes of evidence and submissions, and extent of repetition, was wildly excessive. The point was reached close to the hearing where we threatened to impose page limits on any further materials and time limits on cross-examination. The parties had exchanged in excess of 40 statements of evidence and were complaining that the five days that the Court had allocated for the hearing would be insufficient.²

[9] One of the things undertaken by direction of the Court just prior to the hearing, was the production of a statement of agreed facts.

[10] The following is a short summary of that seven-page document. The statement

¹ Decision [2021] NZEnvC 82 (9 June 2021).

² In the event, with close supervision from the Court, the hearing was completed in three days plus time taken for our site and locality inspection.

itself is attached to this decision as **Appendix A**.

Description of Private Plan Change 21

[11] The requestor made the request for a private plan change to the Auckland unitary Plan on 1 February 2019 to enable the expansion of its existing Brightside Hospital at 3 Brightside Road onto 149, 151 and 153 Gillies Avenue, Epsom (together, “**the site**”). The request was accepted for processing by Auckland Council on 5 March 2019. It was approved with modifications by a majority of independent hearing commissioners on 28 May 2020.

[12] The objective of the PPC was to enable efficient operation and expansion of the existing hospital, while managing the effects on the adjacent residential amenity. It would replace the residential zonings currently applying across the site with the Special Purpose Healthcare Facility and Hospital Zone (**HFH Zone**) with some site-specific modifications.

[13] The PPC also sought to remove the Special Character – Residential Isthmus B Overlay (**SCA Overlay** or **SCAO**) from the three Gillies Avenue properties.

[14] Various activity tables and rules concerning activity status, notification, building heights, outline plans, matters of control and assessment criteria were described.

Description of the site

[15] There was agreement that the site is approximately 9,273m² in area with frontage to both Brightside Road and Gillies Avenue (the latter a secondary regional arterial) in Epsom. The site comprises the four properties previously described. The 3 Brightside Road property was the subject of an Environment Court decision number A23/97 enabling development of the existing Brightside Hospital, completed in 2000. This was done as a discretionary activity in the Residential 2a Zone in the Council’s legacy District Plan. A hospital use has been accommodated on the site since 1922. (We comment on the scale of that later in the decision).

[16] 149 Gillies Avenue contains a boarding house with building and garden modified [from original].

[17] The properties at 151 and 153 Gillies Avenue contain double and single storey residential buildings respectively, situated somewhat back from Gillies Avenue in well landscaped gardens.

[18] Details of vegetation across the four properties was provided.

Current AUP zoning and overlays and features applicable to this site

[19] 3 Brightside Road is currently within the Residential – Mixed Housing Suburban Zone (**MHS Zone**) under the AUP.

[20] The sites at 149, 151 and 153 Gillies Avenue are located within the Residential – Single House Zone (**SH Zone**).

[21] These zones contain certain standards relevant to permitted built form on this site, which are generally quite modest height, coverage, yard and recession plane controls.

[22] The Gillies Avenue properties are subject to the SCA Overlay, specifically the “B1” subset, relating to the buildings, vegetation and landscape on the three sites; applying a demolition removal and relocation control to 151 and 153 Gillies Avenue; offering a character statement for the overlay; and setting permitted built form standards, again being relatively modest in relating to building height, coverage, yards and recession planes.

[23] Two notable trees on 3 Brightside Road are protected in the AUP.

[24] The sites are variously subject to other overlays in the AUP, two relating to volcanic view shafts setting height limits, and one relating to a quality-sensitive aquifer management under the entire site.

Surrounding environment

[25] The parties attached a map and map key showing the zoning and the SCA Overlay in the AUP, for the site and its surrounding environment. This offers significant information and is attached to this decision as **Appendix B**.

[26] As to adjacent zoning, the site is located within a block of residential properties surrounded by Owens Road to the north, Brightside Road to the west and south and Gillies Avenue to the east. The properties adjacent to the site are predominantly zoned MHS.

[27] Properties in the surrounding area along Gillies Avenue and Owens Road are a mix of SH with a SCA Overlay, MHS, and some Mixed Housing Urban (**MHU**). There are also areas of Terrace Housing and Apartment Building (**THAB**) Zone located within 450m of the site.

[28] The SCA Overlay is mapped on **Appendix B** and the site itself is outlined blue.

Evidence about Southern Cross and its proposal

[29] Before recording information about the requestor and its proposal, we need to say something about the case materials overall. While we were eventually assisted by the statement of agreed facts (and, as will be seen later, the three joint witness statements), there remained a huge volume of evidence from all parties; particularly the appellant and Southern Cross. We infer that the sheer volumes were driven by the high importance placed on the outcome of these proceedings by those two parties, but they have hindered our task and contributed to the delay in releasing this decision because we have felt the need to cover all ground in order to sift out important and helpful material from the overall detailed and repetitive mass.

[30] The Chief of Property & Development for Southern Cross, Mr CJ Bennett, filed evidence-in-chief and rebuttal. He described the background to Southern Cross,

demand on its existing hospitals, its response to that, the planning framework for healthcare facilities, expansion of Brightside, benefits of the PPC and expansion of Brightside, and its consultation efforts. His rebuttal offered a brief response to some local evidence.

[31] Mr R W Hennin is an experienced company director and executive and director of nib NZ Limited, the country's second-largest health insurer. He offered succinct evidence about healthcare and hospital care in NZ, limitations and shortages of the healthcare system, trends in healthcare insurance, the role of private hospitals and the benefits and importance of them, and consequent benefits of the PPC.

[32] Mr L E Williams is an associate director of EY, which consultancy has provided hospital growth analysis advice to Southern Cross, and evidence on the topic to the council and to us. He discussed population demographics and trends relevant to the health sector, issues faced by the health sector, potential shortcomings of the health sector to meet demand, and anticipated benefits from expanding Brightside Hospital.

[33] These statements made for high-level compelling reading, and were not seriously challenged in cross-examination, except in the area of cost-benefits, alternatives and other options. Mr Bennett and Mr Williams were (we initially thought surprisingly) unable to offer much about these matters. Indeed, cost-benefit was expressly not in Mr Williams's brief.

[34] There can be no doubt about pressures on the health system, and the part that private hospitals need to play in that, especially with elective surgery. We can readily understand Southern Cross's desire to expand its existing Brightside infrastructure. Some of that may play into the s32 analysis (and one may wonder where inadequacy of cost-benefit analysis leaves that, which we discuss later). But the issues surrounding the PPC quickly become focussed on the site and the locality in which it is found. This was becoming apparent to us when we finished pre-reading all the evidence, and put the five core questions to the parties.

The remaining two core questions put by the Court

[35] The remaining two questions of the five that were put to the Court at the start of the hearing, were questions 4 and 5.

Question 4

[36] Question 4 was:

Extent to which PC21 gives effect to the RPS, in light of relevant directive policies and the reconciliation exercise anticipated by *King Salmon*; whether there are directive policies that take precedence in relation to PC21.

[37] Regrettably, the parties tended to “cherry-pick” policies from among chapters B2 (Urban Growth and Form), B3 (Infrastructure, Transport and Energy), B4 (Natural Heritage) and B5 (Historic Heritage and Special Character).

[38] There was however some commonality of approach to what the Supreme Court directed in *King Salmon*³, where in summary it can be said that it held that objectives and policies can be expressed in deliberately different ways, which determines the degree of flexibility decision makers have in applying them;⁴ that policies expressed in more directive terms will carry greater weight than those expressed in less directive terms⁵ where policies “pull in different directions”; close attention should be paid to the way in which the policies are expressed; if conflict remains after this analysis has been undertaken, an analysis of the policy document informed by s5 RMA could conclude that one policy prevails over another.⁶ In addition, where there is invalidity, incompleteness or uncertainty in relation to the statutory planning instrument being applied, recourse to Part 2 RMA will be appropriate.⁷

³ *Environmental Defence Society Inc v New Zealand King Salmon* [2014] NZSC 38, [2014] NZLR 593.

⁴ At paragraph [127].

⁵ At paragraph [129].

⁶ At paragraph [130].

⁷ At paragraphs [85] and [88].

[39] Counsel for the Council helpfully noted that the High Court held in 2017⁸ that the Supreme Court's observations in *King Salmon* in relation to the New Zealand Coastal Policy Statement are equally applicable to documents lower in the planning hierarchy.

[40] Counsel for the requestor pointed to the planners' joint witness statement where it was submitted that the experts had agreed that when taken in the round, the plan change is not inconsistent with the relevant objectives and policies and will specifically give effect to B2.8 relating to social facilities; and that the plan change would clearly give effect to the provisions of B2.

[41] We are concerned that those submissions somewhat sidestep the description of the task set out by the Supreme Court.

[42] Counsel for the appellant submitted that two policies in B2 contain strongly directive language, each in B2.4.2 as follows:

(5) Avoid intensification in areas:

(a) where there are natural and physical resources that have been scheduled in the Unitary Plan in relation to... special character... where such intensification is inconsistent with the protection of the scheduled natural or physical resources...

(10) Require non-residential activities of a scale and form that are in keeping with the existing and planned built character of the area.

[43] Counsel for the Council correctly pointed out that Policy B2.4.2(5) relates to residential intensification and not the provision of social infrastructure such as a hospital. That is clear because the heading above sub-clauses (1) to (7) is just that: "residential intensification".

[44] However, sub-clause (10) quoted above comes under another heading "residential neighbourhood and character" and unlike sub-clauses (1) to (7), squarely addresses that non-residential activities [are] to be of a scale and form that are in keeping with the existing and planned built character of the area. We note that the

⁸ *Royal Forest & Bird Protection Society of New Zealand Inc v Bay of Plenty Regional Council* [2017] NZHC 3080 at [98].

word “require” is directive, the question then being “to what degree?”. We note that the Oxford English Dictionary Online defines the verb *require* as being “*to demand (a thing) authoritatively or as a right; to demand, claim, or insist on having (something) from or of someone...*”.

[45] We accordingly find Policy B2.4.2(10) to be framed in strong directive language. It should therefore be accorded quite significant weight over other policies that are framed less directly or more flexibly.

[46] Counsel for the appellant submitted that there are directive provisions in B5.3.1, first an objective (2):

(2) The character and amenity values of identified special character areas are maintained and enhanced.

[47] That is followed by policies B5.3.2(1) and (4) which employ the same language about special character areas and the character and amenity values of them, and involve identifying such areas (1), and a statement of four ways to maintain and enhance them (4).

[48] Counsel for the requestor submitted that B5.3 could not be interpreted as directive or prohibiting development and pointed to the evidence of certain of the planners to the effect that maintenance of identified trees and stone walls would mitigate special character effects and that the removal of three sites from the SCA Overlay and demolition of three houses on Gillies Avenue would not impact on the overall integrity of the overlay.

[49] Counsel for the Council submitted that this objective and these policies concern the maintenance and enhancement of character and amenity values of special character areas and not the retention of the areas. That to us seems to potentially be a circular and self-defeating argument. If a special character area is sought to be removed (as proposed in the plan change) then the evidence must be examined to see if it is being maintained and enhanced. The bar will be likely very high.

[50] Counsel for the Council also submitted that the provisions of PC21 anticipate

the retention of the most visible special character features, stone walls and trees, and that the provisions of the plan change are consistent with relevant provisions of B5.3 of the RPS and provide a mechanism for the provisions of B5.3 to be given effect to. That must be checked against the evidence, but as we have just said, the bar will likely be high.

[51] We find the words in the objective and the two policies to be strongly directive and they should have predominance in the analysis of the policy provisions of the RPS. We stop short however of holding that they amount to a prohibition.

[52] Like the submission for the requestor on the point, counsel raised mixed questions of fact, expert opinion and law. The point before us just at this stage of our decision is simply about the strength of the operative words in the relevant policies. We will come later in this decision to analysis of facts and expert opinions in applying provisions of the RPS and the plan.

[53] Submissions in reply from Southern Cross on 25 June 2021 zeroed in on some other AUP provisions which counsel submitted were strongly directive, concerning establishment and intensification of social facilities. Policies B2.8.2(1), (2), (3) and (4) were set out and discussed in the submission. The first three commenced with the word “**enable**”, and the word appears in the body of the fourth.

[54] Counsel submitted that “enable” is a strong direction to do something, in the same vein as “avoid”, being a strong direction not to do something. We disagree. Taking the pertinent Oxford English Dictionary Online definition of “...*make it possible or easy [for something to happen]*” and “*authorize, sanction, empower; give legal power or licence to*”, we see more “support” (even “strong support”), but not “direction” let alone “strong direction”.

[55] The way in which “enable” is used in the four policies is also we find, contextual. The phrase “establish in appropriate locations” appears in (1) and (4), and the other two are high-level matters no doubt of importance, but none of the four can be interpreted to **direct** establishment or intensification of social facilities on any given site. In contrast, the directions we have found in B2.4.2(10) and B5.3.1(2) are strongly

directive in any given relevant place.

Section 32 RMA.

[56] Before tackling the issues raised in our core Question 5 about alternatives, we deal with matters under s32 because the main matter in contention there is, in our view, whether examination is required of “other reasonably practicable options” (s32(1)(b)(i)).

[57] The planning experts achieved a measure of agreement about matters under s32 in preparing their JWS. They took matters in a slightly different order than the section provides, but we consider there may have been some logic in the way they tackled matters in that somewhat convoluted provision.

[58] They first asked what are the key benefits and costs of the environmental, economic, social and cultural effects of implementation of PPC21 provisions, including opportunities for economic growth and employment?

[59] They agreed that there is a need for healthcare and hospital facilities as enabled here; and that the issue in contention is whether the proposed location for the present change is appropriate given the SCAO on part of the site.

[60] They further agreed that if there was no SCAO, the Special Purpose Zone would be an appropriate way to achieve the purpose of the RMA. Therefore, the difference in opinion between the experts was the relative weight given to the SCAO and the hospital activities on the site⁹.

[61] All experts acknowledged there is a potential cost in terms of the loss of the special character values associated with the ability to demolish the two buildings at 151 and 153 Gillies Avenue.

[62] They generally considered that there would be potential for “regional-scale” or

⁹ Our findings under core Question 4 are apposite, indeed important on this.

positive benefits through the expansion of the existing hospital, including social, wellbeing and health benefits, and economic and employment benefits. Mr Shaw, Ms Saville and Ms Linzey considered the provisions of PPC21 [as amended] would protect “the most visible special character features of the site”¹⁰. Mr Shaw offered a personal qualification that the positive benefits as described would outweigh the benefits of retaining the special character area and residential zoning¹¹.

[63] In contrast, Mr Putt considered that PPC21, while providing for a positive outcome in increased healthcare facilities in Auckland, the hospital could be located in other localities with similar advantages of centrality and public transport, but the same flexibility is not open to the SCAO because it is specific to the existing special character values that are present¹².

[64] The planners next asked “to what extent is the objective of PPC21 the most appropriate way to achieve the purpose of the RMA. They started answering by referring to the answers just given.

[65] They then recorded that the objective of PPC21 is appropriate, but Mr Putt did not agree that the location proposed is appropriate as per his answers above. The others considered the site appropriate.

[66] The planners next asked “what are the efficiency and effectiveness of the provisions of PPC21 to achieve its objective?”. They agreed that the provisions would be efficient and effective “if the subject site is determined to be appropriate”.

[67] In doing so, they must have been engaged in considering matters under sub-sub-sections (ii) and (iii) of s32 (1)(b). That left us wondering what we should make of matters under sub-sub-section (i), that is by [examining whether the provisions in the proposal are the most appropriate way to achieve the objectives of the proposal] by identifying other reasonably practical options for achieving [them]. We consider

¹⁰ We have made findings against that proposition.

¹¹ We have made findings that effectively rule out such analysis on account of weightings to be accorded RPS objectives and policies.

¹² We have made findings about the comparative fixed versus flexible locational requirements, favouring the fixed in the context of the more directive of the RPS objectives and policies.

those matters as part of our consideration of our core Question 5 below, meantime holding that on the matters actually discussed and recorded in the JWS, and based on our consideration of all witnesses' relevant statements, matters favour the appellant society to this point.

Question 5

[68] This question was whether there is an obligation to consider alternatives to this private plan change request.

[69] We had noted from our pre-hearing reading that the parties were adopting significantly different positions about whether the requestor should have considered alternative sites (and indeed on the facts as to whether it had done so).

[70] The genesis of such arguments seems to be found in the key Supreme Court decision *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*¹³ commencing at paragraph [155].

[71] We note that the version of s32 considered by the Supreme Court was as in force prior to the 2013 Amendment to the Act.

[72] Slightly reframing the relevant question on which leave had been granted to appeal to that Court, it considered the following question:

Was the Board obliged to consider alternative sites when determining a site-specific plan change that is located in, or does not avoid significant adverse effects on, an outstanding natural landscape or feature or outstanding natural character area within the coastal environment?

[73] The Supreme Court held that it did not really need to consider the question, because of its main conclusion that the Board, having found that the proposed salmon farm would have had significant adverse effects on the area's outstanding natural attribute, should have declined King Salmon's application in accordance with policies 13(1)(a) and 15(a) of the NZCPS. However, it nevertheless proceeded to do so, and

¹³ [2014] NZSC 38.

in the process appeared to add qualifications to what initially seemed to be a straightforward answer.

[74] The legislative foundation for consideration was the then section 32, subsections (3)(b) and (4)(a) as follows:

(3) An evaluation must examine –

(a) ...

(b) whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.

(4) For the purposes of the examinations referred to ... an evaluation must take into account –

(a) the benefits and costs of policies, rules or other methods; and ...

[75] The starting point in the analysis was the often quoted, reported decision of the High Court *Brown v Dunedin City Council*¹⁴ which has sometimes been called the orthodox position, finding lack of compulsion to consider alternative sites. The circumstances in that case were that Mr Brown owned some land on the outskirts of Mosgiel that was zoned rural, which he wished to have changed to residential. The Environment Court held against his request. The High Court held that it was wrong for the Environment Court to have been influenced by the potential of alternative sites to accommodate residential expansion because the [then] s 32(1) did not contemplate that such is needed for determination of site-specific proposed plan changes. The High Court held that logically the assessment should be confined to the subject site and that other sites would not be before the Court or be amenable to control by the Court as to their zoning, leading to unrealistic and unfair expectations if alternative sites were required to be in the mix.

[76] There is then reference to a decision of the Full Court of the High Court in *Meridian Energy Limited v Central Otago District Council*¹⁵, where in the resource consent context the Court contrasted the absence of a specific requirement to consider

¹⁴ [2003] NZRMA 420.

¹⁵ [2011] 1 NZLR 482.

alternatives with express requirements for such consideration elsewhere in the RMA. That Court accepted that alternatives could be looked at but rejected the proposition that they must be looked at, citing *Brown* with approval.

[77] The Supreme Court¹⁶ agreed with the findings in *Brown* that the RMA does not require consideration of alternative sites as a matter of course and noted the practical difficulties which the Judge identified. It noted also however that the High Court in *Brown* had acknowledged that there may be instances where a consideration of alternative sites was required and suggested a way in which that might be dealt with; also that there may be instances where a decision-maker must consider the possibility of alternative sites when determining a plan change application in relation to an applicant's own land, through RMA mechanisms including requests for further information.

[78] At paragraph [170] the Supreme Court held that the question of when consideration of alternative sites might be necessary, would be determined by the nature and circumstances of the particular site-specific plan change application. An example was given of the presence of important matters in the coastal environment (apposite in *King Salmon*). It seems from paragraph [172] that for the Supreme Court, this outcome was driven as much by the NZCPS as by sound decision-making under s 32.

[79] In their brief submissions filed in answer to the Court's core question 5, counsel for the appellant referred to a recent High Court decision *Tauranga Environmental Protection Society Inc v Tauranga City Council*¹⁷ which we do not find especially helpful because it probably stands on case-specific circumstances. That was a case where an application for resource consents needed to be heavily focussed on particular wording of certain policies in the Bay of Plenty Regional Coastal Environment Plan (**RCEP**) requiring consideration of whether it is "practicable" and "possible" to avoid adverse effects and whether alternative locations are "practical".¹⁸

¹⁶ At [167]-[168].

¹⁷ [2021] NZHC 1201.

¹⁸ At paragraphs [142] to [153].

[80] Counsel for the appellant offered passing acknowledgment that the *Tauranga* case was decided in a different factual matrix, but in some way (unexplained) considered that it had correctly identified “the test in *King Salmon*”. We consider the latter part of the submission to be a rather sweeping assessment, but on closer examination there may be some analogies to the present circumstance of the directiveness of certain RPS objectives and policies.

[81] Counsel for the Council in the present case identified some of the issues that we have traversed as being pertinent to the findings of the Supreme Court in *King Salmon*, particularly noting from paragraphs [170]-[173] that the consideration of alternative sites may be necessary or be determined by the nature and circumstances of the particular site specific plan change application. She submitted that “the short point is that *King Salmon* is not authority for the proposition that consideration of alternative sites is required in every case involving a site-specific plan change”.

[82] She noted that the present plan change involves the use of Southern Cross’s own land; the effects in issue do not relate to s 6 RMA as was the case in *King Salmon*; the objective or purpose of PPC21 is to enable the efficient operation and expansion of the existing hospital while managing the effects on the adjacent residential amenity; and given the framing of the objective or purpose of PPC21, the site is the only location with the feature (the existing hospital) that makes it uniquely suitable for the activity.

[83] These of course raise matters of fact, and the final paragraph of counsel’s submissions noted that there is no expert evidence before the Court to enable any comprehensive consideration of whether an alternative site may in fact be a reasonably practicable alternative.

[84] Counsel for the requestor submitted that the findings in *King Salmon* support the proposition that this is not a case where alternatives are required to be assessed having regard to the nature and circumstances of the application and the reasons advanced in support of it. They noted that Southern Cross owns the land; it already has an existing hospital on the site; the objective of the plan change is to enable efficient operation of the existing hospital and expansion, neither of which she

submitted could be achieved at another location; and there are no s 6 RMA matters in play.

[85] They submitted that while there was no requirement to consider alternatives in this case, Southern Cross has undertaken an “appropriate assessment”.

[86] Before considering the situation under s32 (1)(b) from the 2013 amendment, it is instructive to consider some other passages from the Supreme Court decision in *King Salmon*. In paragraphs [166] to [171], the High Court’s findings in *Brown* were effectively approved and to a degree elaborated upon. It held that there may be instances where a decision maker must consider the possibility of alternative sites when determining an application on an applicant’s own land. An example was given of using the “further information request”, referring to RMA schedule 1, clause 23(1)(c) including its words “*any possible alternatives to the request*”.

[87] We do not interpret that as being limited to situations in which that provision has been employed. The Court simply took it as an indication that alternatives could be relevant in private plan change requests for an applicant’s own land.

[88] Then at paragraph [170] the Court answered the broad question of when consideration of alternative sites may be necessary, holding “This will be determined by the nature and circumstances of the particular site-specific plan change application.

[89] We hold that our findings under core Question 4 can and indeed should be considered relevant “nature and circumstances”.

[90] We find that since the 2013 Amendment to the Act (post *King Salmon*), the words of [now] sub-sub-section (1)(b)(i) have sharpened this possible focus.

[91] In *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council*¹⁹, the Environment Court held that seven listed effects-based matters (“among other things”) could trigger an appropriateness for identification of reasonably

¹⁹ [2017] NZEnvC 51

practical options. We add that strongly directive provisions of higher order instruments (in this case the RPS), may be considered as well.

[92] In an earlier section of this decision “Evidence about Southern Cross and its proposal”, we found evidence about cost-benefits, alternatives and other options distinctly lacking. Indeed, the professional witness from whom one might perhaps have expected such evidence, Mr Williams (of EY), told us they were not in his brief.

[93] In this aspect of s32, we find the requestor has not measured up. We must have “particular regard” to matters of evaluation under the section (s32(5), s74(1)(e) and s290(1)), and our findings here, along with the others in our section on other aspects of s32 above, comprise our findings for the purposes of s32AA.

Special character

[94] In view of our findings about the wording of RPS Objective B5.3(2), that the character and amenity values of identified special *character areas are maintained and enhanced*, as being strongly directive, we proceed next to consider the evidence about special character.

[95] Two months prior to the hearing, three witnesses who had exchanged evidence about special character, undertook expert witness conferencing and produced a joint witness statement. They were John Brown and Carolyn Hill for Southern Cross and Jeremy Salmond for the appellants’ society²⁰.

[96] We have already summarised the agreed statement of facts and appended the statement itself to this decision.

[97] We next consider the joint witness statement - special character. We summarise

²⁰ Mr Salmond subsequently became unavailable to participate in the hearing, and his place was taken by Ms Heike Lutz, who generally agreed with and adopted evidence of Mr Salmond, but who exchanged her own statement of evidence about three weeks before the hearing. She listed for us the statements of evidence that she had read and considered, and other documents created for the hearing, importantly the Agreed Statement of Facts and the joint witness statement on special character.

it here.

[98] Schedule 15 to the AUP is extensive and sets out provisions for special character, inclusive of statements and maps. There is a relevant plan for the Epsom North area at Schedule 15.1.7.3.1(1) at p163. The overlaying type is Isthmus B which includes almost no properties on the east side of Gillies Avenue but a considerable number on the west side, including 149, 151 and 153 Gillies Avenue. 151 and 153, along with some other properties on the west side, to the south of Brightside Road, are mapped as having demolition control limitations applied.

[99] The experts agreed that the qualities of the SCA Overlay are accurately summarised in the Schedule, and agreed that the overlay:

- (a) Is a demonstration of an early period of residential development in Auckland from the late 19th and early 20th century;
- (b) Illustrates patterns of residential development that occurred as transport networks improved;
- (c) Is characterised by low housing densities, larger sections, bigger homes set well back on the lots, and wide streets;
- (d) Is characterised by a range of housing styles from the period above;
- (e) Is characterised by an abundance of planting, including private gardens and street tree planting;
- (f) Demonstrates the contributing factors to the Isthmus B Overlay that include the build form and landscaping components; this is important because both buildings and landscape are integral to the defined character.²¹

[100] The experts analysed how change to established character is provided for under existing SCAO provisions, and agreed:

²¹ The experts noted that the difference with Overlay Isthmus A is the latter characterised by regular and consistent lot sizes with buildings set close to the street and limited landscaping and setbacks.

- (a) Some level of change is anticipated, noting that properties with demolition controls have greater constraints than those without;
- (b) Demolition or removal of a building from a site with the demolition control is a restricted discretionary activity with defined assessment criteria and matters of discretion;
- (c) The development of a new building on a site is a restricted discretionary activity with defined assessment criteria and matters of discretion; and
- (d) Any development above the heights specified (generally 8 metres) is a restricted discretionary activity which they understood to control potential effects arising from a change of scale or bulk.

[101] In contrast, the experts examined how change to established character would be provided for under the provisions of the requested PPC21, and agreed that:

- (a) The specific special character provisions are removed, and changes made to the built form and site activities as anticipated;
- (b) Demolition is a permitted activity;
- (c) Buildings, alterations and additions are generally permitted activities within certain footprint and yard limitations;
- (d) New development over the height specified in H25.6.1.2 (either 12 metres or 16 metres) is a restricted discretionary activity; and
- (e) Landscape elements identified in an outline plan must be retained in accordance with H25.6.7.

[102] The experts considered that there is a link between “special character” and “amenity” and that they cannot be considered in isolation from each other.

[103] The experts agreed that the values and qualities of the Gillies Avenue properties’ contribution to special character was:

- (a) The two houses at 151 and 153 Gillies Avenue contribute to special character because they are examples of period houses with clear architectural merit;
- (b) The house at 149 Gillies Avenue generally lacks architectural qualities and does not contribute strongly to special character;
- (c) On all three properties, mature trees, gardens and vegetation contribute to special character; and
- (d) On all three properties, basalt stone walls contribute to special character.

[104] Mr Brown and Ms Hill considered that PPC21 would contribute negligible change at the regional level, while Mr Salmond believed it would contribute a cumulative loss of special character at that level.

[105] As to the extent PC21 might affect the ability to maintain special character at the neighbourhood and site level, the experts agreed that there is some potential for such adverse effects but disagreed on the significance of them. Mr Salmond considered that the effect of PC21 would be significantly and adversely to diminish the intrinsic character that the SCAO sought to preserve, for reasons he offered²².

[106] Mr Brown and Ms Hill considered that while there would be potential adverse effects on special character by removing the overlay, these would be mitigated because of variation of building form and mass in the general locality, mitigation from existing basalt stone walls, mature trees and substantial garden areas, which would be protected, the receiving environment of Gillies Avenue being highly variable and able to accommodate the level of change anticipated.

[107] These experts confirmed that the underlying points of difference between them related to:

- (a) The effectiveness of the proposed plan change in maintaining landscape elements of the existing special character in the long term;

²² Because he was not called, we will focus instead on the evidence of Ms Lutz.

- (b) The effectiveness of the proposed plan change to control the adverse effects of new development permitted under the plan on the existing special character of the neighbourhood; and
- (c) The degree to which the visible streetscape forms the basis of the assessment.

[108] The requestor filed three significant statements of evidence by Ms Carolyn Hill who holds a Master of Architecture degree and has 15 years' experience in heritage architecture. She filed a primary statement of evidence, a reply mainly focussing on the evidence of Mr Salmond who was not called, and another responding to the evidence of Ms Heike Lutz which replaced the evidence of Mr Salmond and was not significantly different.

[109] Ms Hill extensively examined the AUP provisions concerning the site, focussing on the three properties of 149, 151, and 153 Gillies Avenue and the SCA Overlay applying to them.

[110] The main thrust of her evidence was, that despite the strength of the RPS objective B5.3(2) that the character and amenity values of identified special character areas are to be maintained and enhanced, the physical situation relating to these properties restrained the contribution of the SCA Overlay; and in particular because of visual concealment and the "heterogeneity" of architectural form in the vicinity.

[111] As did some other witnesses for the requestor, she brought significant focus onto mature trees and basalt stone walls of quite some age (possibly up to around a century old) which she considered provided the main contribution to character and locality.

[112] We note immediately that the Isthmus B1 provisions are significantly about heterogeneity (see Schedule 15.1.7.3.2 the AUP), noting the range of representative ages and styles of residential buildings, associated patterns of development, diversity of style, presence of vegetation, and generous setbacks from streets, among other things. We are therefore uncomfortable with Ms Hill's characterisation of these

properties as having the SCAO restrained by “visual concealment” and “heterogeneity”.

[113] Ms Hill focussed heavily on opinions that the provisions of PPC21 would, primarily through provision for an Outline Plan, offer positive standards for the retention of specific trees and stone walls, demarcation of different height levels, and provide for certain boundary setback lines. She also considered that the provisions of PC21 would contribute to positive effects on the privacy of immediate residential neighbours, certain aspects of design and appearance, and site travel management.

[114] She placed considerable importance on the fact that the main hospital site is not covered by the SCA Overlay, that the three sites subject to the SCA Overlay are somewhat isolated, the eclectic nature of urban development in the area, and the presence of the significant road Gillies Avenue.

[115] As against some of these characteristics, she noted that the existing subdivision pattern in the area dates from about 1905, and that 3 Brightside Road has been in hospital use since 1922, adding an acknowledgement that the private residences of 151 and 153 Gillies Avenue also date from the 1920s, were probably designed by well-known architectural practices, and that the houses in the grounds including trees and garden features, reflect the properties’ early 20th century origins.

[116] Under the heading “potential erosion of special character values”, she continued to stress her opinion that the landscape elements of the sites make a more significant contribution than the houses, and that the houses are, allegedly, deliberately concealed from the public realm. This emphasis, and the evidence of other witnesses on the subject, caused us to think very carefully about its accuracy or otherwise, and has been an important element of the case.

[117] Ms Hill contrasted the situation with some other properties in the area, particularly the Mercy Hospital a few blocks away, but we were not assisted by those comparisons because the sites and built development on them are very different.

[118] Ms Hill noted that the Council hearing commissioners made a point that

development enabled by PPC21, while having the potential to adversely affect the amenity and special character values of their immediately adjacent neighbours and of the fronting streets of the wider neighbourhood, could be addressed through modifications to PPC21 which they required. The focus was on the retention of the historic stone walls and mature trees, provisions to enable the assessment of building design from a special character perspective and not just amenity, and site-specific controls on height and boundary setbacks, scale and bulk in relation to the residential and special character of the area.

[119] Ms Hill considered some alternatives such as changing the zoning but retaining the overlay, and scheduling site elements as historic heritage, before concluding that PPC21 with the modifications required by the hearing commissioners, adequately protected special character for the reasons she had been discussing.

[120] The requestor also called the evidence of Mr John Brown, qualified in archaeology and with 26 years' experiences as a "heritage specialist". He specialises in planning policy for heritage matters, evaluation of heritage values, assessment of effects on historic heritage and "character evaluations and heritage impact assessments".

[121] He had provided a peer review of earlier evidence by Ms Hill at the hearing before the Council commissioners. We seriously wondered at the need to call such extensive evidence from two senior heritage practitioners.

[122] His evidence offered similar things to those offered by Ms Hill, including apparent criticism of lack of consistency of built form and use in the Isthmus B1 SCA Overlay setting, lack of strong contribution to character by the particular Gillies Avenue properties, and appraisal of the use of the outline plan and site-specific rules and controls in PPC21.

[123] He examined the history of zoning and overlays on the subject properties and seemed to offer criticism that the controls under consideration had been "rolled over" from a legacy plan. He offered a quite detailed contrast with planning processes in other streets in Epsom which we did not find particularly helpful.

[124] As did Ms Hill, this witness focussed on what he considered to be benefits from modified provisions of the proposed plan change.

[125] He continued his theme of comparing and contrasting other neighbourhoods around the region including mention of what he called “larger scale hospital buildings with compatible architectural forms at Kingseat, and Mercy Ascot”. We found much of this evidence complex and confusing and note ironically that the hospital buildings referred to (some photographed) are two-storied and probably of similar scale, at least in terms of height, to the existing buildings on the 3 Brightside Road site.

[126] As to RPS Objective B.5.3.1(2), he expressed the view that it does not oblige the Council necessarily to maintain and enhance the values as they relate to the particular Gillies Avenue properties, but to provide a mechanism by which areas with special character could be identified so that particular character and amenity values can be maintained and enhanced. He expressed the opinion that the genesis of SCAOs in the AUP was driven by the need to accommodate rules and provisions from different legacy plans around the region and did not, he thought, intend a mechanism for individual site protection. It is our preference to focus on the wording of the objective as we find it in the context of provisions of this district plan, rather than speculate about whether the plan makers had struggled with differing legacy provisions.

[127] Ms Lutz took a considerably different view, and while she generally agreed with the statements (agreed) in the JWS, she stressed that loss of the SCAO on the three properties would be highly detrimental in this predominantly residential area with generally single and double storey houses and the variety of larger lot sizes; that there would be significant adverse effects from the loss of the SCAO in the neighbourhood, (although minimal at a regional level); that the mitigation measures stressed by the other two witnesses would offer limited value compared to the special character attributes that would be lost; that while change is anticipated in this area, any changes proposed should be sympathetic to the special character of the area and in keeping with the scale and bulk that is expected; that the proposed HFH zoning would be incompatible with existing special character and would not control the adverse effects

of new development from the mitigation measures proposed in it.

[128] Ms Lutz identified some particular features of the Isthmus B1 Overlay which she (and we) consider important. In particular, she identified that the character is somewhat diverse, yet diversity is coherently existing in addition to attributes found across sites subject to it (the twelve features).

[129] She considered that changes authorised should be made sympathetically and fit with the overall character (noting that Mr Brown agreed with that aspect); it is not the change *per se* but the degree of change and the impact of the change that needs to be considered.

[130] Ms Lutz noted that Mr Brown criticised the level of integrity of the special character along Gillies Avenue, noting that both sides of the road are not mapped in the SCAO. She agreed with the contrary view earlier espoused by Mr Salmond noting that the edges of the overlay with other zones will not diminish the SCAO itself, and adding her own view that the width of a street such as Gillies Avenue can also have a significant impact on how the character is perceived; advising that Gillies Avenue consists of four lanes and includes car parking spaces and amenities such as bus stops, and has limited capacity to convey a homogenous character even if it had been mapped on both sides.

[131] Ms Lutz considered that the effects of the removal of the SCAO on the subject properties would be significant, in contrast to the views of Ms Hill and Mr Brown that the demolition of the houses would be of minor consequence because they cannot easily be seen and therefore do not really contribute to character.

[132] Ms Lutz offered us photographs from some vantage points close to the properties and from a little greater distance, which we were able to check from our own field inspection. She offered the useful observation that the observer is at no time under the impression that these sites are only a “layered landscape behind a wall”. She disagreed with the emphasis by Ms Hill and Mr Brown on availability of “mitigation” from the trees and the walls and considered that the buildings contributed as much as the landscape and boundary treatments surrounding them, as

noted by the landscape experts.

[133] She considered that the removal of any buildings within the SCAO would be closely linked to their replacement. She considered that the demolition of the houses at 151 and 153 Gillies Avenue would result in the loss of valuable elements of the special character on the sites and would not accept that replacement of the buildings even with similarly scaled new ones, would have anything other than a negative impact on the special character. The buildings, she said, have integrity and authenticity in this area and are representative of the special character. Replacement buildings would lack historical association with the area that the existing buildings currently contribute. She noted some differences at 149 Gillies Avenue where the architectural merit of the existing building is low.

[134] Ms Lutz considered Mr Brown's view that the three Gillies Avenue sites are "an isolated element" within the block of land and would not today be included in the SCAO. We agree with her differing view based on some analysis of the history of the zoning and overlay, that the three sites are not an anomaly, but can be considered "the last man standing" showing how without the SCAO, erosion of special character can thrive. (In addition, we note the evidence of Hon Tony Randerson QC, a neighbour, about Southern Cross having removed three character homes in Brightside Road over time, including the original Owens family home used as the original small hospital here).

[135] We also accept Ms Lutz's opinion that with loss of these buildings, and their replacement by structures that would be enabled by the plan change, the effects of erosion on the block would be cumulative, and a large gap would be created on the SCAO along the west side of Gillies Avenue.

[136] Not only did she consider that new replacement buildings of a similar scale would offer such adverse effects, but worse, significantly-increased building coverage and heights would further impact the special character of the area significantly. We will consider further the bulk and location issues available in the planning evidence before us, but with a mind ahead to that, agree that the effects she was concerned about would be almost inevitable, and that "the character of generously layered

landscapes with hidden buildings behind would then be completely lost under the proposed PC”.

[137] Ms Lutz was able to draw on her architectural background and involvement with hospital designs in the past, to offer the view that an efficiently-designed modern hospital building would not fit in the restrictions required by the SCAO. Such development as enabled by the proposed rezoning would be inconsistent in scale, form, and mass with the special character of the area as well as the residential zoning and would be visually and spatially dominant.

[138] Again, we make our assessment of the bulk and the location aspects of the proposed change drawing from planning evidence as well as special character and landscape evidence but find ourselves coming to the same conclusions. Noting as she did that there would be no requirement for the new development to be in line with objectives and policies of D18.3, nor (we consider importantly) to meet the objective B.5.3.1(2) to [at least] maintain the special character of the area.

[139] Given our earlier findings about that objective of the RPS, we consider this aspect to be of considerable importance in the outcome of this case.

[140] Ms Lutz considered the twelve attributes of special character relevant under Schedule 15 of the AUP and presented us with a table comparing and contrasting the mitigation measures proposed in the plan change, with those special character attributes. The table conveyed a powerful message that almost all the attributes currently offered would be significantly lost. In summary, there would be a significant increase in building coverage, subdivision patterns, large lot sizes, and generally a considerable change in the built form that would be visibly dominant and change the character of the sites from noticeably residential to obviously institutional or commercial. Once again, she looked at comparative bulk and location enablements, and considered that the mitigations offered in the proposed plan change, and emphasised by witnesses for Southern Cross, would result in these very significant effects.

[141] She noted the evidence on behalf of Southern Cross that buildings up to 25m

that could be enabled in the future, even if there was a “present intention” to limit heights to 12m and 16m, would in the early stages be accompanied by a removal of the SCAO and ultimately see much more significant bulk of development potentially enabled as a restricted discretionary activity. She considered that the purpose described for the HFH would invite further development pressure.

[142] Ms Lutz was cross-examined by counsel for Southern Cross concerning the parameters of mitigation offered, and quite strongly held to her views.

[143] We have mentioned some of the evidence of Hon Tony Randerson QC about special character. We note that he observed that Southern Cross did not file a submission to the then proposed AUP opposing the residential zonings and seeking change that would have accommodated the hospital. He noted that Southern Cross had recorded that at the time it was short-staffed and too busy with other matters. We cannot hold it against Southern Cross not to have dealt with the issues during the formation of the AUP but do record that it would have been a better time for it to have done so, allowing decision-makers a broader examination of the issues to the extent necessary across the region, rather than the more siloed approach by Southern Cross consequent on requesting a plan change for a confined and specific piece of land.

[144] We have also noted the evidence of local residents Ms J M Kippenberger and Mr M Lorimer about the neighbourhood they know and live in, why they chose it, and their approaches to restoring their character homes. There was also the extensive evidence of another neighbour Mr R S Speer, a practicing planner but who did not give evidence as an expert witness because of his lack of independence. Among many provisions of the AUP he stressed Objective B5.3.1(2), although not quite in the way that we have focused on it. Mr Speer essentially submitted that the existence of a SCAO implies a duty to apply special care and noted that use of the overlay in the AUP is not common, applying to less than ten percent of all residential areas across the city, leaving 90 percent for a wider discretion of development.

[145] We have considered the reply statements of Ms Hill and Mr Brown, in answer first to the evidence not ultimately called of Mr Salmond, and the replacement

evidence from Ms Lutz. We accept the points they make that the case before us is not an application for resource consent, but by and large beyond that, the arguments they mount in criticising the statements on behalf of the Society, very much resemble their evidence-in-chief that we have already analysed in quite some detail. In considering the reply statements, we remained concerned about the undue focus on landscape elements allegedly obscuring views of the houses at 151 and 153 Gillies Avenue, and their seeming criticism of lack of homogeneity within the Isthmus B overlay.

[146] Mr Brown in his reply statement continued to offer the view that it does not immediately follow that PPC21 may enable greater change of built form than the existing planning framework, but rather the provisions are intended to manage the potential risk of adverse or inappropriate development. We have already indicated that we perceive an undue level of risk, even with the changes directed by the hearing commissioners, a key reason being that the argument and its supporting evidence gloss over the directive language of Objective B5.3.1(2) in the RPS.

Consideration of special character

[147] We prefer the evidence of Ms Lutz, supported by some of the evidence of neighbours well versed in the character of the locality underpinning the SCAO. Her evidence offered a faithful analysis of the policy underpinnings and workings of the SCAO and the resulting character of the neighbourhood on the west side of Gillies Avenue. We do not add to our reasoning here because to do so would be repetitive of findings already made.

[148] Her comparative analysis of what is being offered in the proposed plan change offered quite a stark comparison, and in our view is not overstated. Working as well with bulk and location comparisons offered by the planners and the landscape architects, we found her opinions almost invariably correct and persuasive, while those of the requestor's relevant witnesses were often strained or unduly narrow.

[149] We hold on the evidence as we have analysed it, that PPC 21 is strongly discordant with Objective B5.3.1(2). This is of considerable importance to the

outcome in this case, because we have found that the provision is framed very directive, and accordingly must be assigned greater weight than provisions that are more flexibly framed.

Planning, landscape and urban design issues

[150] We have brought these topics together, because of the considerable extent of overlap between the planners on the one hand and the experts on landscape and urban design on the other; some overlap already having been noted in the above section on special character as between that topic and the ones now to be addressed.

[151] We were once again quite overwhelmed by the sheer volume of evidence – the many witnesses and the many statements, particularly called by Southern Cross. Fortunately, the situation was slightly rescued by hard work put into the preparation of joint witness statements by the groups of experts, so it is our intention to focus somewhat on two JWSs, one by the planners and the other by landscape and urban design witnesses. We follow this approach, even though some of what we will report or summarise will be repetitive of our introductory sections and the statement of agreed facts annexed to this decision. That cannot be helped in the circumstances. We will then proceed to analyse what we consider to be the crucial factors informing the overall outcome.

[152] To use the words of the Supreme Court in *King Salmon* as discussed earlier in this decision, we were confronted with a plethora of planning provisions, existing and proposed, that “pull in many directions”, making the guidance from the court in that decision important in arriving at an outcome.

[153] That last message is important in starting into the JWS of the planning experts, because we disagree with two statements in their paragraph 15 recording of that “*there is not a hierarchy established in the RPS*”, and “*the RPS must be taken as a whole*”. Our reasoning is found earlier in this decision, where we held that Policies B2.4.2(10) and B5.3.1(2) are framed in strong directive language and should be accorded significant weight over other policies that are framed less directive or more flexibly.

[154] It was helpful that the planning experts agreed that there was no inconsistency with Chapter B2 (Urban Growth and Form) and that PPC 21 gives effect to B2.8 (Social Facilities).

[155] We have dealt with the issue of special character elsewhere in this decision and simply record here that the agreement that there is not a hierarchy in the RPS was wrong.

[156] The planners offered us helpful agreement about the nature of the proposed Health Care Facility and Hospital Zone (**HFHZ**), including the nature of it and its key objectives and policies.

[157] Planners Mr D Shaw, called by Southern Cross, Ms C Saville, called by Auckland Council, and Ms A Linzey, called by Kainga Ora, considered that the zone is applied in similar contexts throughout Auckland in terms of site size, proximity to residential zones, proximity to SCA Overlays, proximity to centres, location on arterial roads and public transport networks. Mr B Putt, called by the appellant, agreed with those things but noted that the zone was applied to existing health care facilities during the preparation of the AUP and did not replace an existing SCA Overlay. In view of the findings we have made about special character, we consider that the latter qualification offered by Mr Putt is of importance.

[158] The planners helpfully tabulated the activity differences in permitted and controlled development under PPC 21 compared with the existing zoning and the SCA Overlay. They did this, breaking out the proposed Area 1 (essentially the existing hospital site at 3 Brightside Road) and Area 2, the Gillies Avenue properties. Activities of new buildings, additions, alterations, and demolition are largely permitted activities in Area 1 in the existing residential/mixed housing suburban zone; largely restricted discretionary in Area 2 (single house zone/SCAO) and a mix of permitted, controlled and restricted discretionary in HFH as modified by PPC 21. Certain aspects of new buildings and additions would be a controlled activity in the latter, becoming restricted discretionary in certain circumstances relating to visibility from and location within ten metres of a street.

[159] The latter table needed importantly to be read with a second table the experts offered setting out the differences in permitted standards comparatively between existing and proposed zones on Area 1, and a third table relating to Area 2, the Gillies Avenue sites.

[160] We were able to discern from these tables that while some bulk and location controls and standards had been tightened in the interests of amenity, some at the direction of the hearing commissioners, others would be the subject of significant increases, particularly in Area 2. The most notable was in the area of building height, in Area 1 potentially rising from 8 m plus 1 m roof pitch to 12 m, and in Area 2 from the same current provision, to 16 m, almost doubling. On this subject we note from Southern Cross's reply submissions (25 June) a tabulated approach drawn from evidence showing that the 12m in Area 1 is close to existing heights of the hospital shown in drawings produced at our request late in the hearing. That may be, but the greater focus in our view must be on the Gillies Avenue properties where it is proposed to remove the SCAO and nearly double the building heights. The submission also leaves aside the proposal for heights up to 25m by way of RDA as indeed much of Southern Cross's case also did.

[161] Needless to say, the planning, landscape and urban design witnesses wrote a great deal about the various changes (increases and decreases, particularly new controls), but it has been necessary for us to stand back and consider matters with a particular mind to the key RPS provisions as first priority. The question ultimately became whether the various potential decreases in intensity and mitigations, particularly the newly offered retention of large trees and stone walls on the Gillies Avenue properties should be enough to enable the plan change to be sustained.

[162] The debate about potential building heights became a particularly important issue towards the end of the hearing, with the court requiring the production of comparative sections, which occurred as we have just noted. We emphasize that the issues in the case are more complex than just potential building heights and that we have needed to consider the changes overall.

[163] The planning witnesses took us through questions about the difference in bulk

and scale of a controlled activity development on this site under PPC 21 as compared to a development that complies with the bulk and development controls under the existing zonings in the AUP, with varying degrees of agreement and disagreement. They also considered whether the matters of control and assessment criteria in the plan change would be sufficient to cover the range of potential effects of development on the site, where again they had noted the different approaches taken by the landscape and urban design experts in the JWS and reached their own positions. Notably Mr Putt stressed that the answer to this question should be made in light of the operative zone outcomes for the subject sites, producing a result in his opinion that the plan change would not achieve the management of adverse effects that arise from a significantly larger building envelope in the same way that adverse development effects are managed under the operative zone and overlay.

[164] As to planning implications, the planners agreed that the removal of the SCAO in the application of the new zone would:

- a) Enable the demolition of the dwellings at 151 and 153 Gillies Avenue;
- b) Enable increased intensity of use of the site as per their Table 3, particularly building height and building coverage;
- c) Increase the effective yard setbacks;
- d) Retain the identified trees and stone walls.

[165] Mr Shaw and Ms Saville considered that while the removal of the SCAO would generally reduce the overall recognition of the special character values, site specific controls would enable consideration of special character in the design of new buildings, placing some emphasis on the retention of significant trees and stone walls.

[166] Ms Linzey considered that the removal of the SCA Overlay would reduce the priority given to those character values provided by the existing built form and architectural values of the two Gillies Avenue properties, enabling potential loss of these values; she further considered the development standards would result in change

to the urban form of the area particularly in relation to building scale, noting however that the proposed provisions specifically provide for protection of landscape and natural features.

[167] Mr Putt considered that the removal of the SCAO deleted the protection and intention of retaining the special character of this site in this part of the Isthmus B area and that the proposed zone would introduce built form not in keeping with the SCAO intention, particularly in terms of height of buildings and building coverage. In its reply submissions, the requestor was critical of Mr Putt for having to concede under cross-examination that he had not factored in the changes to the PPC made by the hearing commissioners. While that may be, our focus should be more on the evidence of the landscape witnesses about that, than that of a planner.

[168] The planners agreed that there were potential benefits from the plan change including:

- a) Providing additional healthcare capacity through expanding an existing facility;
- b) Central location with good access for everybody;
- c) Increased employment;
- d) Protecting some identified streetscape visible special character values.

[169] They identified potential adverse effects including:

- a) Effects on the values of the SCAO;
- b) Localised amenity effects;
- c) Increased traffic effects.

[170] They noted particularly that Mr Putt considered a potential adverse effect with the introduction of a large building out of scale with the intentions of the SCAO and the loss of the two special character dwellings in Gillies Avenue would undermine the

integrity of the overlay in the location.

[171] The planners helpfully discussed s32 RMA aspects, key benefits and costs of the environmental, economic, social and cultural effects including opportunities for economic growth and employment. They had no difficulty identifying positive benefits from increasing healthcare and hospital facilities, also positive social and economic benefits. They struggled however with differences in opinion about the relevant weight to be given to the SCAO values and the hospital activities on this site.

[172] We think they might have been assisted if they had developed an understanding of the relative weighting to be applied to RPS provisions as we have examined earlier in this decision.

[173] Interestingly Mr Putt considered that development enabled by PPC 21, while providing for a positive outcome in increased healthcare facilities in Auckland, could be located in other localities with similar advantages of centrality and public transport, whereas the SCAO on the subject area has no alternative location because it is specific to the existing special character values that are present. We understand that advice, and accept it.

[174] The joint witness statement on landscape and urban design tended to point to central differences between those experts who favoured controls at times of future consenting based on limitations and standards in the plan change; also mitigation; versus those who felt there were more fundamental differences, particularly Ms B Gilbert called by the appellant. Analysis of their JWS points to plusses and minuses for amenity when viewed from public streets, from some properties with a common boundary with the site, and from the area surrounding the site. They perceived differences in protection or mitigation available for vegetation and the lack of visibility of buildings (or otherwise).

[175] They agreed that the key contributors to character and amenity of the area in which the site is located, particularly viewed from north-west and south, were the generally cohesive, leafy and spacious residential character but with pockets of flats or units of varying age and style and some non-residential activities. They disagreed on

the importance or otherwise of the latter. To the east there is a suburban residential area characterised by predominantly single and two-storey buildings, with some intensification including a new three-storey building under construction.

[176] They agreed that along the Gillies Avenue frontage there is a greater variation in building form and activity, including community education and healthcare facilities, but with Ms Gilbert differing from the others as to the contribution diversity makes to that character.

[177] As to degree of change anticipated to character and visual amenity in area surrounding the site, the experts agreed that where mixed-house suburban and mixed-house urban zones apply, the AUP allows for change in character and visual amenity, but they disagreed on the extent and significance of that change. They agreed that each of those zones anticipated suburban built character generally characterised by two-storey residential development in MHS and three-storey in MHU. Ms Gilbert stressed that the area is intended to maintain a suburban built character while the others agreed that the MHS zone would enable the terrace house topology that would result in a significant change in character due to an increase in building coverage, removal of trees and allowable building envelope close to boundaries. We consider that Ms Gilbert's view is supported by Policy B2.4.2(10) previously referred to. We worry that the other witnesses overstated the potential for terrace house topology in the context of the current plan provisions.

[178] There was helpfully a good measure of agreement as to the key comparisons between existing development controls and PPC 21 as follows:

- a) Change from residential development to hospital and healthcare development at the Gillies Avenue properties;
- b) An approximate increase in building coverage from 35% (SHZ) and 25% (SCAO) to approximately 58% in Area 2 and from 40% to approximately 45% in Area 1; overall building coverage will be approximately 51% across both areas; with building coverage control being replaced by the Brightside Hospital Plan and the setback distance referred to below;

- c) An increase in height from 8 m to 12 m in Area 1 and to 16 m in Area 2 as controlled activities;
- d) Setback changes from 3 m in Area 2 to 6 m on the eastern boundary of 32A Owens Road and from 1 m (in Area 1) to between 3 m and 19.65 m along the northern boundary of 3 Brightside Road;
- e) Height to boundary remaining the same but in relation to the south boundary of 32A Owens Road the setback required will reduce the effective angle of the height in relation to boundary;
- f) Removal of the 40% landscaped area requirement and the front yard landscaping requirement but retention of trees identified in the Brightside Hospital Plan;
- g) An increase of the maximum impervious area from 60% to 80%;
- h) Retention of identified trees and stone walls that are not currently protected, as identified in the Brightside Hospital Plan;
- i) No change to the retention of two notable trees at 3 Brightside Road;
- j) The building setback of 10 m from street frontages is broadly similar to that contemplated by the SCAO;
- k) Controlled activity assessment criteria to be applied;
- l) A significant change that PPC 21 would allow for buildings up to 25 m high as restricted discretionary activity outside of the volcanic view shaft;
- m) A key component being the introduction of the Brightside Hospital Plan, with its site-specific provisions intended to minimise effects on character and residential amenity.

[179] There was discussion of the care that should be taken in making use of photo

montages, with some arguments about differences appearing in the two sets placed before the court. As to visual and landscape effects, the experts agreed that consideration of biophysical, perceptual and associative values is relevant to landscape assessment; unhappily they employed differing effect rating scales but offered us a table showing the differences in terminology between Mr Hudson and Ms Gilbert, along with comparative RMA terminology.

[180] They then offered us a table of comparative assessments as between Mr Hudson and Ms Gilbert of adverse visual effects for controlled activities considered within 17 viewpoints. There was some commonality of assessment, but as to some Ms Gilbert rated adverse visual effects as greater than Mr Hudson, but occasionally the converse. They offered another column in the table being Ms Gilbert's assessment of adverse effects from restricted discretionary activity up to 25 m height, which she described as invariably "very high".

[181] The witnesses turned to urban design issues with Ms Ogden-Cork and Mr Mackay agreeing that there were minimal difficulties, or some benefits, in terms of shading, privacy for neighbours, site location (Gillies Avenue as an arterial route), clustering of healthcare services in the area, site access, and landmark trees.

[182] The witnesses jointly told us that the PPC 21 provisions (as modified by the hearing commissioners) manage urban design issues in the following way:

- a) Urban design issues are managed in many ways by PPC 21, including most notably the Brightside Hospital Plan;
- b) One of the management tools is the cascade of activity status that is consistent with the conventions of the AUP, with a controlled activity status and associated matters of control and assessment criteria being added by the commissioners; the provisions would manage effects more effectively than the HFH zone alone, a THAB zone, or the MHS zoning of 3 Brightside Road if it was redeveloped.

[183] In a brief section examining similarities and differences in urban design effects

of a controlled activity development under a PPC 21 compared to development complying with bulk and location controls and existing zones and AUP provisions, the witnesses told us that if 3 Brightside Road (the existing hospital) was to be redeveloped for residential activity (no SCAO and only two notable trees), it would potentially result in a range of visual dominance and privacy effects as well as an adverse change in particular from the ability to build two-storey terraced houses and apartments. Unhelpfully they did not contrast this with controlled activity development under PPC 21 in this particular section of the JWS, but we do have the tables from the planners previously referred to and some mentioned elsewhere in this JWS about shading, visual dominance, privacy and character.

[184] Potential urban design benefits and positive effects from PPC 21 would include protection of stone walls and mature trees and apparent compatibility of healthcare services in Gillies Avenue and the efficient and sustainable use of existing resources which include the existing hospital, we doubt that the latter is truly an urban design benefit.

[185] The experts turned their attention to what might be the effectiveness of PPC 21 in managing urban design, visual and landscape effects. They considered their differing views on sensitivity of the receiving environment, mitigation benefits and positive effect of retention of trees and walls, bulk, scale and character, and effectiveness of assessment criteria.

[186] All four agreed that Gillies Avenue is a busy road corridor, but Ms Gilbert stopped short of agreeing with the others that it is an appropriate and compatible location for more healthcare activities on account of being a four lane road and having a diverse building form and land use presence. Ms Gilbert considered that while there is a range of non-residential activities, including healthcare and education facilities, these are sporadic on the corridor and are typically accommodated within converted dwellings and remain of a domestic scale (acknowledging exceptions of Epsom Girls Grammar School and the Southern Cross Hospital, both on the eastern side of Gillies Avenue).

[187] We incline more to the views expressed by Ms Gilbert particularly given the

mapping differences between the western and eastern side of Gillies Avenue with a preponderance of SCAO on the former.

[188] As we noted in the section of this decision on special character, witnesses in support of the proposed plan change seemed to place a lot of weight on extent of mitigation that could be offered by stone walls and trees which are not currently protected. Ms Gilbert acknowledged the benefits of protection of those elements but considered they would be unlikely to be removed under the current zoning and overlay provisions, so she placed less weight on that benefit; she also considered that they provide limited mitigation benefit.

[189] We are unable to assess whether the trees and stone walls would be likely or unlikely to be removed under the current provisions, but we have already noted in our findings that some witnesses place too much emphasis on potential benefits from them compared to the two houses being retained.

[190] As to bulk, scale and character, Ms Gilbert considered that development enabled by the plan change would be incongruous in this specific residential setting, drawn from the variances discussed earlier about the key comparisons between existing development controls and PPC 21 (we infer, particularly from matters of building coverage and building height). In this, we consider she was on fertile ground, but we think she went too far in offering an opinion that hospital development of the scale enabled would have specific operational design requirements that typically drive a building that is commercial or institutional in scale, form and character. That might or might not be an outcome and we do not have any specific application proposal before us.

[191] Ms Ogden-Cork and Mr Hudson considered that the scale and character of development would not be incongruous in its setting, in particular that a building height of 16 m on the Gillies Avenue properties would not be as high as several notable trees there; and that the 10 m setback for a controlled activity would allow space along the street frontages for existing and future planting to reduce the effects of bulk and scale on character.

[192] Mr Mackay agreed with Ms Gilbert's conclusion that the enabled bulk, scale and character would be incongruous, but he agreed with the other two witnesses that this would be significantly mitigated by the provisions of PPC 21. We express concerns about over-reliance on mitigation, particularly in the face of the key RPS provisions.

[193] Ms Gilbert and Mr Mackay agreed that an increase from 12 or 16 m to 25 m (as a restricted discretionary activity) would be unacceptable in terms of bulk, scale and character effects. The other two witnesses expected that an application would be assessed as a restricted discretionary activity with all the provisions applicable to that assessment and assuming the normal test for notification. We note here that Hon Tony Randerson QC expressed concern that there might not be notification unless the Council found special circumstances and we agree that that might be an unacceptable risk in the circumstances described on this point by Ms Gilbert and Mr Mackay, which we identify with.

[194] As to effectiveness (or not) of assessment criteria, the experts agreed that matters of control and assessment criteria would assist with the mitigation of bulk and scale effects on residential amenity and character, noting particularly H25.7.2(2)(a):

The extent to which building design and appearances visibly compatible with and complimentary to the residential and special character of the surrounding neighbourhood.

[195] They further agreed that managing visual dominance effects was critical.

[196] Ms Ogden-Cork and Mr Hudson considered that the matters of control and assessment criteria would be sufficient to appropriately manage effects on residential amenity and character. Ms Gilbert considered that the matters of control and assessment criteria including the provision above referred to and the additional criteria recommended by the Council experts which signal the use of building design as a mitigation tool, would not overcome her concerns about the incongruous bulk, scale and character that she identified.

[197] We cannot help but keep coming back to Policy B2.4.2(10) which requires non-residential activities to be of a scale and form that are keeping with the existing and

planned built character of the area. Our views based on the extensive evidence before us, that while the proposed provisions might assist in the direction of “form” being in keeping with the existing and planned built character of the area, we cannot find the same about “scale”. This important policy requires that both be attended to. We find that scale simply is not.

Questions about expert evidence – focussing mainly on urban designers

[198] During the hearing, the Court asked questions of some witnesses raising issues about admissibility or weight to be given to their evidence as experts, where they called themselves urban designers, but were trained in recognised disciplines such as architecture and archaeology.

[199] The Court quite regularly receives evidence from people describing themselves as urban designers, and is sometimes assisted by their evidence, but needs to bear in mind the legal basis for opinion evidence being admissible in a court.

[200] The Court sought legal submissions on the matter in light of the concerns we expressed during the hearing. The reply submissions lodged subsequently by the three main parties addressed the legal position and admissibility or weight to be assigned to the evidence of several of the witnesses.

[201] The starting point is s 25 of the Evidence Act 2006. To the relevant extent, it provides as follows:

- (1) An opinion by an expert that is part of expert evidence offered in a proceeding is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding.
- (2) An opinion by an expert is not inadmissible simply because it is about—
 - (a) an ultimate issue to be determined in a proceeding; or
 - (b) a matter of common knowledge.

- (3) If an opinion by an expert is based on a fact that is outside the general body of knowledge that makes up the expertise of the expert, the opinion may be relied on by the fact-finder only if that fact is or will be proved or judicially noticed in the proceeding...

[202] Section 4(1) of the Evidence Act 2006 defines “expert” and “expert evidence” as follows:

“**Expert** means a person who has specialised knowledge or skill based on training, study or experience.

Expert evidence means the evidence of an expert based on the specialised knowledge or skill of that expert and includes evidence given in the form of an opinion.”

[203] All counsel offered submissions to the effect that relevant expertise would not only come from academic study but could be acquired by training and/or experience. The latter appears to be the situation with some of the witnesses whose credentials we were enquiring about. As a result, we have decided that there are no issues about admissibility with any of the statements, but in a couple of instances, there are residual issues about weight.

[204] Counsel referred us to a number of documents in the public domain, in particular a Ministry for the Environment publication “New Zealand Urban Design Protocol” (March 2005), a paper issued by the Urban Design Forum, and University of Auckland “Master of Urban Design” course description (commenced 2004).

[205] There was agreement among counsel that there was no formal professional body with organisational and disciplinary powers, but that did not mean that urban design was not a recognised professional discipline. We accept those submissions.

[206] The *New Zealand Urban Design Protocol* records that urban design is a field of expertise focussed on the design of buildings, places, spaces and networks and the way as people use them; ranging in scale from the metropolitan region, city or town, down to the street, public space or even a single building. The protocol records that urban design is concerned not just with appearances and built form, but with the environmental, economic, social and cultural consequences of design. The publication “About Urban Design Forum” notes that the practice of urban design is

a skilled process of influencing and arranging urban components.

[207] Representatives of the Council complied with our request to provide us with information and material about the Council's urban design panel. We were told that its aim is to provide a "cost-effective tool for creating better quality urban environments". There are Terms of Reference published from the Council's website, where panel members are described as "highly regarded professionals with specialist skills in the area of urban design, architecture, planning, landscape architecture, heritage, Maori design, development and property" nominated by their professional institutes. Those bodies are NZIA, NZILA, NZPI and the Property Council of New Zealand.

[208] As confirmed by the Council, projects considered to have regional or local significance are referred to the panel, where the focus tends to be on building, bulk, location and design, scale, layout and articulation of facades and how they respond to the functional and environmental conditions of the site and the character of surrounding neighbourhood.

[209] The Council's urban design panel does not have a decision-making role, but by repute, exercises quite considerable persuasive power. Some are critical that it is not cost-effective.

[210] We consider that for expert "urban design" evidence to be accorded a reasonable level of weight by the Court, there should be demonstrable connection between aspects of a person's academic training, other training, and/or experience.

[211] Before we turn to the situation of particular witnesses, we mention that we have become aware of a paper published last August called "*Reflections on the Nature and Extent of Urban Designers as Expert Witnesses and Members of a Profession*"²³.

[212] We will not comment in detail on the article because we have not sought submissions from the parties about it, but simply comment in a general way that it

²³ Written by Urban Designers and Planners Ian Munro and Lisa Mein, and found on the website <https://urbandesignforum.org.nz>

appears to offer helpful information about the practice of urban design in New Zealand, and a fairly balanced view about some of the issues we have been discussing in this decision.

[213] Turning now to some of the witnesses.

[214] Southern Cross Hospitals and its witnesses, Ms Ogden-Cork and Mr Brown were sufficiently concerned about the questioning by the Court, that they filed affidavits about their credentials along with that party's reply submissions.

[215] We did not intend to go into detail, but fully accept that these witnesses have specialised knowledge in urban design (in the terms we have described above) based on training and experience, in addition to formal education undertaken by each of them, architecture in the case of Ms Ogden-Cork and archaeology in the case of Mr Brown. We have no problem making similar findings about the Council's witness Mr J Mackay (who was less under the spotlight than the other two witnesses).

[216] We have no difficulty in assigning weight to the evidence provided to us by Mr Brown and Mr Mackay. For other reasons, we have some concerns about the evidence of Ms Ogden-Cork. In another category again was the evidence of the appellant's witness Mr R Speer.

[217] First as to Mr Speer, this witness openly acknowledged that as a resident of the neighbourhood with personal interest on the outcome of the proceeding, his evidence could not be classified as expert evidence. While he is a professional planner, it needs to be said that little weight could be placed on any opinion evidence he offered.

[218] His evidence can generally be characterised in three ways, factual evidence about the locality gained as a resident, some uncontroversial statements about the contents of the AUP, and some opinion evidence, for instance on effects on the environment including cumulative effects, and a cost-benefit analysis. By way of example, some paragraphs of his evidence are introduced by the words "in my opinion".

[219] The factual evidence about the locality has been helpful, (along with the many statements offered by neighbours), helping us to understand professional evidence in areas such as landscape, architecture, urban design, and shadowing.

[220] Mr Speer's evidence about the contents of the AUP was very detailed and tended to compliment the similar evidence offered by the planners.

[221] We have however placed little to no weight on his statements of opinion. We have to say that it was unfortunately quite an exercise to disentangle them.

[222] We have some concerns about the role that Ms Ogden-Cork appears to have played in assisting Southern Cross to prepare its proposal, and her evidence in the case before us. Although an architect with urban design experience, she appears to have adopted the role often undertaken by planners pulling to together corporate evidence and expert evidence from other disciplines. For instance, rather remarkably, while noting that the requestor's planning witness Mr Shaw had undertaken a full comparative assessment of other areas in Auckland having the HFH zoning, Ms Ogden-Cork proceeded to review his assessment at quite some length, offering her view on the application of the Zone to the subject site drawing upon aspects of its application to sites elsewhere in the region.

[223] In her rebuttal evidence, she offered quite detailed commentary about evidence given by local residents about the apparent commercial or institutional character of the proposal, and undertook a comparative analysis of other zones in the AUP, which we would usually expect to be done by a planning witness.

[224] Some of her evidence not only appeared to adopt the role of planner, but even border on advocacy. She appears in some ways to have become rather too closely aligned with the party calling her evidence. On being tested by Mr Savage about zonings appropriate for hospitals, and the nature of those zones, we regret we found her answers didactic and inappropriately forceful, which seemed to reinforce the concerns we held about her approach to the case.

[225] We do not rule her evidence inadmissible, but in some areas, particularly urban

design and the nature of the subject neighbourhood, we prefer the evidence of other professional witnesses, and as we have said some of the statements by neighbours (who we note were not required by Southern Cross for questioning).

Section 290A: the decision of the hearing commissioners

[226] We have had regard as required by the section, to the decision of the hearing commissioners. It is plain that our decision is directly at odds with the decision of the majority (three) of commissioners. Our decision has the same outcome as the decision of the minority (one), but our reasoning is somewhat different and much more detailed.

[227] We take key points more or less in the order they occurred in the decision of the majority (which may differ somewhat from our own sequence of topics above).

[228] First, we note the majority faced a submission by Southern Cross that the AUP (RPS) failed to recognise the critical importance of healthcare facilities, hence resort should be had to Part 2 RMA on *King Salmon* (SC) principles. The commissioners held that the provisions about “social facilities” “cover the field”. We agree, but note that they appeared not to have been asked to deal with the argument Southern Cross mounted in reply before us, as to whether the relevant RPS policies in that regard were directive or not.

[229] We come next to a s32 matter (which also relates to our discussion about some objectives and policies in the RPS we held to be strongly directive). The majority held that the examination required by s32 (1)(b), where focussing on provisions of the AUP that “*would no longer apply to the site if PC21 were approved*”, would mean leaving out the residential zone provisions and those of D18, Special Character Areas Overlay. Importantly they stopped short of suggesting that the provisions of Chapter 5.3 of the RPS were to be omitted from consideration, and proceeded to consider them, albeit leading to a very different set of findings to our own.

[230] The majority considered evidence about “options” similar to evidence offered us, but seemed to have undue ease in finding in favour of the plan change, their

analysis being very focussed on the compelling needs expressed by Southern Cross witnesses, and without worrying about shortcomings in the evidence about alternatives and cost/benefit that we have focussed on. Their consideration of the *King Salmon* (SC) decision on the subject of alternatives in a site-specific plan change quoted only the early paragraph [16] from that decision, whereas we have drilled further into it and discussed other (and more recent) caselaw on the point.

[231] We disagree with their subsequent finding that “*B5.3 must be read as being equivalent in statutory importance to the other RPS objectives in Chapter B*”, for reasons we need not repeat here.

[232] The section of the decision of the majority about effects on the environment is detailed, and some of our findings are similar and others different. It would be tedious and unnecessary to list them all, given that they and we have provided reasons. Notable differences however are their finding that 151/153 Gillies Avenue are a discrete part of the wider special character area and that their demolition would not detrimentally undermine the area’s special character values. Also notably that the (new) proposal to protect the majority of the significant landscape trees on the sites and their stone walls through an outline plan control should be considered mitigation.

[233] Their consideration of RPS objectives and policies seems to have omitted Policy 2.4.2(10) which we have held to be not only relevant, but important as being strongly directive (“*require non-residential activities be of a scale and form that are in keeping with the existing and planned built character of the area*”).

[234] Finally in this summary, the majority properly noted the provisions of s75(3) RMA, requiring a district plan to give effect to (among other senior instruments) any regional policy statement. They then reminded the reader that they had considered the relevant provisions of the RPS and found PPC21 overall consistent with them. We do not repeat our reasons for finding against both parts of that sentence.

[235] The minority commissioner exhibited a concern about proposed scale which aligns with some of our findings, but seems to have driven almost all of his decision off evidence about effects on the environment, whereas we have held that matters run

much deeper than that.

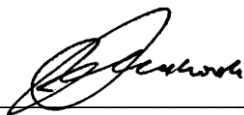
Conclusion

[236] Our findings throughout the decision have favoured all three principal parties to some degree in some ways, but on key issues have been against the requestor Southern Cross, and in favour of parts of the case advanced by the appellant society. In quite some measure, those key findings emerged from a focus/analysis of key issues from our pre-reading of evidence, advised to the parties at the outset of the hearing.

[237] We hold that the request for PPC21 must be refused, and it is.

[238] Costs are reserved. We have not at this stage turned our minds at all to whether they might be relevant in this plan change case. If application(s) is/are made, we set a date for filing of any such, to 15 working days after issue of this decision.

For the Court:



L J Newhook
Alternate Environment Judge



APPENDIX A

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2020-AKL-000079

**I TE KŌTI TAIAO
O AOTEAROA
TĀMAKI
MAKAURAU
ROHE**

UNDER

the Resource Management Act 1991

IN THE MATTER

of an appeal under clause 14(1) of Schedule 1
of the Resource Management Act 1991 against
a decision on Proposed Plan Change 21 to the
Auckland Unitary Plan

BETWEEN

**EDEN EPSOM RESIDENTIAL PROTECTION SOCIETY
INCORPORATED**

Appellant

AND

AUCKLAND COUNCIL

Respondent

AND

SOUTHERN CROSS HOSPITALS LIMITED

Requestor

AND

KĀINGA ORA – HOMES AND COMMUNITIES

Section 274 Party

AND

**TŪPUNA MAUNGA O TĀMAKI MAKĀURAU
AUTHORITY**

Section 274 Party

AGREED STATEMENT OF FACTS

AGREED STATEMENT OF FACTS

1. The following facts relating to this matter are agreed between the parties.

Description of Private Plan Change 21

2. Southern Cross Hospitals Limited (**Southern Cross**) made a request for a private plan change (Private Plan Change 21) to the Auckland Unitary Plan (**AUP**) on 1 February 2019 to enable the expansion of its existing Brightside Hospital at 3 Brightside Road onto 149, 151 and 153 Gillies Avenue, Epsom (together, the **Site**). The request was accepted for processing by Auckland Council on 5 March 2019.
3. Private Plan Change 21 was approved with modifications by Independent Hearings Commissioners on behalf of Auckland Council on 28 May 2020 (**PPC**).
4. The objective of the PPC is to enable the efficient operation and expansion of the existing hospital, while managing the effects on the adjacent residential amenity.
5. The PPC (as approved by Auckland Council) replaces the residential zonings which currently apply to 3 Brightside Road and 149, 151 and 153 Gillies Avenue, Epsom (**Site**) with the Special Purpose Healthcare Facility and Hospital zone (**HFH Zone**), with some site-specific modifications (which are noted below).
6. The PPC (as approved by Auckland Council) also removes the Special Character – Residential Isthmus B Overlay (**SCA overlay**) from the three Gillies Avenue properties and amends Table E27.6.2.4 in Chapter E27 to specify the minimum parking rate of 1 space per 64m² for the Brightside Hospital.
7. The existing HFH Zone provisions approved by Auckland Council are amended as follows:
 - (a) A new row within Table H25.4.1 Activity Table is inserted to provide that new buildings, or additions to existing buildings that increase the building footprint by more than 20 per cent, at Brightside Hospital requires consent as a controlled activity. Activity (A22).

- (b) A new provision in H25.5 Notification to provide that applications for new buildings, or additions to existing buildings that increase the building footprint by more than 20 per cent, at Brightside Hospital to be considered without public or limited notification or the need to obtain written approval from affected parties, unless the Council decides that special circumstances exist under s95A(4) of the RMA. H25.5(1)(c).
- (c) A new row in Table H25.6.1.1 Building Heights is inserted to specify the permitted, restricted discretionary and discretionary building height standards at Brightside Hospital and refers to an Outline Plan for the Brightside Hospital (new Figure H25.6.1.2) (**Outline Plan**) which specifies different height standards for Area 1 and 2.
- (d) The Outline Plan is inserted to identify Areas 1 and 2 for the height controls (as noted above) and specific trees and stone walls to be retained (in accordance with new standard H25.6.7), and a building line setback to be complied with from the adjoining residential properties (in accordance with new standard H25.6.7).
- (e) A new standard H25.6.1.1(3) is inserted to confirm that the heights noted in figure H25.6.1.2 are measured as per the AUP definition of height, and that the purpose of the Brightside Hospital building height limits is to manage adverse effects of building dominance on the amenity of adjacent residential properties.
- (f) A new standard H25.6.7 is inserted to provide for development to be in accordance with the Outline Plan. This provides that any permitted, controlled, or restricted discretionary development of the Brightside Hospital site must:
 - (i) retain the trees and stone walls identified on the Outline Plan to manage adverse effects on adjacent areas including streetscape character and amenity; and
 - (ii) be set back to the building line identified on the Outline Plan to manage adverse effects of building scale and location on adjacent residential properties.

- (g) A new set of matters of control are inserted as H25.7(1)-(3).
These reflect the new controlled activity and include effects on the privacy of immediate residential neighbours; building design and appearance; and site travel management.
- (h) A new set of assessment criteria are inserted as H25.7.2. These expand on the matters of control noted above, and also point to relevant AUP policies.

Description of the Site

- 8. The Site is approximately 9273m² in area, with frontage to both Brightside Road (a local road) and Gillies Avenue (a secondary regional arterial) in Epsom.
- 9. The Site is located within 800m of travelling distance south of the Newmarket Business – Metropolitan Centre zone and is approximately 1.5km of travelling distance from the Newmarket railway station. It is 1km of travelling distance from the Mt Eden Village centre to the west on Mt Eden Road, and approximately 350m of travelling distance from the Manukau Road business mixed use corridor and frequent bus route to the east.
- 10. The Site consists of four properties: one property at 3 Brightside Road and three properties at 149, 151 and 153 Gillies Avenue.
 - (a) 3 Brightside Road is currently used for the existing Brightside Hospital, which was completed in 2000. This was authorised by the Environment Court (Decision No. A23/97) as a discretionary activity in the then Residential 2a zone under the Council's legacy district plan. A hospital use has been accommodated on the Site since 1922.
 - (b) The property at 149 Gillies Avenue currently contains a boarding house. The house and garden on this property have been modified.
 - (c) The properties at 151 and 153 Gillies Avenue contain double and single storey residential dwellings, respectively. The houses are

situated well back from Gillies Avenue in well landscaped gardens.

11. All properties are variously vegetated with large trees, smaller shrubs, hedging and ground cover including grass. These include four large trees along the Gillies Avenue frontage (a Puriri tree, a Tulip tree, Dawn Redwood and Pohutukawa), a mature Cooper Beech tree, and a Jacaranda in the existing formal garden on the Site. Southern Cross also recently planted four Australian Frangipani on the western boundary of 149 Gillies Avenue that is shared with 32A Owens Road.
12. There are two notable trees within 3 Brightside Road that are protected under the provisions in the AUP. This includes a large Pohutukawa located between the existing building and the Gillies Avenue properties, and an Australian Frangipani on the northern boundary of 3 Brightside Road.
13. The front boundaries of the three Gillies Avenue residential properties are stone walled, with integrated hedging and openings for vehicle driveways and pedestrian accessways.

Current AUP zoning and overlays and features applicable to the Site

14. The existing hospital at 3 Brightside Road is currently within the Residential - Mixed Housing Suburban Zone (**MHS zone**) under the AUP. The sites at 149, 151 and 153 Gillies Avenue are located within the Residential - Single House zone (**SH zone**). These zones contain the following standards relevant to the permitted built form on the Site:
 - (a) Building height must not exceed 8m plus 1m for 50% of the vertical height of the roof, where the entire roof slopes 15 degrees or more.
 - (b) Building coverage must not exceed 35% of the net site area under the SH zone and 40% of the net site area under the MH zone.
 - (c) There must be minimum depth of 3m for the front yard and 1m for the side and rear yards.

- (d) Buildings must not project beyond a 45 degree recession plane measured from a point 2.5m vertically above ground level along side and rear boundaries of the Site.
15. The Gillies Avenue properties are subject to the Special Character Residential Isthmus B Overlay (**SCA overlay**), specifically the “B1” subset:
- (a) The SCA overlay relates to the dwellings, vegetation and landscape currently located on these three sites.
 - (b) A demolition, removal and relocation control is applied to the houses at 151 and 153 Gillies Avenue under the AUP. It does not apply to the boarding house at 149 Gillies Avenue.
 - (c) The character statement for the SCA overlay (15.1.7.3, Schedule 15 of the AUP) includes a summary of the special character values and physical and visual qualities that apply to the special character area and how these elements interrelate and contribute to the predominant character of the area.
 - (d) The SCA overlay contains the following standards relevant to the permitted built form on the Site:
 - (i) Building height must not exceed 8m plus 1m for 50% of the vertical height of the roof, where the entire roof slopes 15 degrees or more.
 - (ii) Building coverage must not exceed 25% of the net site area (where the site is greater than 1,000m²).
 - (iii) The front yard must have a minimum depth of the average of existing setbacks of dwellings on adjacent sites and there must be minimum depth of 1.2m for the side yard and 3m for the yard.

- (iv) Buildings must not project beyond a 45 degree recession plane measured from a point 3m vertically above ground level along any boundary of the Site.¹
- 16. As noted, there are two notable trees within 3 Brightside Road that are protected under the provisions in the AUP, the large Pohutukawa located between the existing building and the Gillies Avenue properties, and an Australian Frangipani on the northern boundary of 3 Brightside Road.
- 17. The Site is also subject to the following additional overlays under the AUP:
 - (a) There is a volcanic viewshaft overlay (Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay – E:14, Mount Eden, Viewshafts) that affects the western portion of 3 Brightside Road. This overlay limits the maximum height of development on that part of the Site to 11.5m at the western boundary with Brightside Road, rising up to 16.5m for the north-western portion of 149 Gillies Avenue.
 - (b) There is a second volcanic viewshaft overlay (Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay – W26, Mount Wellington, Viewshafts) that affects the entire Site. This overlay sets a maximum height limit of 36 – 42.5m.
 - (c) The 12m permitted height for the PPC in Area 1 and the 16m permitted height in Area 2 will in the main be beneath the height of the volcanic viewshaft. Towards the western boundary of Area 1 the viewshaft height limit of 11.5m is exceeded by the permitted 12m height in the PPC. However, this is outside the footprint of the existing hospital on 3 Brightside Road and outside the area where a building complying with the 3m yard setback rules under the HFH zone could be located.

¹ The height in relation to boundary standard D18.6.1.2 is proposed to be modified by Plan Change 26 so that it is measured along the side and rear boundaries of the Site only. Plan Change 26 is currently subject to appeal.

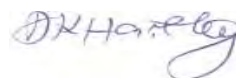
- (d) There is a quality-sensitive aquifer management area overlay that affects the entire Site. This means that any discharge into the aquifer within the underlying volcanic materials should be undertaken in accordance with the controls in the AUP to minimise the discharge of contaminants into the aquifer.

Surrounding environment

18. Attached to this statement as **Appendix A** is a map showing the zoning and SCA overlay under the AUP for the Site and its surrounding environment.
19. Adjacent zoning: The Site is located within a block of residential properties bounded by Owens Road (to the north), Brightside Road (to the west and south) and Gillies Avenue (to the east). The block of properties adjacent to the Site is predominantly zoned MHS.
20. Surrounding zoning: The properties in the surrounding area along Gillies Avenue and Owens Road are a mix of SH with a SCA overlay, MHS, and some Mixed Housing Urban (**MHU**). There are also areas of Terrace Housing and Apartment Building (**THAB**) zone located within 450m of the Site.
21. SCA Overlay: The properties subject to the SCA overlay are shown on the map in Appendix A.

Michael Savage

Counsel for **Eden Epsom Residential
Protection Society Incorporated**



Diana Hartley

Counsel for **Auckland Council**



Bianca Tree

Counsel for **Southern Cross Hospitals
Limited**



Claire Kirman

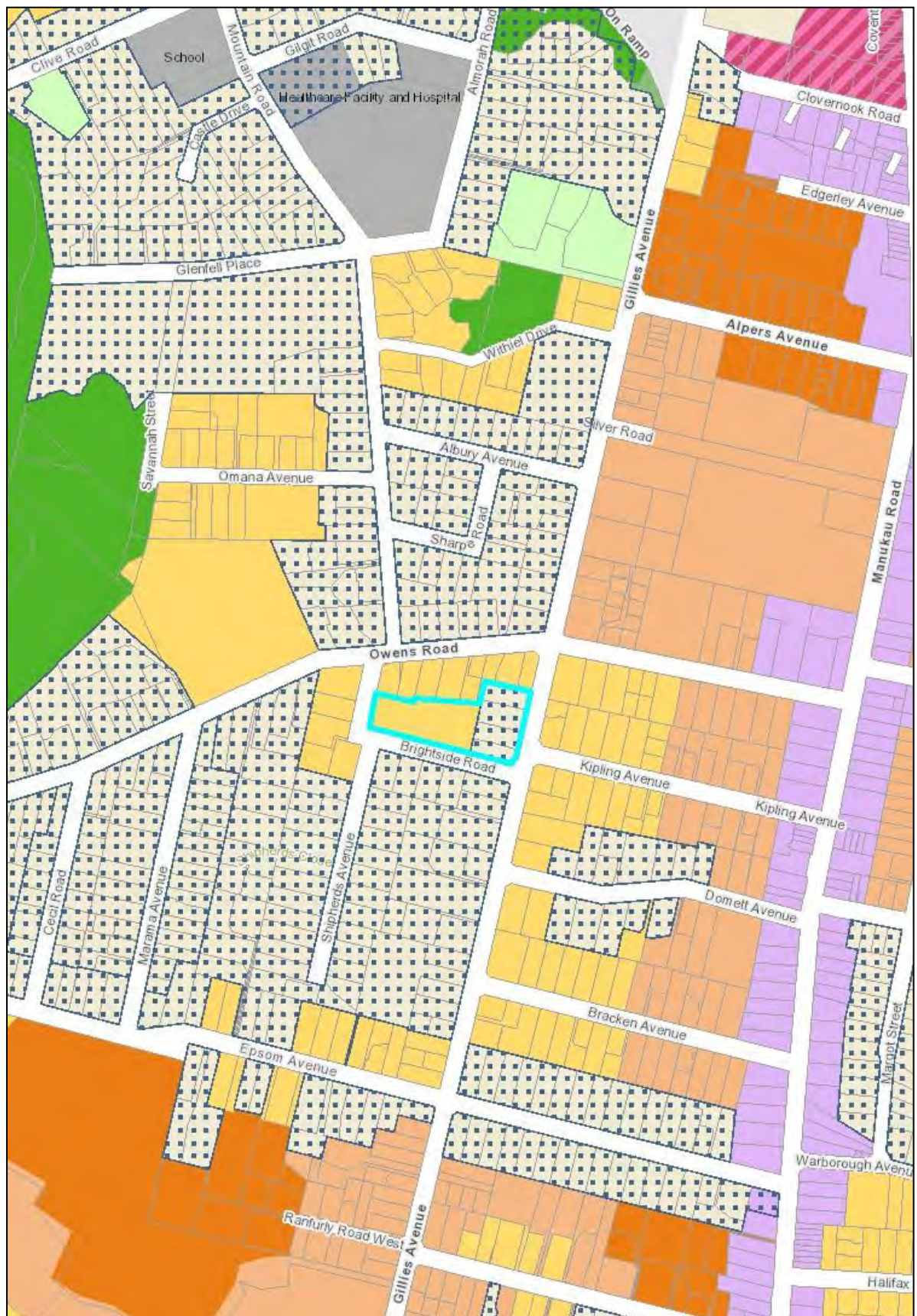
Counsel for **Kāinga Ora – Homes and
Communities**

Dominic Wilson

Head of Co-governance for **Tūpuna Maunga
o Tāmaki Makaurau Authority**

APPENDIX B

AUP Map showing zoning and the SCA overlay of the Site and its surrounding environment



Map Key:**Residential**

	Residential - Large Lot Zone
	Residential - Rural and Coastal Settlement Zone
	Residential - Single House Zone
	Residential - Mixed Housing Suburban Zone
	Residential - Mixed Housing Urban Zone
	Residential - Terrace Housing and Apartment Buildings Zone

Business

	Business - City Centre Zone
	Business - Metropolitan Centre Zone
	Business - Town Centre Zone
	Business - Local Centre Zone
	Business - Neighbourhood Centre Zone
	Business - Mixed Use Zone
	Business - General Business Zone
	Business - Business Park Zone
	Business - Heavy Industry Zone
	Business - Light Industry Zone

Open space

	Open Space - Conservation Zone
	Open Space - Informal Recreation Zone
	Open Space - Sport and Active Recreation Zone
	Open Space - Civic Spaces Zone
	Open Space - Community Zone

Historic Heritage & Special Character

	Special Character Areas Overlay Residential and Business
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BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

I MUA I TE KŌTI TAIAO
TĀMAKI MAKĀURAU ROHE

ENV-2020-AKL-000079

UNDER the Resource Management Act 1991 ("RMA")

IN THE MATTER of an appeal under cl 14 (1) of Schedule 1 of the
RMA 1991 against a decision of the Auckland
Council on proposed Plan Change 21 to the the
Auckland Unitary Plan (Operative in Part)

BETWEEN Eden Epsom Residential Protection Society
Incorporated

Appellant

A N D Auckland Council

Respondent

AND Southern Cross Hospitals Limited

Requestor

AND **Kāinga Ora** – Homes and Communities

Section 274 Party

AND **Tūpuna Maunga O Tāmaki Makaurau**
Authority

Section 274 Party

EVIDENCE OF HEIKE BRIGITTE LUTZ ON BEHALF OF EDEN
EPSOM RESIDENTIAL PROTECTION SOCIETY INCORPORATED

SPECIAL CHARACTER

20 MAY 2021

1. INTRODUCTION

- 1.1 My full name is Heike Brigitte Lutz. I am the director of BCon Consultants Ltd, an Auckland based architectural building conservation practice.

Qualifications and experience

- 1.2 I am a building conservation consultant and hold a Master of Architecture degree from the Technical University of Applied Sciences in Berlin, Germany. I have over 35 years of experience in the architectural and building conservation fields. I am an Independent Hearings Commissioner for Auckland Council, Hamilton City Council, Palmerston North City Council, and Christchurch City Council, and I am an accredited Mediator.
- 1.3 For almost 20 years I have been successfully involved in council hearings and resource management matters as an Independent Hearings Commissioner, Duty Commissioner, and as an Expert Witness at Council and Environment Court hearings.
- 1.4 Over the years I have been involved in a number of substantial Plan Changes (**PC**) and developments. Of particular relevance are PC163, and the Proposed Auckland Unitary Plan, acting for a variety of clients on Topics 10, 29,30, 31, 32, 50, and 79.
- 1.5 I prepared thematic frameworks for District Plans, design and heritage guidelines, heritage area management plans, and provided statutory and policy advice and development for Councils.
- 1.6 My project experience extends over a large number of nationally and internationally recognised heritage buildings including Christ Church Cathedral, Arts Centre of Christchurch, Auckland Hebrew Congregation Synagogue, Community Centre and Kadimah School, Bishops House Auckland, Britomart Precinct, Old Government House Auckland, Treaty House Waitangi, and Shackleton's Hut, Antarctica.
- 1.7 Full details of my qualifications and experience are set out in **Appendix 1**.

Code of Conduct

- 1.8 I confirm that I have read the Code of Conduct for expert witnesses contained in the 2014 Environment Court Practice Note and that I agree to comply with it. I confirm I have considered all the material facts that I am aware of that might alter or detract from the opinions I express. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Purpose and scope of evidence

- 1.9 Due to the unavailability of Mr Jeremy Salmond, who provided Evidence in Chief on Special Character matters for the Eden Epsom Residents Protection Society Inc. (**EERPS**) for this hearing, I have been engaged by the EERPS as expert witness with regards to Private Plan Change 21 (**PPC21**) as lodged by Southern Cross Hospitals Ltd (**SCHL**) with Auckland Council, and granted with modifications by the majority of an Independent Hearings Commissioner Panel in May 2020.
- 1.10 I am familiar with the area and have undertaken a site visit on 17 May 2021, accompanied by Hon Tony Randerson. I visited the site surrounds of the Gillies Ave properties, the wider context of the sites, and accessed the sites of the existing hospital at 3 Brightside Rd and 32a Owens Rd.
- 1.11 As background information and for the preparation of this evidence, I read the following documentation:
- (a) Archimedia, Southern Cross Hospitals Brightside Road Extension, Design Statement, Rev C , Resource Consent Issue, September 2019
 - (b) Decision following the hearing of a Private Plan Change under the Resource Management Act 1991, Private Plan Change 21, 20 May 2020;
 - (c) Archimedia, Southern Cross Hospitals Brightside Road, Private Plan Change Appeal Photomontage Appendix, Rev A, November 2020
 - (d) Statement of Evidence of Carolyn Joy Hill for SCHL, Special Character, 26 November 2020;
 - (e) Summary Statement of Evidence of John Edward Brown for SCHL, Special Character, 27 November 2020;

- (f) Evidence of Amelia Joan Linzey on behalf of Kainga Ora-Homes and Communities, Planning, 18 January 2121;
- (g) Statement of Evidence of Alan Christopher England on behalf of EERPS, Visual Simulations, 10 February 2021;
- (h) Evidence of Hon Anthony Randerson QC on behalf of EERPS, 12 February 2021;
- (i) Evidence of Laurence Jeremy Elder Salmond on behalf of EERPS, Heritage and Character Area Effects, 15 February 2021;
- (j) Statement of Evidence of Brian William Putt, Town Planner, on behalf of EERPS, 15 February 2021;
- (k) Statement of Evidence of Robert Sterling Speer on behalf of EERPS and as nearby neighbour, 15 February 2021;
- (l) Statement of Evidence of Bridget Mary Gilbert on behalf of EERPS, Landscape, 15 February 2021
- (m) Statement of Reply Evidence of Carolyn Joy Hill for SCHL, Special Character, 8 March 2021;
- (n) Decision following the hearing of an application for resource consent under Resource Management Act 1991 (BUN60347517 and LUC60150801-A), 24 March 2021;
- (o) Agreed Statement of Facts; undated,
- (p) Joint Witness Statement (**JWS**) for expert conferencing -special character, 27 April 2021;
- (q) JWS for expert conferencing – Landscape and Urban Design, 28 and 30 April 2021; and
- (r) JWS for expert conferencing – Planning, 6 and 10 May 2021.

- 1.12 The extent of PPC21 is well described in the PPC21 decision¹, and in most of the already tabled briefs of evidence. For the sake of brevity, I adopt this information and will not repeat any of this here.
- 1.13 I will also not replicate the applicable planning framework that relates to current zoning and special character at the subject sites. This has been recorded by the planning experts, as well as the special character experts in their evidence to various degrees, and in the Agreed Statement of Facts², and I accept this agreed framework as it pertains to special character.
- 1.14 My evidence is predominantly concerned with the effects of the PPC21 on special character.
- 1.15 My evidence is structured as follows:
- (a) Joint Witness Statement – Special Character; (Section 3)
 - (b) The existing special character of the area (Section 4);
 - (c) Effects of the removal of the Special Character Area Overlay (**SCAO**) from the subject sites (149, 151 and 153 Gillies Ave) (Section 5);
 - (d) Effects of the rezoning of all of the subject sites (including 3 Brightside Rd) to Special Purpose-Healthcare Facility and Hospital Zone (**HFH**) (Section 6); and
 - (e) Conclusions (Section 7).
- 1.16 A summary of my evidence is set out in Section 2.

2. SUMMARY

- 2.1 I generally agree with the findings of the JWS -special character with regards to the qualities of the SCAO, the AUP provisions for change in the SCAO, the PPC21 provisions for change to established character, and the relationship between special character and amenity.

¹ Decision following the hearing of a Private Plan Change under the Resource Management Act 1991, Private Plan Change 21, 20 May 2020

² Agreed Statement of Facts; undated

- 2.2 The existing character of the area is that of a predominantly residential area, with single and double storey houses that sit on a variety of larger lot sizes towards the back and feature an abundance of green, layered landscaped areas, particularly to the front yards. The AUP provides 12 attributes that apply to the SCAO.
- 2.3 For the reasons described in this evidence it is my view that the removal of the SCAO from the three sites as proposed will have significant adverse effects on the special character in this area. The effect on the special character on a regional level has minimal impact.
- 2.4 The mitigation measures proposed are of very limited nature compared to the special character attributes that will be lost. This loss will result in a visible character change of the western side of Gillies Ave between Owens Rd and Brightside Rd, which currently is a character link between the abutting northern and southern special character areas. The mitigation measures are not effective.
- 2.5 While change is anticipated in this area, any changes proposed should be sympathetic with the special character of this area, and in keeping with the scale and bulk that is expected in a residential zone.
- 2.6 The proposed HFH zoning is incompatible with the existing special character.
- 2.7 Overall, PPC21 will have significant adverse effects on the existing special character of the area, and cannot control the adverse effects of the new development with the mitigation measures proposed.
- 2.8 It is my view that PPC21 should be declined.

3. JOINT WITNESS STATEMENT – SPECIAL CHARACTER

- 3.1 I generally agree with the findings of the JWS -special character with regards to:
- (a) the qualities of the SCAO,
 - (b) the Auckland Unitary Plan (Operative in Part) **(AUP)** provisions for change in the SCAO,
 - (c) the PPC21 provisions for change to established character,
 - (d) the relationship between special character and amenity;

- (e) that the natural landscape and the stone walls contribute to the special character; and
- (f) that PPC21 will have minimal effect on the SCAO as a whole on a regional level³.
- (g) Where I do not agree with the JWS and have a different view this is explained in my evidence below.

4. THE EXISTING SPECIAL CHARACTER

- 4.1 In the following I introduce my professional view on the special character values of the three sites along Gillies Ave.
- 4.2 I note that the sites are zoned residential, which contributes positively to the special character in this area. While there are some medical facilities within the area, and also Epsom Girls Grammar School, the sites are predominantly used as residences and many of the healthcare facilities are located in residential buildings. Schools are expected in a residential area as a necessary amenity.
- 4.3 In particular the area between the motorway and about Epsom Ave on the western side of Gillies Ave provides a reasonably consistent context of a residential, leafy green character as described in the special character attributes, with only nominal interruptions. This is also described by Ms Gilbert from an Urban Design perspective.⁴
- 4.4 While I agree with the experts that the two houses at 151 and 153 Gillies Ave contribute to the special character as largely intact examples of period houses, I also believe that the modified building at 149 Gillies Ave contributes to the special character, although somewhat less, as a building that is at a scale and location on its site that is consistent with the specified special character and the residential use.

³ Joint Witness Statement for expert conferencing -special character, 27 April 2021, paras 6,7 8, and 9

⁴ Statement of Evidence of Bridget Mary Gilbert on behalf of EERPS, Landscape, 15 February 2021,

- 4.5 In my understanding of the AUP special character is derived from a wide range of different criteria that go far beyond the readily visible features, which are listed in the AUP Schedule 15 (15.1.1. Background).
- 4.6 The special character of an area is defined by all of these criteria. This does not mean that each and every of the 12 criterion needs to be present at each site to result in a coherent character. For the Isthmus B1 overlay, it is identified that the character is somewhat diverse, yet this diversity is coherently existing in addition to the above-mentioned attributes found in all of the sites to various degrees. This distinguishes Isthmus B1 from, for example, Isthmus A.
- 4.7 It also does not mean that there is no change or development possible. Changes can be made to some of the features, including new buildings; however, they need to be made sympathetically and still fit with the overall character, and Mr Brown agrees with that view⁵. It is not the change per se, but the degree of change and the impact of this change that is of concern.
- 4.8 Mr Brown criticises the level of integrity of the special character along Gillies Ave and sees the cause for that in the fact that not both sides of the road are part of the SCAO.⁶ Mr Salmond refutes this by referring to the edges of an overlay that have to abut to another zone and that fact cannot diminish the SCAO itself.⁷ I agree with Mr Salmond. I would like to add that the width of a street has also a significant impact on how the character is perceived. A *“busy road corridor”*, as Ms Gilbert described Gillies Ave ⁸, that consists of four lanes and includes car parking spaces and amenities such as bus stops, has limited capacity to convey a homogenous character even if it existed on both sides.

⁵ Summary Statement of Evidence of John Edward Brown for SCHL, Special Character, 27 November 2020, 59, 60

⁶ Summary Statement of Evidence of John Edward Brown for SCHL, Special Character, 27 November 2020, 50 and 51

⁷ Evidence of Laurence Jeremy Elder Salmond on behalf of EERPS, Heritage and Character Area Effects, 15 February 2021, 5.11

⁸ Statement of Evidence of Bridget Mary Gilbert on behalf of EERPS, Landscape, 15 February 2021, 87

5. EFFECTS OF THE REMOVAL OF THE SCAO

- 5.1 The purpose of the overlay is as set out in D18.1, namely retaining and managing the specified special character values of the area.
- 5.2 As documented in the JWS, all special character experts agree that there will be adverse effects on the special character should the SCAO be removed. This has also been repeatedly confirmed in the Statements of Evidence of all three experts. I concur that there will be adverse effect.
- 5.3 Mr Brown and Ms Hill believe that these adverse effects are of a nature and level that affords the possibility for mitigation. I disagree with their view.
- 5.4 Ms Hill and Mr Brown are of the opinion that the demolition of the houses is of minor consequence to the special character because they cannot be easily seen and therefore do not readily contribute⁹. I strongly disagree for a number of reasons.
- 5.5 Firstly, the houses can be seen from a few vantage points close by the properties, and from further afar (see **Appendix 2**). The observer is at no time under the impression that these sites are only a layered landscape behind a wall.
- 5.6 Secondly, in this case the somewhat concealed location of the houses forms part of the specified special character of this leafy residential area; it is not a negative. Here the relationship of the buildings with their surrounds, tucked behind landscapes, trees and walls, and in particular the ratio of landscape to buildings is part of the described character of the area.
- 5.7 Thirdly, this means the houses in their position on site are contributing as much as the landscape and boundary treatment that surrounds them. This has also been confirmed by the landscape experts¹⁰. The landscapes are typically arranged to complement a building, not the other way around. Therefore, the landscapes without the buildings would be lacking.
- 5.8 As a result, the removal of any buildings within the SCAO is closely linked to their replacement. It is anticipated that a building is part of that environment. Landscape and boundary treatment alone would not be included in the SCAO. With that in

⁹ Joint Witness Statement for expert conferencing -special character, 27 April 2021, 12(c) (ii)

¹⁰ JWS for expert conferencing – Landscape and Urban Design, 28 and 30 April 2021, 6(b)

mind, the protection of a limited selection of vegetation that is not already scheduled and the remaining wall alone will not achieve the full breadth of the special character.

- 5.9 I agree with Mr Salmond that the demolition of the houses at 151 and 153 Gillies Ave would result in the loss of valuable elements of the special character on these sites. I do not agree that the replacement of the buildings with similarly scaled new buildings would not have a negative impact on the special character. In my view the buildings have integrity and authenticity in this area and are representatives of the special character. Their loss would in my view have adverse effects, even if their replacements were sympathetically designed. The new buildings would lack the historical association with the area that the existing buildings can contribute. In my view, a demolition control was introduced on these sites for this reason and as Mr Salmond rightly noted this was not to “...*prevent demolition or removal, but rather establish rules and assessment criteria to determine the effects of such activity.*”¹¹
- 5.10 I agree with Mr Brown and Mr Salmond, that the assessment needs to be made on a case-by-case basis, because the situation is different for the building at 149. The building on this site is modified and does not have the same level of contribution to the historical context of the special character. Its contribution is mainly due to its compatible size and scale and its positioning on the site. Here a sympathetically designed and similarly scaled building could contribute as much to the character as the existing, hence no demolition control was necessary.
- 5.11 It has also been noted that the landscape and walls have no protection as present, except the individually scheduled trees. While the landscape is part of the character of the area and generally should be maintained, it is not of particular relevance what precise species of vegetation there are to achieve this character. To allow for individual owners’ taste and account for the fact that these are living things that eventually will die off and will be replaced, it is not necessary to protect these elements separately above and beyond the mature historic trees that add a good amount of green to the character by themselves. Since the landscaped areas and walls provide typically a level of privacy it is also unlikely that an owner would take the entirety of the front landscape out. In any case, it could at worst be

¹¹ Evidence of Laurence Jeremy Elder Salmond on behalf of EERPS, Heritage and Character Area Effects, 15 February 2021, 5.7

replaced with lawn or similar, due to the impermeable area restrictions, which in itself is a landscape feature.

- 5.12 The SCAO on the three sites facing Gillies Ave is in Mr Brown's view¹² an "isolated element" within this block of land, and he asserts that in his view these sites, if considered today, would not be included in the SCAO¹³. I disagree with his notion. When the SCAO was introduced, the block had the same composition and features as it has today.
- 5.13 The special character was once also apparent in other parts of this block fitting most of the attributes. The existing hospital site had originally a large residential building (later used as a hospital) placed on it and to its west were two more lots that had residential houses on them. A similar situation as exists now. Those sites were amalgamated and now one large building (the existing Brightside Hospital) is located on the site. Other sites within the block have been subdivided (before the SCAO was introduced) which made them equally unfitting to be included in the SCAO despite some older houses being located on them. The three sites are not the anomaly, but 'the last men standing'. This shows clearly how without the SCAO the erosion of special character thrives.
- 5.14 I also like to note that 'the block' is a construct that can be appreciated best on a map. The special character is by the public not usually appreciated from within the block of land, but predominantly from the street. The block cannot be experienced as such standing on any side of the streets that surround it. This puts less emphasis on the application of the overlay continuously over the block, but more on the street edges, where the character can be more readily appreciated.
- 5.15 If the existing buildings on 149, 151 and 153 were demolished, without being replaced by structures that, as explained above (3.8), duly take their place by maintaining and enhancing the special character, the effects of erosion on this block would be cumulative, and a large gap would be created in the SCAO along the west side of Gillies Ave.

¹² Summary Statement of Evidence of John Edward Brown for SCHL, Special Character, 27 November 2020, 35

¹³ Summary Statement of Evidence of John Edward Brown for SCHL, Special Character, 27 November 2020, 55

- 5.16 There are further adverse effects that will impact the special character of the area significantly, should the SCAO be removed. The building coverage and height can be drastically increased which effects the relationship of the buildings with their surrounds, an attribute that is part of the special character.
- 5.17 The landscape requirements of 40% in the front yard will not apply anymore, which can result in having a setback, but no layered landscape in front of a building, which is further promoted by allowing an impervious site area standard of up to 80% under the HFH zone. The character of generously layered landscapes with hidden buildings behind is then completely lost under this proposed PC.

6. EFFECTS OF THE REZONING TO HFH

- 6.1 The experts largely agreed that an option where the area is rezoned HFH with the SCAO retained is not feasible. With my architectural background and the fact that I have been involved in hospital designs in the past, I agree that an efficiently designed modern hospital building would not fit in the restrictions that the SCAO requires.
- 6.2 I agree with Mr Salmond¹⁴ and Ms Gilbert¹⁵ that the development proposed on site as enabled through the rezoning would be inconsistent in scale, form and mass with the special character of the area as well as the residential zoning, and would be visually and spatially dominant.
- 6.3 The drawings included in the Archimedia Design Statement¹⁶ show the large mass that the proposed building requires with its consistent height that clearly has an institutional/commercial character, that could not be mistaken for a residential building.
- 6.4 The new development is not responding to the existing character as the existing hospital building is. This was previously restricted to 10m (under the Residential 2a Zone and without a SCAO imposed) to be sympathetic to the existing

¹⁴ Evidence of Laurence Jeremy Elder Salmond on behalf of EERPS, Heritage and Character Area Effects, 15 February 2021, 3.3

¹⁵ Statement of Evidence of Bridget Mary Gilbert on behalf of EERPS, Landscape, 15 February 2021, 13

¹⁶ Archimedia, Southern Cross Hospitals Brightside Road Extension, Design Statement, Rev C , Resource Consent Issue, September 2019

residential character. The existing hospital appears from the road as a two storey building, has a more traditional window to wall ratio, has a modulated façade that is of a relatively compatible scale with the existing surrounds.

- 6.5 However, it needs to be remembered that technically, if the rezoning and the removal of the SCAO is granted, there is no requirement for the new development to be in line with objectives and policies of D18.3, nor does it need to meet objective B5.3.1(2) to maintain the special character of the area. Any new design only needs to adhere to the modifications that were imposed by the commissioners, which are very limited, if the Court decides so.
- 6.6 I am of the opinion, as Mr Salmond also states in the JWS¹⁷, that the PPC21 will adversely affect the special character the overlay seeks to maintain. In addition, it is my view that the limited mitigation measures proposed are inherently ineffective.
- 6.7 Ms Ogden-Cork, Mr Mackay and Mr Hudson consider that a significant degree of mitigation has been provided due to the screening of the new building¹⁸. I do not believe this is the case, but I am in consensus with Ms Gilbert, that the mitigation benefits are very limited¹⁹.
- 6.8 Firstly, the screening is predominantly restricted to the lower part of the building, yet the upper half, which is of considerable height, is in full view to the observer except from the corner and further along Gillies Ave, where the protection of taller trees affords localised screening. I am also not convinced that the photomontages show an accurate view with regards to the remaining vegetation. While specified trees are part of the protection proposed, there is a large amount of non-descript vegetation of various sizes along Gillies Ave, that would be removed as unwanted growth, which would result in a less dense screening at eye level.
- 6.9 Secondly, and as noted above, the special character has 12 attributes that are relevant to this character. It is proposed to protect some selected landscaping, parts of the boundary walls (it is reasonably expected that openings for car access are required in positions where currently walls are located), a range of height

¹⁷ Joint Witness Statement for expert conferencing -special character, 27 April 2021, 12(b)

¹⁸ JWS for expert conferencing – Landscape and Urban Design, 28 and 30 April 2021

¹⁹ JWS for expert conferencing – Landscape and Urban Design, 28 and 30 April 2021, 22(d)

restrictions (12m – 25m), each bundled with a different activity status, and some setbacks to neighbouring properties and the street front.

- 6.10 The table below (Table 1) shows how the mitigation measures proposed compare with the attributes of the special character.
- 6.11 It seems very obvious to me that the limited mitigation measures proposed calculate to a very small fraction of the attributes that contribute to the special character.
- 6.12 There would be a significant increase in building coverage, subdivision patterns would be lost, lot sizes would greatly enlarge, and generally a considerable change in the built form would be visibly dominant, and change the character of the sites from noticeably residential to obviously institutional/commercial.
- 6.13 It is important to remember that the HFH allows buildings up to 25m in height, which compares to 8m (+1) and 10m maximum height limit for the current site zonings and SCAO. At present the proposal is limited to 12m and 16m, however that does not exclude SCHL at a later stage proposing a higher building. At that time the SCAO will have been removed and there may be little reason for SCHL to not go outside the controlled activity status and apply for a restricted discretionary activity.
- 6.14 There is a high risk that the special character remnants that are sought to be protected by the modifications to the current PPC21 will have no long-term consequence. The photomontages provided in Mr England's evidence Appendix 2 show clearly the development potential when taken to the maximum height allowed.
- 6.15 The purpose described for the HFH will invite further development. During the 2000 development there was no mention of acquiring three more adjoining properties to enlarge the hospital. It is not farfetched to imagine that in the future the hospital will again require further extension and SCHL acquiring additional properties within the block, which I note, have only the layer of residential zoning to overcome. There is clearly a cumulative loss of character considering the three properties lost in the past, and the three (not one) properties proposed to be developed now.

TABLE 1

Special character attribute	SCAO and SH	HFH
Historical context	Historic context since at least 1905, Architects Arnold and Abbott (151,153 Gillies Ave)	Linked to Brightside Hospital (2000)
Period of development	ca 1921	2020s
Scale of development	Single and double storey residential dwellings	16-25m high large scale Hospital building
Form and relationship to street	Very large setbacks, partially concealed buildings, distinguishable as three single elements	Largely reduced setback, single rectangular bulk of ca 68m length, limited concealment
Density/pattern of development	Large lot sizes, single buildings, low density, Site coverage by existing buildings from 17% to 44% ²⁰	Site coverage by new buildings up to 80% (yard setbacks might reduce that to 58% ²¹), high density.
Building types	Residential buildings	Hospital buildings (Institutional)
Visual coherence	151 and 153 are visually intact and authentic period buildings, 149 is modified and enlarged, yet all are visually coherent with the SCAO	No visual coherence with the special character area, dominant 3-4 storey building
Styles	Arts and Crafts and Bungalow style	Modern
Materials and construction	Timber, traditional construction methods	Unknown (likely concrete), aluminium, glass, terracotta panels, modern construction methods
Subdivision	Subdivision pattern as of ca 1905, three separate lots 149 = 2209 sqm ; 151 = 971 sqm; 153 = 850sqm Subdivision pattern visible	Amalgamation of three lots into one possible (4030 sqm), visually through link to existing hospital it appears as one large site (9445 sqm). Original subdivision pattern not visible/possibly lost
Road pattern	No changes	No changes
Vegetation and landscape characteristics	Extensive front yard planting, mature trees, Soft landscaping existing (excl. paths and driveways) From 31% to 69% ²²	Single individually protected mature trees, narrow landscape strip towards street between openings for vehicle access, landscaping ca 20%

²⁰ Statement of Evidence of Bridget Mary Gilbert on behalf of EERPS, Landscape, 15 February 2021, p23 Table 2

²¹ JWS for expert conferencing – Landscape and Urban Design, 28 and 30 April 2021, 9(b)

²² Statement of Evidence of Bridget Mary Gilbert on behalf of EERPS, Landscape, 15 February 2021, p23 Table 2

6.16 Ms Hill refers in her evidence to the National Policy Statement on Urban Development (**NPS UD**)²³. I agree that this is a framework that needs to be taken into account. However, I consider it premature to place any significant weight on the provisions relating to height and intensification. To my knowledge Auckland Council has not undertaken any determinative steps at this time to regulate the requirements under the NPS-UD through the AUP or otherwise. Therefore, it is presently unclear what level of height and intensification can be expected in this area, if any, and also what can be considered as 'other matters' (in accordance with clause 3.32(1)(h)).

7. Conclusion

- 7.1 For the reasons described in this evidence it is my view that the removal of the SCAO from the three sites as proposed will have significant adverse effects on the special character in this area. The effect on the special character on a regional level has minimal impact.
- 7.2 The mitigation measures proposed are of very limited nature compared to the special character attributes that will be lost. This loss will result in a visible character change of the western side of Gillies Ave between Owens Rd and Brightside Rd, which currently is a link between the abutting northern and southern special character areas. The mitigation measures are not effective in overcoming the adverse effects.
- 7.3 While change is anticipated in this area, any changes proposed should be sympathetic with the special character of this area, and in keeping with the scale and bulk that is expected in a residential zone. The proposed HFH zoning is incompatible with the existing special character.
- 7.4 Overall, PPC21 will have significant adverse effects on the existing special character of the area, and cannot control the adverse effects of the new development with the mitigation measure proposed. It is my view that PPC21 should be declined.



Heike Lutz, 20 May 2021

²³ Statement of Evidence of Carolyn Joy Hill for SCHL, Special Character, 26 November 2020, 31-35

APPENDIX 1

Heike Lutz – Qualifications and Experience

HEIKE LUTZ

Dipl Ing Arch, M.Arch,

Qualifications and Professional Development

- NZ Certificate, He Papa Tikanga Maori (Te Wananga o Aotearoa)
 - Accredited Independent Hearings Commissioner (MfE),
 - Accredited Mediator (LEADR)
 - CoP, Conservation Architecture, (University of Auckland),
 - Master of Architecture, University of Applied Science (Berlin, GER)
 - Registered Educator, 1st State College for Educators (Berlin, GER)
-
- o Maritime Archaeology: Shipwrecks and Submerged Worlds (University of Southampton, UK)
 - o Leading with Effective Communication (Catalyst Inc., USA)
 - o Communication Skills for Bridging Divides (Catalyst Inc., USA)
 - o The Science of Everyday Thinking (University of Queensland, AUS)
 - o Jury X: Deliberations (Harvard University Law School, USA)
 - o Justice (Harvard University Law School, USA)
 - o Sustainable Urban Development (Wageningen University / Technical University Delft, NL)
 - o Environmental Protection and Sustainability (Ben-Gurion University of the Negev, IL)
 - o Comparative Analysis Methodology (ICOMOS NZ)
 - o Strategic engagement under the RMA (NZ Law Society)

Relevant memberships and appointments

- Member of International Council on Monuments and Sites ICOMOS (incl. member of Charter Development Committee and former Board Member)
- Member of New Zealand Conservators of Cultural Materials (NZCCM)
- International Peer Reviewer for World Monuments Fund-WMF (USA)
- Former Chair and Trustee of North Shore Heritage Trust NSHT (Auckland Council organisation)
- Member of Resource Management Law Association (RMLA)
- Accredited Panel Member of LEADR, Resolution Institute

Professional experience

Heike has over 35 years of experience in the fields of architecture, building conservation, and urban design. For nearly 20 years she has been involved in Council and Environment Court hearings and resource management matters, and has also been working for the Environmental Protection Agency (EPA) as an expert witness, and for Councils as an Independent Hearings and Duty Commissioner.

In early 2013 Heike established BCon Consultants Ltd to expressly concentrate on her interest in heritage conservation in combination with effectively serving client needs regarding resource management matters in planning and the legal arena. She has completed the 'Making Good Decisions' course and is an accredited LEADR Mediator.

Previously, she co-founded and managed Archifact Ltd, a heritage architectural practice, from 2003-2013, acted as consultant to the New Zealand Historic Places Trust and taught Building Conservation and Design at the University of Auckland from 2000, before joining Jasmax Limited in 2002. At Jasmax Heike contributed to developing a building conservation department within the practice, in-house education in the field and worked on a number of important heritage projects.

Her project experience as the director of her own practices and under contract to various architectural practices in Europe and New Zealand includes a large number of nationally and internationally recognised heritage buildings.

Selection of heritage projects:

- Christ Church Cathedral, Christchurch
- Citizen War Memorial, Christchurch
- Arts Centre of Christchurch, Christchurch
- Auckland Hebrew Congregation Synagogue, Community Centre and Kadimah School, Auckland
- Basin Reserve, Wellington
- Bishop's House, Auckland
- Britomart Precinct, Auckland
- Chapel of Faith in the Oaks, Auckland
- Holy Cross Church, Auckland
- Homebush Estate, Darfield
- Old Government House, Auckland
- PekePeka to Otaki, Otaki
- Shakleton's Hut, Cape Royds, Antarctica
- Treaty House, Waitangi
- Waikumete Cemetery, Auckland

Over time Heike has been involved in a number of substantial Plan Changes; in the Auckland and Wellington areas.

Her contribution as Expert Witness to the judging panel at the Environment Court has been described as:

"Having reconsidered the conservation architecture evidence since the hearing we have to say that we found her [Heike Lutz] views reasoned, realistic and convincing." (EC Judge C J Thompson).

Selection of expert witness projects:

- Proposed Auckland Unitary Plan (PAUP), Independent Hearings Panel hearings, acting for a variety of clients including the Bishop of the Roman Catholic Diocese of Auckland (2014-2016)
- Albert St, Auckland, Council hearing (2014)
- Remuera Rd , Newmarket, Council hearing, Resource Consent (2012)
- Masonic Tavern, Devonport, Environment Court hearing, Council hearing, Resource Consent (2010 and 2008).

Selection of Independent Hearings Commissioner decisions:

- All Saints Church, Palmerston North (2021)
- 401-403 Parnell Rd, Parnell, Auckland (2020)
- Waikaraka Park, Onehunga, Auckland(2020)
- 42-48 Ponsonby Rd, Ponsonby, Auckland (2019)
- 11 Surrey Cres, Grey Lynn, Auckland (2019)
- New Downtown Public Space, Auckland City (2019)
- Quay Street Seawall Upgrade, Auckland City (2018-2019)
- Ferry Basin and Queens Wharf, Auckland City (2018)
- Stockade Hill, Howick, Auckland (2018)
- Westhaven Marina, Auckland City, (2018)

Publications:

Heike has published peer-reviewed papers and presented at a number of international conferences including:

- *Preservation of Architectural Heritage through Adaptive Reuse and Its Value for a Sustainable Environment*, Southern Crossings, Sixth Australasian Urban History/Planning History Conference, Auckland 2002;
- *Conservation versus restoration – a story about layers over time*, Past Matters, Eighth Australasian Urban History/Planning History Conference, Wellington 2005;
- *Community Planning as if Cultural Heritage Matters*, Past Matters, Eighth Australasian Urban History/Planning History Conference, Wellington 2005.

APPENDIX 2

Photographs

(taken 17 May 2021, BCon Ltd)

Views from footpath close to properties











View from Brightside Hospital



Views from further afar





**IN THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2020-AKL-000079

**I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

UNDER	the Resource Management Act 1991
IN THE MATTER	of an appeal under clause 14(1) of Schedule 1 of the Resource Management Act 1991 against a decision on Proposed Plan Change 21 to the Auckland Unitary Plan
BETWEEN	EDEN EPSOM RESIDENTIAL PROTECTION SOCIETY INCORPORATED
AND	AUCKLAND COUNCIL Respondent
AND	SOUTHERN CROSS HOSPITALS LIMITED Requestor
AND	KĀINGA ORA – HOMES AND COMMUNITIES Section 274 Party
AND	TŪPUNA MAUNGA O TĀMAKI MAKĀURAU AUTHORITY Section 274 Party

**Statement of Evidence of Bridget Mary Gilbert on behalf of Eden Epsom
Residential Protection Society**

Landscape

Dated 15 February 2021

INTRODUCTION

1. My full name is Bridget Mary Gilbert. I am a Landscape Architect and Director of Bridget Gilbert Landscape Architecture Ltd, Auckland. I hold the qualifications of Bachelor of Horticulture from Massey University and a postgraduate Diploma in Landscape Architecture from Lincoln College. I am an associate of the Landscape Institute (UK) and a registered member of the New Zealand Institute of Landscape Architects.
2. I have practised as a Landscape Architect for over twenty-five years in both New Zealand and England. Upon my return to New Zealand, I worked with Boffa Miskell Ltd in their Auckland office for seven years. I have been operating my own practice for the last fifteen years, also in Auckland.
3. During the course of my career, I have been involved in a wide range of work in expert landscape evaluation, assessment, and advice throughout New Zealand, including:
 - (a) landscape assessment in relation to Regional and District Plan policy;
 - (b) preparation of structure plans for rural, coastal, and urban developments;
 - (c) conceptual design and landscape assessment of infrastructure, rural, coastal, and urban development; and
 - (d) detailed design and implementation supervision of infrastructure, rural, coastal, and urban projects.
4. Of particular relevance to Proposed Plan Change 21 (**PPC 21**), I have assisted Councils and private landowners throughout New Zealand with rezoning and development applications that include a range of special purpose type activities. These include hospitals, schools, universities, recreation facilities, resorts, cemeteries, and quarries. Many of these projects related to land in an urban residential context.

5. I have also been involved in a number of development applications that relate to more sensitive urban contexts where such matters as the Special Character, Volcanic Viewshaft, and Notable Tree Overlays of the Auckland Unitary Plan: Operative in Part (AUP:OP) are involved.
6. I am currently a panel member of the Auckland Urban Design Panel (with a Chair endorsement).
7. I am also an Independent Hearing Commissioner for Auckland Council.
8. I have been appointed as one of three peer reviewers¹ of the Landscape (including natural character) Assessment Guidelines project under the direction of the New Zealand Institute of Landscape Architects. I have recently reviewed a draft of the Landscape Assessment Guidelines and participated in two workshops with the authors² and fellow peer reviewers. This work has given me an up-to-date insight into landscape assessment best practice. I understand that consultation with the wider Institute members has commenced with an aim to endorsing the guidelines document at the NZILA AGM in May 2021.

Code of Conduct

9. I record that I have read and agree to abide by the Environment Court's Code of Conduct for Expert Witnesses as specified in the Environment Court's Practice Note 2014. This evidence is within my area of expertise, except where I state that I rely upon the evidence of other expert witness as presented to this hearing. I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed.

¹ The other peer reviewers are Ms Di Lucas and Mr Stephen Brown.

² Rachel de Lambert (Boffa Miskell), Gavin Lister (Isthmus Group) with input from Te Tau a Nuku (the Māori Designers Collective) and Professor Simon Swaffield.

EXECUTIVE SUMMARY

10. Southern Cross seek a private plan change (PPC 21) to rezone the site at 3 Brightside Road from the Mixed Housing Suburban zone (MHS zone), and 149, 151 and 153 Gillies Avenue from the Residential – Single House zone (SH zone), to the Special Purpose – Healthcare Facility and Hospital zone (HFH zone). The Private Plan Change also adds site-specific provisions to the HFH zone and removes the Special Character Area overlay (Isthmus B1) (SCA overlay) that applies to the Gillies Avenue properties.
11. My landscape and visual effects analysis finds that there will be:
 - (a) More than minor to significant adverse visual effects in relation to audiences to the east and south of the site (Gillies Avenue and Brightside Road ‘catchments’ respectively);
 - (b) significant adverse visual amenity and privacy effects in relation to the residents at 32A Owens Road (the Allen’s property);
 - (c) significant adverse (urban) landscape character effects; and
 - (d) significant cumulative adverse (urban) landscape character effects.
12. It is my impression that the existing hospital does not overwhelm the character of Brightside Avenue and the local area. However, this is very finely balanced as a consequence of the scale and character of the existing development evident and the landscape sensitivity of the highly attractive and cohesive, ‘special character’ residential context.
13. In my opinion, the proposed rezoning will fundamentally disrupt this ‘balance’ resulting in development that is visually dominant and serves to negatively transform the ‘sense of place’ and identity of the local area from a highly attractive, spacious and leafy, heritage residential neighbourhood to one that is subjugated by a large scale, institutional hospital development.

14. Overall, I am left with a sense that the site is simply too small for the scale and character of development anticipated by the HFH zone.
15. I consider that the proposal is a poor fit in this sensitive part of the cityscape as a consequence of its incongruous scale, extent and bulk.

BACKGROUND

16. I was engaged by Eden Epsom Residential Protection Society (**the Society**) in September 2018 to provide very preliminary comment in relation to the (then draft) plan change documentation.
17. I prepared a Memorandum, dated 4 April 2019, in support of the Society's submission opposing PPC 21. This was followed by the preparation and presentation of primary and supplementary evidence at the PPC21 hearing in November 2019.
18. I was also engaged by the Society to prepare and present evidence at the Proposed Brightside Hospital Expansion Resource Consent hearing in December 2020.
19. I am familiar with the area to which PPC 21 relates. I have visited the existing hospital grounds and both the Allen property (32A Owens Road) and the Rabone property (36 Owens Road). I have driven and walked the local street network and have stopped at each of the viewpoints relied on in Mr Robert Pryor's visual effects assessment on a number of occasions, most recently on Thursday 11 February 2021.
20. I have read the following documents to assist the preparation of my evidence:
 - (a) Auckland Council's decision on PPC 21.
 - (b) Expert evidence prepared on behalf of Southern Cross:
 - i. Mr Robert Pryor (landscape).
 - ii. Ms Tracy Ogden Cork (urban design).

- iii. Mr Reuben O'Halloran (architectural design).
- iv. Mr Lindsay Mackie (architecture - design introduction).
- v. Mr Richard Peers (arboriculture).
- vi. Ms Carolyn Hill (special character).
- vii. Mr John Brown (special character peer review).
- viii. Mr Daniel Shaw (planning).

(c) Expert evidence prepared on behalf of Auckland Council:

- i. Mr John Mackay (urban design).
- ii. Ms Cosette Saville (planning).

21. I have also read the draft evidence of:

- (a) Mr Alan England (photomontage specialist).
- (b) Mr Jeremy Salmond (special character).
- (c) Mr Brian Putt (planning).
- (d) (Draft) lay evidence prepared on behalf of the Society.

SCOPE OF EVIDENCE

22. Given the large volume of evidence in relation to PPC 21, in the interests of brevity my evidence will focus on areas of disagreement with respect to the landscape effects of the proposal.

23. My evidence will address the following:

- (a) A brief summary of the proposed plan change, including clarification of assumptions and observations that underpin my effects assessment.

- (b) Commentary in relation to the landscape assessment methodology used by Mr Pryor.
 - (c) What I consider to be shortcomings in the description of the existing landscape values associated with the site and local area (including brief comments with respect to the planning context relevant to landscape considerations).
 - (d) An evaluation of the landscape and visual effects of PPC 21.
24. The fact that I do not specifically refer to or address an aspect of Mr Pryor's (or other witnesses') evidence does not mean that I have not considered it, or the subject matter of that evidence, in forming my opinion regarding PPC 21, and in preparing this evidence.
25. I also confirm that, consistent with landscape effects best practice, my understanding of the issues raised in the Society's lay evidence assists with my evaluation of the visual amenity ('perceptual') and 'associative' landscape values associated with the local area, and the visual amenity and associative landscape effects of the proposed development.³

PPC 21

26. I confirm that my evidence is based on the description of PPC 21 set out in paragraphs 132 to 137 of Ms Ogden Cork's evidence.

Controlled Activity Development

27. It is my understanding that the provisions contemplate built development that increase the building footprint by more than 20 percent as a controlled activity, where the buildings are up to 12m high within PPC 21 Area 1 (**Area 1**) and 16m high within PPC 21 Area 2

³ I expand on the accepted scope of 'landscape', explaining where visual and associative values and effects fit within that scope later in my evidence under my discussion of Landscape Assessment Methodology, and more specifically, in **Appendix A**.

(**Area 2**). An 80% maximum impervious area control applies to both areas, as do the 'standard' HFH HIRB, public road setback (10m) and storage/rubbish screening controls. Location-specific yard setbacks are proposed along the northern edges of the site (ranging from 3m to 6m), and there is a requirement to retain the trees and stonewalls identified in PPC 21 Figure H25.6.1.2⁴.

28. Location-specific matters of control are included in the provisions which the Southern Cross experts consider address the sensitivities of the site and local area. These include a controlled activity assessment criterion that requires consideration of whether the building design and appearance is visually compatible with, and complementary to, the residential and special character of the surrounding neighbourhood.
29. I am advised that as a controlled activity, Council cannot decline consent to a development application that complies with these various development standards.
30. Of interest within a character residential neighbourhood context, PPC 21 does not include standards in relation to building coverage or landscaped areas. This is of no surprise to me, as, unlike residential zones (which do include such standards), the HFH Zone expressly anticipates extensive and highly visible non-residential buildings.⁵

Restricted Discretionary Activities

31. It is my understanding that buildings up to 25 metres high would be a restricted discretionary activity.
32. In this instance where a hospital zoning is being sought, which inevitably entails large buildings and carparking areas (as articulated in the HFH Zone description), the 'mechanics' as to how such restricted

⁴ Noting that Figure H25.6.1.2 is of insufficient scale and clarity to accurately determine the extent of the existing stone walls that are intended to be retained.

⁵ H25 Special Purpose-Healthcare Facility and Hospital Zone H25.1 Zone description.

discretionary activities are likely to be managed is of importance in understanding the effects of the plan change.

33. The Southern Cross experts advise that for a restricted discretionary activity that infringes a standard that is not specifically listed in the matters of discretion or assessment criteria, AUP:OP C1.9(3) sets out the matters for consideration. This includes consideration of the objectives and policies relevant to the standard and the effects of the infringement.
34. Of relevance to landscape effects, infringements within the HFH zone would trigger consideration of the following:
 - (a) whether adverse effects on adjacent areas are avoided, remedied, or mitigated;
 - (b) whether significant adverse effects have been avoided, remedied, or mitigated;
 - (c) whether significant adverse effects of overshadowing, visual dominance, and loss of visual privacy on neighbouring properties have been minimised;
 - (d) whether new buildings that adjoin streets and public open spaces will maintain and enhance amenity values; and
 - (e) whether new buildings provide a high standard of amenity.
35. I am also advised that development of this scale would trigger consideration of the controlled activity assessment criterion addressing the visual compatibility of the development to the residential/special character context described earlier.
36. It is my understanding that Mr Pryor and Ms Ogden Cork consider that consideration of this policy context would ensure that the effects of the neighbouring properties and streetscapes of a building between 12 metres and 25 metres high on Area 1, and between 16 metres and 25 metres high on Area 2, would be appropriately addressed. This has led

to the Southern Cross experts confining their effects assessment to a development envelope enabled by controlled activity standards.

37. I am less convinced.
38. As a landscape architect evaluating the effects of a proposal against the relevant statutory instruments, I often look to the zone description to understand the broader intentions of the zone. As mentioned earlier, within the HFH Zone Description there is clear acknowledgement that HFH sites 'generally consist of **extensive and highly visible buildings and substantial parking areas**'. (My emphasis added.)
39. In my opinion, the overarching description of the HFH 'colours' interpretation of the objectives and policies that relate to managing the adverse landscape (including visual) effects of buildings⁶ and effectively sets a reasonably high threshold (or tolerance) for adverse landscape related effects.
40. For these reasons, I consider it is possible that a large building up to 25 metres high on the site could occur in a manner that makes it highly visible from adjacent areas.
41. In addition, I note that the current resource consent requires landscaping on 3 Brightside Road but if the plan change is granted, no landscaping is required other than the trees identified for retention on the Gillies Avenue properties.
42. I have factored these various matters into my landscape effects analysis.

⁶ For example, in *Summerset Villages* (NZEnvC 173, 2019) paragraph [58], where the Court explains that "the flavour of the zone is established by the zone description".

LANDSCAPE ASSESSMENT METHODOLOGY

43. In my opinion, there are three aspects of Mr Pryor's landscape assessment methodology that are problematic, and which (to varying degrees), cast doubt on the technical accuracy of his effects assessment:

- (a) the 'scope' of landscape that underpins Mr Pryor's assessment;
- (b) the Photomontages relied on in his evidence; and, of lesser importance,
- (c) the effects rating scale that has been used.

Scope of Landscape Values (and landscape effects assessment)

44. In my opinion, Mr Pryor's landscape evaluation has not factored in the associative values of the urban landscape into his analysis of the existing landscape and landscape effects. I explain my reasons for reaching this opinion more fully in **Appendix A** attached.

Photomontages

45. I agree with Mr Pryor that photomontages are a tool⁷ to assist an understanding of visual effects and should not be a substitute for expert evaluation in the field. However, in my experience, they are often an important reference tool in understanding visual amenity (and landscape character) effects, particularly by non-landscape experts, due to the easily understood picture that they tend to paint.
46. The NZILA Best Practice Guide - Visual Simulations BPG10.2 (November 2011) (**BPG 10.2**) provides guidance on how to prepare (reasonably) accurate photomontages. Having worked with visual material of this nature over the last 25 or so years, the general intention of such photomontages is to create an image of a development

⁷ R Pryor EiC: paragraph 61.

proposal within a photograph that can be printed onto clear acetate of a specific page size dimension, taken into the field to the photograph location and held up at a specified distance from the eye. When constructed and viewed in this way, the printed photograph (on acetate) in which the development is shown, should roughly line up with the existing features in the view, thereby giving confidence that the modelled imagery is reasonably accurate and the scale of the printed image roughly corresponds to the human field of view.

47. The complexities of this work, together with the increasing reliance on such material to inform decision makers, and changes in camera technology and computer software, mean that over the years, photomontage preparation has evolved as a specialist field. Recognised specialists include Buildmedia, Truescape, U6 Photomontages and specialist in-house teams at Isthmus and Boffa Miskell.
48. I have worked with each of these organisations in the preparation of photomontages for Environment Court evidence. In my experience, the selection of photomontage viewpoints typically requires collaboration between the landscape architect and photomontage specialist to balance technical constraints with the need to provide a fair range of representative views.
49. For example, when preparing photomontages for close range views of large scale buildings it can be particularly challenging to produce an image that can be printed at a reasonable scale and viewed at a sensible viewing distance (generally accepted to be up to around 400mm to 500mm distance for an A3 image) without cropping out most of the 'view'. In this sort of situation it is common for the photomontage specialist and the landscape architect to carefully select photograph

viewpoints that will afford 'usable' imagery that assists an accurate understanding of visual effects.⁸

50. It is also usual to test the accuracy of the printed photomontages by viewing them in the field to see if they roughly correspond to the actual view that is experienced.
51. Further, the preparation of photomontages in accordance with BPG10.2 involves stipulating the camera lens, field of view and reading distance of an A3 printed version of the photomontage, together with a clear methodology statement explaining how the image has been constructed and any assumptions that may have been factored into that work. It is also usual to show the context within which a development will be seen in recognition of the fact that we do not view development proposals in isolation, i.e. we see them in the context of the surrounding urban (or rural) 'fabric'. This is important, as it is often the character of the visual relationship of a development with the surrounding (in this instance, urban) landscape that is at issue when considering visual effects.
52. Much of this information has not been provided in the Southern Cross expert evidence for the PPC21 appeal; however, was provided in response to similar comments for both the first instance hearing and the hospital expansion resource consent hearing. I have relied on the information that was subsequently provided for those hearings as part of my evidence preparation for the PPC 21 appeal (although I consider it would be helpful that this technical information is provided to the Court by the requester).
53. I have undertaken a site survey with the printed photomontages (including the additional material referenced above) and noted a

⁸ For example, when the viewpoint is very close to a large building it is usually necessary to print the imagery at poster scale (or larger), with the viewing distance set at metres (rather than millimetres) back from the image.

number of considerations. A summary of my comments is in **Appendix B** attached.

54. In particular, I am concerned that the visual material that has been provided conveys a truncated view that does not capture the character residential context within which the development will be viewed (Viewpoints 1, 2, 4, 6 11, 16 and 17).
55. I am also concerned that in some views, a wide-angle camera lens has been used, which, for a viewpoint close to the proposed development, and where the image is printed at A3 scale; has the effect of making objects in the centre field of view appear more distant than they are in reality. This is particularly noticeable in the (Southern Cross) Viewpoint 12 photomontage of the outlook from the Allen's property; and, in my opinion, makes the proposed development appear further away from the viewer than it would be in reality. I consider that this visual material is inaccurate to the point of being misleading. I discuss the technical challenges of accurately portraying this close range outlook in a photomontage shortly.
56. Further, I note that existing vegetation on the Gillies Avenue properties that is not protected as part of PPC21 is shown in the Viewpoint 6 and the Photomontage 02 versions for Viewpoints 1, 2, 3 and 5, making these images misleading.
57. In a similar vein, and for the reasons outlined earlier (in relation to assumptions with respect to the existing hospital plantings remaining should the land be rezoned), the inclusion of the existing (non-scheduled) vegetation on the 3 Brightside Road hospital site in Viewpoints 8, 9, 10, 11 and 16 and the Photomontage 02 version of Viewpoint 17 is problematic.
58. For these reasons, I would caution the Court in relying on the photomontages provided by Southern Cross's experts as a fair and true representation of the visual outcome associated with the development. Importantly (and as I will explain shortly), I consider that the

development will have a greater level of adverse visual effect than the photomontages convey.

59. Due to concerns about the accuracy of the photomontages provided by Southern Cross, the Eden Epsom Residential Protection Society, and Gemma and John Allen (independently), have engaged Isthmus to prepare photomontages of three views to better assist an understanding of the potential adverse visual effects of PPC 21. These are attached to Mr England's evidence (and referred to as the "**Isthmus photomontages**").
60. The Isthmus photomontages have been prepared in accordance with BPG 10.2 and a thorough Methodology Statement is included in Mr England's evidence.

Isthmus Photomontage Viewpoint 01 (32A Owens Road)

61. Accurately portraying the visual impression of large-scale buildings at close range is inherently difficult. Ideally, photomontage photographs are taken from a vantage point set reasonably 'well back' from the site, to take in the full extent of the proposed development and to include some of the surrounding area to provide context and scale for the proposed development.
62. This technical difficulty is particularly relevant for the outlook from the Allen's property at 32A Owens Road (Mr Pryor's Viewpoint 12), which adjoins the site on two boundaries.
63. Isthmus and I have extensive experience in dealing with such issues and careful consideration was given (on site) to the selection of the vantage point of the photograph to be modelled, to ensure that it optimises the full 'breadth' of view, minimises distorting the view and gives a fair representation of the outlook to the site that would be afforded from the Allen's property. For this reason, a photograph vantage point as one as one enters the dwelling's central courtyard was selected.

Development Envelope Model: Viewpoint 01 Photomontages (32A Owens Road)

64. Mr England's Appendix 1 depicts the maximum development envelope models that Isthmus have used in their photomontages for the controlled and restricted discretionary activity development scenarios contemplated by PPC 21.
65. A digital building model supplied by Archimedia has been used for the development envelope modelled in the Isthmus controlled activity scenario.
66. For the restricted discretionary activity scenario, the same yard setbacks, Height in Relation to Boundary (**HIRB**), volcanic viewshaft and retained tree 'constraints' to that used for the controlled activity scenario have been applied, with the building model height increased to 25 metres across the development footprint.
67. The recently planted Australian Frangipani trees have been added into the outlook from the Allen's property (Isthmus Viewpoint 01) for each development scenario, assuming the same plant growth rates advised by the Southern Cross experts.
68. I acknowledge that parts of the 25m high development envelope model indicate a narrower building floorplate in places (approximately 18 metres). I note that the main body of the existing hospital building ranges from approximately 17.4 metres to 19.7 metres⁹ wide. I also consider that were an applicant seeking a restricted discretionary application for a height infringement up to 25 metres, it would be entirely plausible that they would also seek a minor infringement of the HIRB standard to enable a workable floorplate, and that such an infringement, on the south side of neighbouring properties, is likely to have a reasonably straightforward consenting path.

⁹ Measured using AC GeoMaps.

69. For these reasons, I consider that the Isthmus 25 metre high development envelope model suggests a plausible 'maximum development envelope' outcome.

Isthmus Photomontage Viewpoints 02 and 03

70. The photograph locations selected to model the view from Gillies Avenue (to the south) and Kipling Avenue (to the east) vary slightly to those used by Mr Pryor (his Viewpoints 1 and 5 respectively). The Isthmus locations correspond to the vantage points agreed by Mr England and I in the field, that convey a clear understanding of the development contemplated by PPC 21 within the existing urban context. Of particular note, the Isthmus photomontages for these viewpoints capture the residential context around the site, rather than forming a truncated view as depicted in the Southern Cross photomontages.

Development Envelope Model: Viewpoints 02 and 03 Photomontages

71. Mr England's Viewpoint 02 and 03 Photomontages were prepared for the Council hearing and use a different Development Envelope Model as his evidence explains.
72. However, and importantly, the changes to the Brightside Road and Gillies Avenue 'frontages' of the development envelope anticipated at the Council hearing, to that now under consideration are confined to a reduction in the extent of retained and protected vegetation along these frontages. The plan provisions considered at the Council hearing provided for the retention and protection of the hedging adjacent to the stonewalls, whilst the current PPC 21 provisions do not. Critically, the building height and setback along these frontages remains unchanged (although a more simplified approach with respect to accommodating the retained trees on the corner of Brightside Road and Gillies Avenue is evident in the latest development envelope model).

73. On this basis, Mr England's photomontages understate the adverse visual effects of PPC 21 by including vegetation that will not be protected.

Effects Rating Scale

74. Mr Pryor's evidence¹⁰ explains that his effects rating scale is taken from the Auckland Council Landscape and Visual Effects Assessment 'guidelines' document that is available on the Council website.¹¹
75. As the Court may be aware, there is an ongoing debate within the landscape profession with respect to effects rating scales. Unfortunately, the Auckland Council Landscape and Visual Effects Rating Scale is not immune. I have reproduced the full Council effects rating scale in **Appendix C** for convenience, together with commentary on the merits of that scale and an explanation as to why my evidence adopts the effects rating scale in **Table 1** below.
76. I do, however, note that Mr Pryor and I are in agreement that a seven-point (odd numbered) scale is appropriate, and the location of a 'minor' effects rating sits 'below' the central point on the scale.

¹⁰ Pryor EiC: paragraph 81.

¹¹

<http://content.aucklanddesignmanual.co.nz/resources/tools/landscapeandvisualeffectsassessment/Documents/Landscape%20and%20Visual%20Effects%20Assessment%20Requirements.pdf>

Table 1: BGLA Effects Rating Scale

RMA Terminology	Effect Rating	Use and Definition
Significant	Very High	Total loss of key elements / features / characteristics / values, i.e. amounts to a very significant negative change in landscape/visual amenity characteristics and/or values.
	High	Major modification or loss of most key elements / features / characteristics / values, i.e. little of the pre-development landscape character / visual amenity remains and amounts to a significant negative change in landscape character and/or visual amenity values. <u>Concise Oxford English Dictionary Definition</u> <i>High: adjective - Great in amount, value, size, or intensity.</i>
More than minor	Moderate - High	Modifications of several key elements / features / characteristics / values, i.e. the pre-development landscape character and/or visual amenity values remains evident but materially changed.
	Moderate	Partial loss of, or modification to, key elements / features characteristics / values, i.e. the pre-development landscape character and/or visual amenity values remains evident but is changed. <u>Concise Oxford English Dictionary Definition</u> <i>Moderate: adjective - average in amount, intensity, quality, or degree</i>
Minor	Moderate - Low	Minor loss of, or modification to, one or more key elements / features / characteristics / values, i.e. new elements are not uncharacteristic within the receiving landscape and do not disturb the pre-development landscape character and/or visual amenity values.
Less than minor	Low	Very little material loss of, or modification to, key elements / features / characteristics / values. i.e. new elements integrate seamlessly into the pre-development landscape character and/or visual amenity values. <u>Concise Oxford English Dictionary Definition</u> <i>Low: adjective - 1. Below average in amount, extent, or intensity.</i>
	Very Low	Negligible loss of, or modification to, key elements / features / characteristics / values of the baseline, i.e. influence of new elements on landscape character and/or visual amenity values is barely discernible.

EXISTING LANDSCAPE VALUES

Neighbourhood Context

77. In my opinion, Mr Pryor, Ms Ogden Cork and Mr Mackay have overemphasised the role of the busy traffic corridor of Gillies Avenue (and, to a lesser degree, Owens Road), variable architectural styles, and the scattered non-residential uses within the wider context in shaping the (urban) landscape character of the local area.
78. This is important, as it effectively ‘sets the scene’ of an urban landscape context that has a relatively low sensitivity (in their opinion) to change of the type contemplated by the proposed plan change.
79. Mr Shaw builds on this ‘low sensitivity to development change’ theme in describing the existing hospital to be of ‘an institutional built form’.¹²
80. In contrast, I consider that the neighbourhood within which the site is located comprises an urban residential landscape that is highly valued as a place to live in and visit, and which stands apart from much of the rest of the cityscape. This is reflected in the Single House zoning and Special Character Overlay that applies to much of the local area.
81. In my opinion, the Southern Cross experts have glossed over the quite different urban character associated with the Gillies Avenue corridor roughly south of the Newmarket Viaduct (and certainly beyond the Owens Road intersection) and the network of suburban streets to the west, stretching towards Maungawhau-Mt Eden, whereby the more commercial neighbourhood character (to the north) gives way to a distinctly spacious, leafy residential character that is strongly imbued with legacy home overtones. Whilst non-residential uses are evident, they are either of a type that suggests a good ‘fit’ with a residential neighbourhood (e.g. schools, sports facilities and parks), or of a limited scale and scattered patterning such that they do not dominate the

¹² D Shaw EiC: paragraph 84.

neighbourhood character (e.g. the scattered medical facilities, childcare facilities, boarding houses / backpackers' accommodation).

82. In fact, in relation to several of the latter uses, many of these developments are located within character buildings, serving to maintain (to at least some degree) the impression of a cohesive residential neighbourhood.
83. In my opinion, the 'glue' that binds the attractive and leafy residential neighbourhood within which the site is located derives from the following key attributes:
 - (a) The patterning of visible character buildings and stone walls scattered throughout the area.
 - (b) The dominance of vegetation rather than buildings on many of the older residential properties as a consequence of the large-scale plantings that the generous lot sizes enable. Seen in combination, and experienced sequentially as one moves around the neighbourhood, these vegetation-dominated properties serve to dilute the perceived neighbourhood density and are of critical importance in shaping the leafy and spacious neighbourhood character that prevails. Street tree plantings add to this perception, although such vegetation is often of a smaller scale in comparison to the mature canopy trees evident in private gardens.
 - (c) A complex and highly attractive patterning of mature specimen trees supported by a mosaic of established hedges, historic stone walls, and spacious garden plantings. The layering of these various vegetation and garden wall features, both within individual properties and across properties collectively, reinforces the generous scale of many of the residential lots, and contributes a relatively high degree of aesthetic coherence to the neighbourhood. The mid and long-range visibility of such features (as a consequence of their scale and proliferation) means that they contribute to the wider amenity; and the

concept of ‘borrowed landscape’¹³ is very much an integral part of the local neighbourhood character.

84. I note that my description accords with the specific physical and visual qualities of the site and local area described by Ms Peake on page 8 of her report (bullet point list) and that my impression of the area as a relatively cohesive residential neighbourhood accords with Mr Riley’s¹⁴ comments.
85. I acknowledge that scattered throughout this cityscape are more modern buildings, often on smaller sites with limited garden plantings. However, I do not consider their patterning or visual presence to be of such consequence that it dominates the neighbourhood character. In this regard, I agree with Mr Riley where he describes the local area as having a *“generally cohesive character..... typified by houses up to two storeys in height sitting within generally spacious, well landscaped lots with mature planting”*.¹⁵
86. In my opinion, the highly attractive glimpses of character buildings set within the layered vegetation context described above from almost all of the local street network serves as a constant reminder of the wider character neighbourhood setting, despite the patterning of more modern (and/or less vegetated) properties in places.
87. Further, whilst Gillies Avenue is a busy arterial road corridor, the stretch of the western side of the road in particular, extending south of the Newmarket Viaduct to approximately Epsom Avenue, retains a reasonably distinctive ‘green’ character imbued with strong ‘character’ overtones, despite the localised ‘interruption’ of a streetscape that is more dominated by commercial and institutional buildings (for example, around the Alpers Avenue intersection; although even here, the tree-

¹³ ‘Borrowed landscape’ refers to when landscape features outside a property contribute to the landscape character and amenity enjoyed within the property itself.

¹⁴ Hearing Agenda, page 24.

¹⁵ M Riley Urban Design Memo for Auckland Council: paragraph 5.3.

clad steep quarry slopes of the old Pascoe Quarry signal the broader vegetation-dominated urban neighbourhood further to the west).

88. This contrasts with the more open and building-dominated character of neighbouring arterial corridors in this part of the city, such as Manukau Road and Great South Road (to the east), and Mt Eden Road and Dominion Road (to the west).
89. Further, notwithstanding the high traffic volumes, residential properties dominate the corridor, particularly to the south of Owens Road.
90. In support of this observation, the AUP:OP zoning mapping attached in **Appendix D** reveals that of the five key arterial routes radiating out from the city in this part of the Isthmus (i.e. Dominion Road, Mt Eden Road, Gillies Avenue, Manukau Road and Great South Road), only Gillies Avenue has a consistent residential zoning typology (excepting that portion of Gillies Avenue that is located within Newmarket). Each of the other routes includes 'nodes' or extensive 'corridors' of Mixed Use and Local Centre zones.

The Site: Gillies Avenue properties

91. At the more immediate scale, the densely vegetated and spacious character of 149, 151 and 153 Gillies Avenue plays an important role in shaping the character of this stretch of Gillies Avenue. This includes the boundary vegetation and 'internal' layering of tree and shrub plantings. The streetscape plantings add to this vegetative character, although are of a far smaller scale.
92. The generous lot size that has enabled the extensive garden plantings, together with the location of the dwellings towards the rear of the property at 151 and 153 Gillies Avenue¹⁶, means that visibility of the character homes is limited to attractive and engaging glimpses from the

¹⁶ Noting that the dwelling on 151 Gillies Avenue sits approximately 24.5m from the Gillies Avenue boundary and the dwelling on 153 Gillies Avenue is located approximately 30m from the Gillies Avenue boundary.

street through the trees in places, adding a sense of intrigue. Indeed, for this stretch of the streetscape, the very limited visibility of buildings and the dominance of substantial and complex layers of vegetation form the key landscape character-shaping factors.

93. The more open frontage of 149 means that the two-storey timber weatherboard guesthouse building is more visible from the street. Although this building has been modified, it retains the impression of a residential building flanked by large trees.
94. The stone walls, decorative railing insets and hedging lining the front boundaries add to this 'green' heritage impression, with the overall composition reading as one of the distinctive vegetation-dominated portions of the streetscape as one travels along Gillies Avenue.
95. The existing spatial 'metrics' of the Gillies Avenue properties speaks to this spacious and leafy impression¹⁷:

Table 2: Existing Building and Soft Landscape coverage areas

	149 Gillies Avenue	151 Gillies Avenue	153 Gillies Avenue
Site size	2,209m ²	971m ²	850m ²
Percentage of site covered by building	44%	17%	22%
Percentage of site in soft landscape coverage (excludes building footprints, paths, and driveways)	31%	55%	69%

¹⁷ Spatial 'metrics' of the existing Gillies Avenue property sourced from **Archimedia Drawing Ref A910 Rev A: Existing Site Coverages**, produced for the Brightside Hospital Expansion Resource Consent hearing and reproduced as **Appendix E** to this evidence.

The Site: Existing Hospital

96. The existing hospital development at 3 Brightside Road was the result of two Environment Court hearings. At that time, hospital developments were a discretionary activity on the 3 Brightside Road property. It is my understanding that very carefully considered development controls were applied to the (existing) hospital development to ensure that it did not detract from neighbourhood character and residential amenity; for example:
- (a) restricting the height of built development along the Brightside Road frontage to ensure that the building reads as two-storey from this orientation;
 - (b) pulling the building back from the western boundary to enable the retention and establishment of large-scale vegetation; and
 - (c) introducing a comprehensive landscape strategy to integrate the large building into the residential setting.
97. This has resulted in a building coverage of approximately 32% with some 40% of the site in soft landscape treatment.¹⁸
98. As Ms Ogden Cork explains at paragraph 61 in her discussion of the local neighbourhood character: “[t]he existing hospital at 3 Brightside Road was designed to fit within this residential context and is zoned MHS [under the AUP:OP]”.
99. Throughout the south side of Brightside Road and Shipherds Avenue is a mix of predominantly single and two-storey character homes set within mature gardens. The consistent and high-quality character of these residential properties is reflected in the SCA overlay that applies to them (and, as discussed shortly), it is my understanding that the AUP:OP provisions that apply to this neighbourhood anticipate very little development change as a permitted activity.

¹⁸ Ibid.

100. The existing hospital site reads as a reasonably well-integrated development as a consequence of its residential-scaled height (predominantly two storeys) and planted context (including street tree plantings). Field survey supported this finding, but also revealed that despite its relatively 'modest' visual profile in many views from the surrounding streets and residential properties, it is undoubtedly a hospital, and somewhat of an anomaly within the 'character', leafy residential context within which it is located. The reasonably constant presence of overflow parking and service vehicles in the street reinforces this perception.
101. My impression is that, as it exists today, the hospital does not overwhelm the character of Brightside Road and the local area. However, this is very finely balanced as a consequence of the scale and character of the existing hospital development, and the landscape sensitivity of the highly attractive and cohesive 'special character' residential context.

Relevant Planning Context

102. Turning to the planning provisions relevant to the site, the Special Character Overlay that applies to 149, 151 and 153 Gillies Avenue limits permitted activities to the restoration and repair of buildings, and minor alterations to their rear.
103. All other building-related changes trigger the need for a resource consent process that includes consideration of a wide range of matters, taking into account effects on landscape and vegetation.
104. Whilst the stonewalls and mature specimen trees on these properties could be removed 'as of right', I note that these existing features make an important contribution to existing on-site residential amenity, including buffering from the street. I also note that the generous proportions of these residential properties mean that tree and stonewall removals are unlikely to occur due to spatial/sunlight constraints which are common reasons cited for such removals.

105. I therefore consider that their removal is unlikely under the existing Single House zoning and SCA overlay regime.
106. Overall (and unsurprisingly), it is my impression that the AUP:OP anticipates very limited visual change on these properties as a permitted activity.
107. The balance of the Brightside, Owens, and Gilles Avenue block (including 3 Brightside Road) is zoned Mixed Housing Suburban.
108. Looking further afield, the majority of the local context on the western side of Gillies Avenue (between approximately Withiel Drive and Epsom Avenue) is zoned SHZ with the SCA Overlay applying (refer **Figure 1** overleaf).
109. For the corresponding area on the eastern side of Gillies Avenue, generally there is a distinct zoning transition evident that contemplates a decreasing intensity of development as one moves westwards from Manukau Road towards Gillies Avenue (i.e. MUZ¹⁹ along Manukau Road, then MHU²⁰, followed by MHS²¹ straddling Gillies Avenue).
110. On this concept of 'transition', I note that Ms Ogden Cork considers that the site forms a transition between areas where substantial change is anticipated to the north and east of the site, and an area defined as having special character and subject to limited change²².
111. I disagree. In my view, the site is part of the extensive and generally coherent patterning of SHZ/SCA neighbourhood flanking the eastern side of Maungawhau/Mt Eden (acknowledging the presence of pockets of MHS in places), with the transition occurring throughout the 'urban block' between Gillies Ave and Manukau Road. The progressively increasing intensity of development contemplated by the AUP:OP

¹⁹ Maximum permitted building height of 16m plus 2m for roof form.

²⁰ Maximum permitted building height of 11m plus 1m for roof form.

²¹ Maximum permitted building height of 8m plus 1m for roof form.

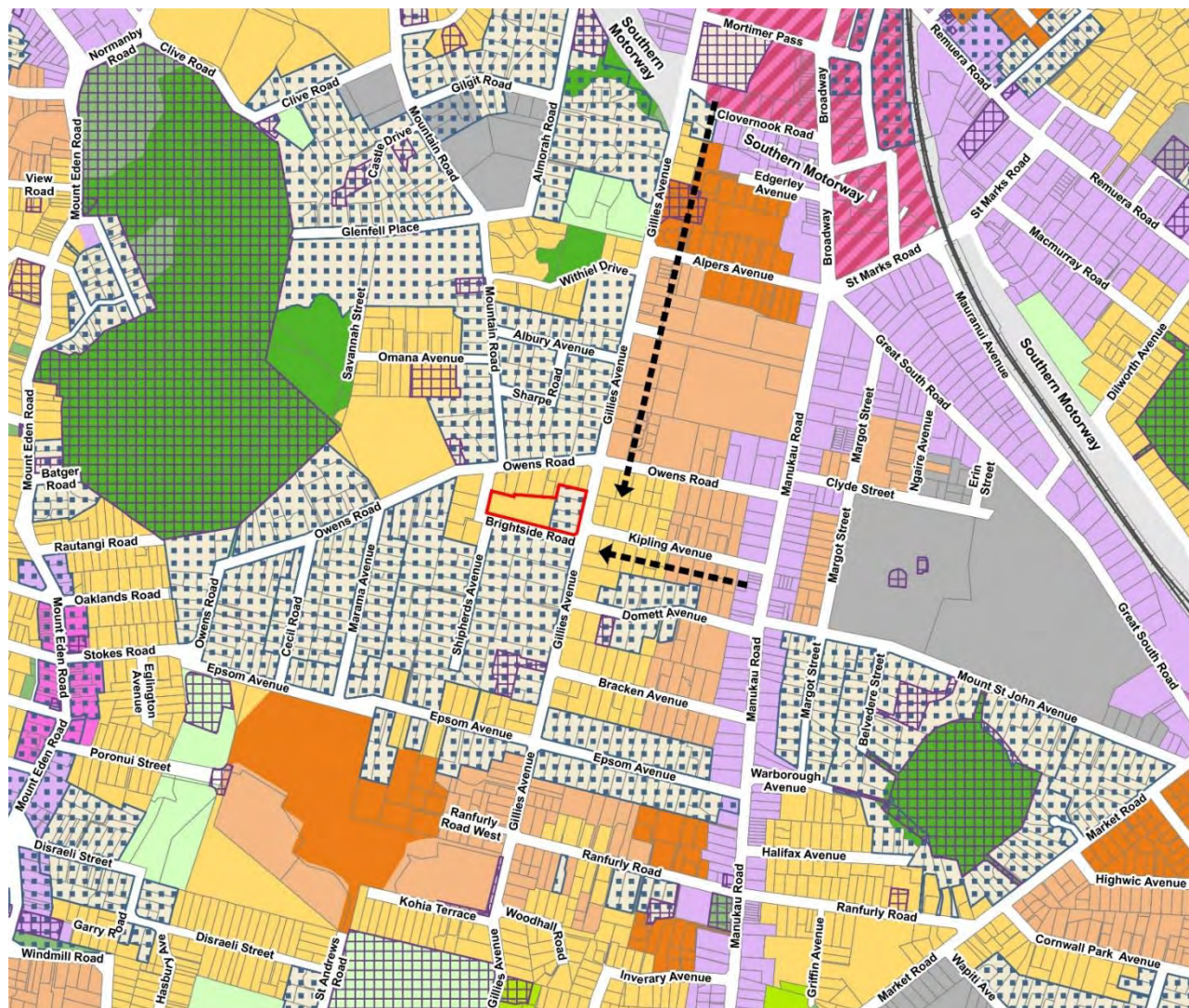
²² Ogden Cork EiC: paragraph 75.

extends in an easterly direction to Manukau Road (as already described) and also in a northerly direction towards Newmarket as depicted in **Figure 1** below.

112. In my consideration of the local planning context, I also acknowledge the recently consented healthcare facility at 22 Kipling Avenue, described by Ms Ogden Cork at (her) paragraph 73. I note that no SCA Overlay applies to that site and that it is zoned MHS rather than Single House this conferring a quite different planning context to the site.
113. In addition I note the recent tree removals described by Ms Ogden Cork on nearby properties.²³ I note the quite different planning context for the 33 Owens Road site (MHU with no SCA Overlay) and the quite different built form and spatial characteristics of 155 Gillies Avenue, in comparison to the site.
114. Whilst 155 Gillies Avenue is zoned SH and the SCA Overlay applies, this property comprises a considerably more cramped, six unit site in which there is often a difficult tension between the retention of large scale trees and providing favourable residential amenity.
115. For these reasons, I do not consider that these examples signal a tolerance or 'contextual fit' for healthcare facilities on the site, nor an expectation that the existing trees on the site will be removed under the SHZ and SCA Overlay regime.

²³ T Ogden Cork EiC: paragraph 84.

Figure 1: AUP:OP Zoning and SCA Overlay patterning and Development Density Transition

**LEGEND****Residential**

- Residential - Mixed Housing Suburban Zone
- Residential - Mixed Housing Urban Zone
- Residential - Terrace Housing and Apartment Buildings Zone

Business

- Business - Metropolitan Centre Zone
- Business - Local Centre Zone
- Business - Neighbourhood Centre Zone
- Business - Mixed Use Zone

Open space

- Open Space - Conservation Zone
- Open Space - Informal Recreation Zone
- Open Space - Sport and Active Recreation Zone
- Open Space - Community Zone

Infrastructure

- Special Purpose Zone - Airports & Airfields
- Cemetery
- Quarry
- Healthcare Facility & Hospital
- Tertiary Education
- Māori Purpose
- Major Recreation Facility
- School
- Strategic Transport Corridor Zone

Historic Heritage & Special Character

- Historic Heritage Overlay Extent of Place [rop/dp]
- Special Character Areas Overlay Residential and Business

The Site

Decreasing development density transition

***National Policy Statement: Urban Development, 20 August 2020
(NPS:UD)***

116. It is my understanding that any change to Regional and District Plans must give effect to the NPS:UD (with a requirement for plans to respond to the intensification provisions in Policies 3 and 4 by August 2022). The Southern Cross experts consider that in terms of implementing the NPS:UD, it is reasonable to anticipate that at least 6-storey buildings will be enabled across much of the site (excepting the notable tree areas within the site and the portion of the site over which the more restrictive Volcanic Viewshaft overlay applies).²⁴
117. Reasons cited in support of this conclusion include:
- (a) The development change that is anticipated by the MHS and MHU zoning proximate to the site.
 - (b) The proximity of the site to the Newmarket Metropolitan Centre zone (MC Zone).
 - (c) The absence of a credible 'other matter' (under NPS:UD 3.32.1 1(h)).
118. Ms Ogden Cork acknowledges that 'special character' has the potential to be considered as an 'other matter'²⁵; however, concludes that on the basis of the Southern Cross expert evaluation of the special character values of the site, special character would not merit consideration as an 'other matter' in this instance.
119. I have struggled to understand Ms Ogden Cork's evidence on this point, as special character is of such importance on the site that she supports a range of location specific and quite detailed provisions for PPC 21

²⁴ For example, see: T Ogden Cork EiC: paragraphs 91 to 110R Pryor EiC: paragraphs 35 to 37.

²⁵ T Ogden Cork EiC: paragraph 108.

(rather than the standard HFH zone provisions) to ensure the rezoning delivers an appropriate development outcome.

120. In my opinion, the Special Character Overlay and Single House zoning of the Gillies Ave site are the sorts of overlays and zonings that I expect would constitute qualifying matters as an 'other matter' under NPS:UD 3.32.1(h).
121. This zoning and overlay condition effectively corresponds to an RMA s7(c) amenity type (urban) landscape construct - as a part of the cityscape that is valued for its pleasantness and aesthetic coherence. It stands apart from the rest of the cityscape on the basis of its amenity values.

RMA Definition

Amenity values means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

122. With respect to the 'qualifying matter test' in 3.33, the site-specific analysis undertaken by Mr Salmond and me:
- (a) establishes that the character of the site and area (and as reflected in its SH zoning and the SCA overlay) constitutes a credible 'other matter'.
 - (b) finds that a 16m-high development is inappropriate. It follows that development at the level directed by Policy 3 (6 storeys) is likely to be inappropriate.

123. I note that Mr Mackay does not agree with the Southern Cross experts that the NPS:UD will result in an increase in building height or intensification in this part of the cityscape.²⁶

SUMMARY OF EXISTING LANDSCAPE VALUES ASSOCIATED WITH THE SITE AND LOCAL AREA

124. The site and local area reveal (urban) landscape values that rate towards the higher end of the spectrum. This is due to the distinctive leafy and spacious residential character, strongly imbued with 'legacy home' overtones.

125. As a consequence, the area displays a relatively high level of cohesion and a distinctive and highly appealing 'sense of place' as a character residential neighbourhood.

126. In my opinion, the key factors that contribute to this character on the Gillies Avenue portion of the site include (in no order of priority):

- (a) The generous lot sizes with a high ratio of green space to buildings.
- (b) The large scale trees and layered shrub plantings enabled by the very generous lot size.
- (c) The overwhelming dominance of vegetation (rather than built development) on 151 and 153 Gillies Avenue in particular.
- (d) The stonewalls and decorative railing insets and hedging around the street frontages.
- (e) In light of the unprotected nature of the stonewalls and majority of vegetation on these properties, the character residential

²⁶ J Mackay EiC: paragraph 18.

buildings evident (acknowledging that the building at 149 has been modified over time).

127. Importantly, it is the spatial arrangement of the various physical elements, together with the character of the elements themselves (trees, layered garden plantings, stonewalls, character buildings) that underpin the landscape character values.
128. For the 3 Brightside Road portion of the site, the very careful design of the hospital to read as a residential-scaled building (predominantly two storeys), its planted context and resultant relatively modest visual profile within the local area are critical factors to its successful integration.
129. The lay evidence speaks to the high associative values associated with this residential neighbourhood.
130. The AUP:OP zoning of the site as SHZ with a SCA Overlay expresses the values of this urban location at a community level, with the relevant planning provisions articulating an intention of the retention of such values and a tolerance (and expectation) of very little development change.
131. In my experience, residential neighbourhoods of this quality generally have a reasonably high sensitivity to development change (acknowledging that the scale of effects will of course be contingent on the scale and character of the proposed development change).

LANDSCAPE AND VISUAL EFFECTS

Visual Effects

132. I have grouped my analysis of public vantage points by orientation and cross-referenced to Mr Pryor's representative viewpoints where

appropriate. This 'grouping' is deliberate, as it was my finding during field survey that:

- (a) the character of the views on each side of the site and site visibility varies as one walks along the street; and
- (b) several of Mr Pryor's photographs are truncated and do not convey the full extent of the outlook available from each vantage point.

133. I consider that the adverse visual effects in relation to **Viewpoint 7: Maungawhau Summit** (Mt Eden) will be **low** (minor) and therefore do not discuss this viewpoint further.

Views from the east: Gillies Avenue and Kipling Avenue

R Pryor: Viewpoints 1, 2, 3, 5 and 6

Isthmus photomontage: Viewpoints 02 and 03

134. These views from the east relate to road users on Gillies Avenue and Kipling Avenue, residential properties along the eastern side of Gillies Avenue (in the vicinity of the site), and residential properties at the far western end of Kipling Avenue. This includes the homes of local residents such as Vinod Mistry (144 Gillies Avenue), Priya Naran (25 Kipling Avenue) and the property of Mr Stuart King (147 Gillies Avenue) who are all opposed to the plan change.
135. The densely vegetated character of 149, 151 and 153 Gillies Avenue plays an important role in shaping the character of the outlook for these audiences. This includes the boundary vegetation and 'internal' layering of tree and shrub plantings. The streetscape plantings add to this vegetative character, although are of a far smaller scale.
136. The generous lot size that has enabled the extensive garden plantings, together with the location of the dwellings towards the rear of the property at 151 and 153 Gillies Avenue, means that visibility of the character homes is limited to attractive and engaging glimpses through

the trees in places (e.g. Viewpoint 1, 3 and 5). The more open frontage of 149 means that the two-storey timber weatherboard guesthouse building is more visible from the street. Although this building has been modified, it retains the impression of a residential building.

137. The stonewalls, decorative railing insets and hedging lining the front boundaries add to this 'green' character neighbourhood impression, with the overall composition reading as a one of the distinctive vegetation-dominated portions of the streetscape as one travels along Gillies Avenue.
138. Beyond the site (and out of the field of view conveyed in the photographs), there is a keen awareness of the distinctly residential neighbourhood along this immediate stretch of Gillies Avenue and further to the east (Kipling Avenue). Whilst the architectural styles are varied, the peppering of visible character homes, stone walls, large canopy trees, dense garden plantings (particularly along Gillies Avenue) and street tree plantings lends a distinctly residential and relatively leafy feel to the area.
139. As explained earlier, the SH zoning and SCA overlay that applies to the three Gillies Avenue properties within the site means that very little development change is anticipated in the part of the site that is visible from these vantage points as a permitted activity. As explained earlier, it is my expectation that were the trees and stonewalls removed (as can be undertaken under the existing planning regime), this would open up views to the attractive character homes at 151 and 153 Gillies Avenue.
140. The MHS zoning on the eastern side of Gillies Avenue suggests it is reasonable to expect that some development change may occur, although I note that this zone seeks to enable intensification while retaining a suburban character. The AUP:OP goes on to explain that: *"development within this zone will generally be two-storey detached or attached housing in a variety of types and sizes to provide housing choice"*. Overall it is my understanding that a residential feel is intended to remain along the eastern side of Gillies Avenue and the adjoining western portion of Kipling Avenue where the MHS also applies.

141. I also acknowledge that all of these existing 'features' are seen within the context of the busy, (albeit relatively 'green') arterial road corridor of Gillies Avenue.
142. PPC 21 will enable the introduction of a 16 metres high (approximately 4 storeys) and (approximately) 63 metres long building, setback 10 metres from the front boundary as a controlled activity.
143. A similarly long building, up to 25 metres high (approximately 6 storeys) could be developed as a restricted discretionary activity.
144. PPC 21 provides for the retention of four mature canopy trees and the stonewalls along this site frontage.
145. I consider that in each of these views, an appreciable proportion of a building on the site will be visible. The existing street trees and retained vegetation will provide a filtering effect in places; however, the 'opening up' of views as one moves along Gillies Avenue and the blatant visibility from Kipling Avenue aligned perpendicular to the site means that overall, the development will be highly visible from this catchment.
146. I agree with Mr Pryor that visibility does not equate to an adverse visual effect.²⁷ In this circumstance, I consider that the extent of building visible and the context within which the development will be seen are the critical determinants with respect to effects.
147. In my opinion, a 16m high building of this length (63 metres) will read as out-of-scale with the surrounding residential patterning characterised by single and two-storey dwellings. Whilst I acknowledge that vegetation (including potential front yard mitigation plantings) will provide a filtering and screening effect in places, this will not mask the overtly incongruous scale of built form within this context.
148. I also expect that the sizeable breaks in the stonewall to enable vehicle access that are likely to be required along the Gillies Avenue frontage

²⁷ R Pryor EiC: paragraph 77.

will increase the visibility into these parts of the site. In this regard, I note that two breaks in the stonewalls are proposed as part of the hospital expansion resource consent proposal (refer **Appendix F attached**). The northern break is 7.0 metres wide and the southern break is 8.0 metres wide.

149. Moreover, the development will destroy the perception of a streetscape dominated by vegetation with glimpses of character buildings along this portion of Gillies Avenue, replacing it with a visually prominent and distinctly commercial or institutional building form.
150. Whilst I appreciate that this outcome has occurred elsewhere on Gillies Avenue, to date it has tended towards the corridor north of Owens Road (e.g. EGGS).
151. South of Owens Road, such development is less intrusive by virtue of its location below the road and/or a single or two-storey building height (e.g. Endoscopy Auckland at 148 Gillies Avenue; Gillies Hospital at 160 Gillies Avenue).
152. On balancing these considerations, I consider that adverse visual effects in relation to these viewing audiences for development enabled by the controlled activity provisions (16 metres high, 80% impervious area), and assuming the retention of the identified trees and stonewalls, rate as **Moderate-High to High (Significant)**.
153. I consider that a building up to 25m high in this location would result in an adverse visual effects rating of **Very High (Significant)** for these audiences.

Views from the south: Brightside Road and Shipherds Avenue

R Pryor: Viewpoints 4, 9, 10 and 11

Appendix 1: Viewpoint 02 (Isthmus photomontages)

154. Views from the south relate to road users on Brightside Road and Shipherds Avenue, and residents along these streets in close proximity

to the site. This includes the homes of local residents such as the Lorimer family (6 Brightside Road), Nina Muller (155 Gillies Avenue) and Julie and John Kippenberger (1 Shiphers Avenue) who are all opposed to the plan change.

155. Shiphers Avenue and the south side of Brightside Road are generally characterised by a mix of predominantly single and two-storey character homes set within mature gardens (acknowledging exceptions to this patterning on Brightside Road in particular, as described in Ms Ogden Cork's evidence under her discussion of Neighbourhood Character). The reasonably consistent and high-quality character of these residential properties is reflected in the SCA overlay that applies to them; and (as explained earlier), it is my understanding that the AUP:OP provisions that apply to this neighbourhood anticipate very little development change as a permitted activity.
156. As described earlier in my discussion of the existing landscape, in these views, the existing hospital site reads as a reasonably well-integrated development as a consequence of its residential-scaled height (predominantly two storeys) and planted context (including street tree plantings). Despite its relatively 'modest' visual profile, in many views from the street it is undoubtedly a hospital, and somewhat of an anomaly within the character leafy residential context within which it is located. The reasonably constant presence of overflow parking and service vehicles in the street reinforces this perception.
157. The far eastern end of the site (coinciding with 153 Gillies Avenue) presents as a vegetation-dominated property with the top of the character home visible from vantage points towards the eastern end of Brightside Road.
158. Despite Brightside Road functioning as a 'cut through' between Gillies Avenue and Owens Road (and overflow parking from the hospital lining the street at times), the area retains a distinctly residential feel.
159. PPC 21 will enable, as a controlled activity, the introduction of a 16 metres high (approximately 4 storeys) and (approximately) 38 metres

long building, set back 10 metres from the front boundary at the far eastern end of Brightside Road (on 153 Gillies Avenue).

160. Within the 3 Brightside Avenue portion of the site, a 12 metres high (approximately 3 storeys) and approximately 80 metres long building, set back 10 metres from the front boundary, will be enabled as a controlled activity. The scheduled mature pohutukawa specimen at 3 Brightside Road will be seen between these two buildings.
161. Similarly long buildings, up to 25 metres high (approximately 6 storeys) could be developed as a restricted discretionary activity. The absence of protected vegetation along the majority of the Brightside Road frontage means that such a building could also be located closer to the street (i.e. infringe the 10-metre road setback standard).
162. PPC 21 provides for the retention of 3 mature canopy trees and parts of the stonewalls along the south and east sides of 153 Gillies Avenue, which have the potential to influence some views from this orientation.
163. With respect to the 38 metres long and 16 metres high development enabled at the far eastern end of Brightside Road (on 153 Gillies Avenue), Mr Pryor's Viewpoint 11 is perhaps the most relevant. My field survey revealed that standing in the location of Viewpoint 11, a viewer has a very close-range view of this portion of the site, although it is excluded from Mr Pryor's Viewpoint 11 photomontage (due to the truncated nature of the photograph that has been used).
164. I expect a controlled activity building will be highly visible from the eastern end of Brightside Road, despite the retention of the scheduled pohutukawa, stonewalls and mature trees on the corner of Gillies Avenue/Brightside Road, and the filtering effects of street tree plantings.
165. I consider that such a building will read as discordant within this distinctly single and two-storey residential context as a consequence of its incongruous bulk.

166. I also consider that the loss of the vegetation-dominated outlook in this part of the Brightside Road streetscape and its replacement with a large building that is out of scale with its residential neighbours will detract from the character and quality of views from this end of Brightside Road.
167. Turning to the 3 Brightside Road portion of the site visible from these vantage points, referencing the consented plans for the existing hospital, it would appear that the proposed 12 metres permitted building height control suggests a reasonably similar scale of building to the existing hospital, although it would enable a three-storey, rather than a two-storey, building to be developed.
168. On the face of it, this suggests a reasonable visual fit, however the extent (footprint) and three-storey scale of building enabled in this residential setting (dominated by single and two-storey dwellings) will read as discordant.
169. As explained earlier, the proposed plan change provides no certainty that the existing vegetative context (which is of critical importance in assisting the integration of the hospital into the residential setting) will remain under any new building development in this part of the site.
170. Were such vegetation to be removed, the cumulative length of a new hospital building visible (acknowledging a break to accommodate the scheduled pohutukawa) would be approximately 118 metres, with the western portion (approximately 80 metres long) extending up to a height of 12 metres and the eastern portion (approximately 38 metres long) rising to 16 metres high.
171. Whilst I acknowledge the moderating influence of the street tree and protected plantings mentioned above (i.e. those plantings specifically identified for retention in PPC 21), it is my expectation that such a development outcome would visually dominate Brightside Road, transforming the area from a highly attractive character residential neighbourhood to one that is dominated by a large-scale institutional hospital development, attendant with extensive carparking, overflow

parking in the local street network and staff, patient, visitor and service vehicle 'comings and goings'.²⁸

172. I accept that front yard plantings (or indeed, the retention of the existing hospital plantings) may go some way to mitigate adverse visual effects. Nevertheless, I consider that, in a similar manner to the existing hospital (which is well planted), the visual presence of a hospital development which extends along the full length of this part of Brightside Road will inevitably be clearly legible. In my opinion, such development will be of a scale that is dominating and of a character that is transformative in a negative way.
173. On balancing these considerations, I consider that adverse visual effects in relation to these viewing audiences for development enabled by the controlled activity provisions (16 metres and 12 metres heights, 80% impervious area), assuming the retention of the identified trees and stonewalls and factoring in the height limitations of the Volcanic Viewshaft Overlay, rate as **Moderate-High to High (Significant)**.
174. I consider that a building up to 25 metres high in this location (and factoring in the height limitations of the Volcanic Viewshaft Overlay) would result in an adverse visual effects rating of **Very High (Significant)** for these audiences.

Views from the west: Brightside Road

R Pryor: Viewpoint 8

175. Views from the west relate to road users on Brightside Road and a short length of Owens Road and residents along the western leg of Brightside Road.

²⁸ Whilst I acknowledge that traffic effects are beyond the scope of my expertise as a landscape architect, the 'activity' of traffic movements and parking can have an effect on (urban) landscape character within some settings. This is particularly the case in residential settings.

176. From this orientation, visibility of the site is limited to the far western end of 3 Brightside Road. The existing hospital is seen flanked and grounded by on-site and neighbouring plantings (including street tree plantings) and is relatively unobtrusive due to the limited extent of building visible.
177. The MHS zoning on either side of this length of Brightside Road suggests it is reasonable to expect that some development change may occur, although a suburban residential feel is intended to remain.
178. The relatively limited extent of the site visible, together with the proposed 12 metres building height control and the similarity of this to the existing hospital building, suggests a more limited change to the character and quality of existing views than that discussed for the southern and eastern vantage points.
179. I consider that adverse visual effects in relation to these viewing audiences for a 12 metres high building, and assuming the existing plantings remain in place, rate as **Low (minor)**.
180. Were the existing plantings removed, and a 12 metres high building developed, I expect adverse visual effects would rate as **Moderate (more than minor)** due to the increased visibility of a three-storey building within a residential context dominated by single and two-storey buildings.
181. I consider that a building up to 25m high in this location (and factoring in the building height limitations of the Volcanic Viewshaft Overlay) would generate **Very High (Significant)** adverse visual effects as a consequence of its markedly incongruous scale within this residential context.

View from 32A Owens Road**R Pryor: Viewpoint 12****Appendix 1: Viewpoint 01 (Isthmus photomontages)**

182. This view relates to the private residential outlook enjoyed from the Allen property at 32A Owens Road.
183. The Allens' home is configured such that one enters from the driveway (to the north) into a walled courtyard, creating a strong sense of arrival.
184. The dwelling itself is arranged to form a 'u' framing the courtyard, with paving and buildings configured around mature trees.
185. The western wing is two-storey and includes a home office on the first floor that enjoys attractive and engaging views out over the Gillies Avenue portion of the site and across suburban Epsom to Te Kopuke/Titikopuke - Mt St John.
186. The southern wing of the dwelling is aligned roughly parallel with, and approximately 2m off, the northern boundary of 3 Brightside Road. The ornamental garden to the east of the existing hospital adjoins the Allen property. This portion of the dwelling is also two-storey, accommodating living, circulation, and bedrooms. Skylights on the southern roof slopes (facing the site) provide sunlight access to the rear of the first floor.
187. The eastern wing accommodates the main living spaces and is effectively a double-height volume. Skylights on the eastern roof slopes (facing towards the site) optimise morning sun.
188. Eastwards beyond the living wing is a paved terrace and pool area enclosed by a mix of solid and timber walling. Glazed doors and panels create a seamless 'indoor outdoor flow' between the living area and pool terrace.
189. Both the pool area and central courtyard are used for outdoor living with the former providing a more open outdoor living space that contrasts with the considerably more sheltered and enclosed courtyard space.

190. Overall, the property enjoys a very high degree of privacy and residential amenity.
191. The mature canopy trees on the neighbouring properties (including the site) add to this amenity consistent with the notion of 'borrowed landscape' discussed earlier, and which is very much part and parcel of the identity and sense of place associated with the local neighbourhood.
192. Excepting the copper beech in the north-western corner of 149 Gillies Avenue, the generous setback of vegetation within the site east of the Allens' contributes a sense of spaciousness to the eastern side of the property. From the ground floor (including indoor and outdoor living areas), views of buildings are generally limited to glimpses of the tops of the neighbouring character buildings, also seen at some distance. There is a glimpse of the existing hospital building between trees from the very far southern margins of the pool terrace area; and it is fair to say that the existing hospital plays very little role in shaping the character and quality of the visual amenity enjoyed at the Allens'.
193. As discussed in relation to other vantage points, the SH zoning and SCA overlay that applies to the neighbouring property at 149 Gillies Avenue means that it is reasonable to expect that there will be very limited visual change there (as a permitted activity).
194. In this regard, I am not convinced by Mr Mackay's²⁹ argument that the existing planning context that applies to the neighbouring Gillies Avenue properties that complies with the existing development standards would generate adverse visual dominance, overlooking and privacy effects. In my opinion, new residential development on these properties would likely be sited and configured to provide for outdoor living along the western side, optimising afternoon sun and views to Maungawhau/Mount Eden.
195. PPC 21 will enable the introduction of a 16 metres high building, 6 metres off the boundary along the eastern side of the Allens' pool area

²⁹ J Mackay EiC: paragraph 46.

as a controlled activity within Area 2 of the site. It will also see the retention of the Copper Beech (not scheduled, mature and deciduous), 4 recently planted Australian frangipani (deciduous/semi evergreen), 1 mature Australian frangipani (scheduled, deciduous/semi evergreen), 1 Jacaranda (mature, deciduous) and 1 established flowering cherry (deciduous) along (or near) the common boundary.

196. Mr Pryor considers adverse effects on this audience would be 'high' and goes on to explain that (in his view), following the establishment of the Australian frangipani trees along this boundary, adverse effects would reduce to a 'moderate' rating in five to ten years' time.
197. I note that this contrasts with Mr Mackay's comments that the development (contemplated by the resource consent) will be "invisible" from the Allens' property and "the 'iceberg model' will diminish its impact and eventually disappear as a viewer moves towards the south-east corner of the pool courtyard". ³⁰ I find these comments difficult to reconcile since I am advised by the Allen's that Mr Mackay has not visited their property.
198. In considering the adverse visual effects in relation to this property, I note that private views are not protected per se. However, it is relevant to consider residential visual amenity effects, with aspects such as visual dominance and privacy being of key focus in such a discussion.
199. In my opinion, a building of this scale and in this proximity to 32A Owens Road will loom above the Allen's property and overwhelmingly dominate their indoor and outdoor living areas.
200. I consider that this will significantly detract from the residential amenity currently enjoyed on the property.

³⁰ J McKay EiC: paragraph 44.

201. Further, the potential for elevated windows and balconies at close range (noting the 6m yard setback) to overlook both outdoor and indoor (via the skylights) living areas points to significant adverse privacy effects.
202. I also consider that Mr Pryor has failed to consider the adverse visual effects associated with his proposed mitigation planting.
203. The need for effectively a 'wall' of vegetation in very close proximity to the Allens' indoor and outdoor living areas will result in a marked loss of spaciousness and sky outlook, resulting in a 'hemmed in' character in their pool terrace area. Whilst such plantings may (in time) lessen overlooking issues, I consider that they will do little to mitigate visual amenity concerns in views from the pool terrace, indoor living areas and the central courtyard.
204. I also note that the need for such a 'wall' of planting points to the very poor fit between the proposed HFH zoning of the site and its residential neighbours and I do not consider that such a planting barrier would be needed, were the Gillies Avenue properties redeveloped for residential rather than hospital use.
205. The prospect of a 25m high building as a restricted discretionary activity would worsen an already significantly adverse situation. In making this comment, I acknowledge that the HIRB controls that would apply along these boundaries of the site, combined with the practical floorplate requirements of a hospital, are likely to mean that the full 25 metre height will not be achievable as a restricted discretionary activity across all of Area 2. Despite these allowances, I consider that visual dominance would still be a significant issue.
206. Turning to effects in relation to the southern boundary of the Allen property, the retention of trees under PPC 21, location-specific yard setback controls, and the controlled activity criterion addressing special character (in particular), means that the 12m high built development contemplated within Area 1 is less likely in close proximity to the Allens' southern boundary.

207. However, a 25 metre high building as a restricted discretionary activity on the eastern portion of Area 1 (where the Volcanic Viewshaft overlay does not apply) would add to the sense of domination and enclosure described in relation to Area 1, despite the retention of the trees throughout this part of the site.
208. On balancing these considerations, I consider that adverse visual amenity (including privacy) effects in relation to this residential viewing audience for development enabled by the controlled activity provisions in Area 2 (16 metres high building, 6 metre yard setback, 80% impervious area and HIRB controls), assuming the retention of the identified trees, rate as **Very High (Significant)**.
209. I consider that a building up to 25 metres high (on Area 1 and Area 2) in this location would result in an adverse visual amenity (including privacy) effects rating of **Very High (Significant)** for this audience.

View from 36 Owens Road

R Pryor: Viewpoints 13 and 14

210. The Rabones' property at 36 Owens Road enjoys an attractive leafy and private aspect. Outdoor living centres on an elevated deck to the rear of the dwelling. Semi-mature and mature deciduous and evergreen tree and shrub plantings on their land and the existing hospital site limit visibility of the existing development to glimpses of the top of the building, seen flanked and grounded by vegetation. It is expected that in winter months, visibility may increase with the loss of leaf cover. Other built form visible in the outlook comprises single and two-storey (distinctly) residential dwellings nestled in garden plantings.
211. Overall, the existing hospital development exerts a relatively limited influence on the visual amenity enjoyed within indoor and outdoor living areas at 36 Owens Road. For this reason, I consider that adverse visual amenity (including privacy) effects in relation to this residential viewing audience for a permitted building (16 metres and 12 metres heights), and assuming the retention of the trees, rate as **Low (minor)**.

212. However, were a hospital building up to 25 metres high developed on the site, I consider that adverse visual amenity (including privacy) effects would rate as **Very High (Significant)** for this audience.

(Urban) Landscape Character Effects

213. The graphic in **Appendix G** depicts the extent of the plan change development enabled by PPC 21 overlaid onto an aerial photograph. The vegetation to be retained is depicted, as is the extent of vegetation and garden areas that can be filled with a 16-metre-high building under PPC 21 on the Gillies Avenue properties (as a controlled activity).
214. In my opinion, the removal of the existing character homes, and the majority of the layered garden plantings around the margins and within the 'interior' of the Gillies Avenue portion of the site, and their replacement with a large and visually prominent, institutional or commercial-scale buildings and extensive carparking, will significantly detract from the distinctive, leafy and strongly 'legacy home' imbued sense of place associated with the local area.
215. Part and parcel of this change is the amalgamation of three residential scaled properties into one large site of a grain that is discordant with the surrounding residential neighbourhood patterning. Ms Ogden Cork's Figure Ground Study mapping³¹ conveys this incongruous spatial relationship well.
216. Further, the loss of an appreciable portion of street frontage in which vegetation rather than buildings dominate will erode the perception of a relatively low-density, spacious, cohesive, and verdant neighbourhood.
217. I have considered carefully the mitigation benefits of the location-specific provisions with respect to landscape character effects. Whilst the retention of the identified trees and parts of the stonewalls is of some (limited) benefit to visual effects, in terms of landscape character and 'sense of place' effects, it is effectively a gesture in which vestiges

³¹ T Ogden Cork EiC: Attachment A, page 15

of the special character elements are to be retained, essentially, 'out of context'.

218. On the benefits of the proposed protection of stonewalls and identified trees under PPC 21, I do not agree with Ms Ogden Cork and Mr Mackay, that the plan change offers an appreciable benefit over the existing planning regime in this regard. As explained earlier under my discussion of the existing planning context, I consider it unlikely that these features would be removed under the existing SHZ and SCA overlay regime unless they failed, due to the privacy and amenity benefits that they offer to the residential properties. In addition, the generous proportions of each property mean that they do not cause shading problems or compromise the use of garden areas etc.
219. As explained earlier, the circumstances of the site are quite different to those evident at 155 Gillies Avenue which is cited by Mr Mackay as evidence of the vulnerability of these features to removal under the existing zoning regime³².
220. Overall, it is my impression that the scale and character of development associated with the proposed rezoning is a poor fit in this sensitive part of the cityscape.
221. Further (and taking into consideration the comparisons cited in the Southern Cross evidence), the limited size of the site for development of this type serves to exacerbate this incongruity.
222. I consider that the marked differences between the site coverage conditions evident in the existing hospital development (which integrates reasonably well into the residential setting) and PPC 21 outlined in **Table 3** below speak to this fundamental incompatibility.

³² Ibid: paragraph 32.

Table 3: Comparison of Coverage Controls between Existing Hospital and PPC 21

Standard	Existing Hospital Site	PPC 21
Building coverage	32% of site area (approximately, measured from AC GeoMaps)	No requirement
Percentage of site landscaped	42% of site area (approximately, measured from AC GeoMaps)	No requirement
Maximum impervious area	58% of site area (approximately, measured from AC GeoMaps)	80% of site area.

223. In coming to my conclusions on the appropriateness of the proposed rezoning from a landscape perspective, I have also considered the development standards proposed as part of PPC 21 alongside the SHZ and SCA Overlay standards (that apply to the Gillies Avenue properties and much of the local area to the west of Gillies Avenue), and the MHZ standards (which apply to the existing hospital site and the balance of the suburban block bordered by Owens Road, Gillies Avenue and Brightside Road. **Table 4** below details this development standard comparison.

Table 4: Development Standard Comparison

Standard	SHZ and SCA	MHS	PPC 21
Building Height	8m permitted	8m permitted	Area 1: 12m controlled for increase of 20% over existing footprint Area 2: 16m controlled for increase of 20% over existing footprint
Building coverage	35% 25% (combined total area of SCA)	40%	No requirement
Landscaped Area	40% net	40%	No requirement

Standard	SHZ and SCA	MHS	PPC 21
Maximum impervious area	60% of site area	60% of site area	80% of site area
HIRB	45-degree recession plane measured from a point 2.5m high on boundary	45-degree recession plane measured from a point 2.5m high on boundary	45-degree recession plane measured from a point 2.5m high on boundary
Front Yard	3m At least 50% of front yard must comprise landscaped area	3m At least 50% of front yard must comprise landscaped area	Area 1: 3m with no requirement for landscaped area. Area 2: No requirement for landscape area; however, identified stone and 4 mature trees along Gillies Avenue and Brightside Road frontages to be retained
Side Yard	1m	1m	1m excepting side boundary adjoining 30 and 30A Owens Road and 147 Gillies Avenue where a 6m setback applies
Rear Yard	3m	1m	3m excepting rear boundary along northern side of site where a minimum 3m or 6m boundary applies. Requirement to retain 7 trees within rear yard setback

224. I consider that the substantial changes to the anticipated building bulk and massing on the site (arising from the changes to the building height, coverage, and landscaped area controls) underpin this fundamental incongruity from a landscape perspective.

225. Ms Ogden Cork comments that because of the sloping terrain eastwards along Brightside Road, the level (or RL) of the top of the existing hospital building is similar to the level of the top of the development anticipated as a controlled activity on the 153 Gillies

Avenue portion of the site, PPC21 is complementary to the existing height and form of Brightside Hospital.³³

226. I consider that the patterning of overall building block height is one factor in evaluating effects on urban landscape character that needs to be considered, alongside such matters as: building coverage, setback controls, landscape coverage and HIRB; as the character of development is determined by the way that these various factors combine. Relying on my description of the existing hospital development and analysis of visual effects in relation to Brightside Road, I do not agree that the development anticipated by PPC21 as a controlled activity will complement the existing hospital development.
227. I have also considered the further matter of control and assessment criterion addressing visual dominance recommended by Mr Mackay and Ms Saville. In my opinion, this amendment which signals the use of the building design as a mitigation tool to manage visual dominance effects will not provide meaningful relief, given the fundamentally poor fit of the proposed building bulk, scale and massing on the site and within this specific character residential neighbourhood.
228. On balancing these considerations, adverse (urban) landscape character effects for development enabled under PPC21 as a controlled activity, are rated as **High (Significant)**.
229. I consider that buildings up to 25 metres high as a restricted discretionary activity in this location (and factoring the height limitations of the Volcanic Viewshaft Overlay) would result in adverse (urban) landscape character effects rated as **Very High (Significant)**.
230. With respect to **cumulative adverse landscape character effects**, when combined with the existing hospital development on Brightside Road, the proposed development will see hospital development extending throughout some 56% of the urban block defined by Owens

³³ T Ogden Cork EiC: paragraphs 186 to 189.

Road/Brightside Road and Gillies Avenue. All of the eastern arm of Brightside Road will be fronted by hospital development, with approximately half of the northern arm and the majority of the Gillies Avenue block boundary similarly bordered, leaving only the Owens Road frontage as dominated by residential development.

231. I consider that this will result in the perception of a suburban block identity that comprises a 'healthcare precinct' rather than a character residential neighbourhood.
232. In my opinion, such an outcome along with my analysis of visual effects, points to a **cumulative adverse landscape character effect** that rates as **High (Significant)**.



Bridget Gilbert

Date: 15 February 2021

IN THE ENVIRONMENT COURT
AT AUCKLAND

ENV-2020-000079

UNDER	the Resource Management Act 1991 (Act)
In the Matter	of an appeal under clause 14(1) of Schedule 1 of the Resource Management Act 1991 against a decision on Proposed Plan Change 21 to the Auckland Unitary Plan
BETWEEN	EDEN EPSOM RESIDENTIAL PROTECTION SOCIETY INCORPORATED Appellant
And	AUCKLAND COUNCIL Respondent
And	SOUTHERN CROSS HOSPITALS LIMITED Requestor
And	KAINGA ORA – HOMES AND COMMUNITIES Section 274 Party
And	TUPUNA MAUNGA O TAMAKI MAKAUARAU AUTHORITY Section 274 Party

EVIDENCE OF LAURENCE JEREMY ELDER SALMOND

On behalf of the Eden Epsom Residential Protection Society
[Heritage and Character Area Effects]

Dated 15 February 2021

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1.0 Qualifications and Experience

- 1.1 My name is Laurence Jeremy Elder Salmond. I am a director of the firm of Salmond Reed Architects Limited and I have been in professional practice as an architect since 1972. I hold the degree of Master of Architecture (Auckland) and I am a Fellow of the New Zealand Institute of Architects.
- 1.2 I am a member of the Association for Preservation Technology International, and a past Chairman of the New Zealand Committee of the International Council on Monuments and Sites (ICOMOS); I contributed to the development of the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value. I am a member of the Auckland City Urban Design Panel and I was a founding Trustee of the North Shore Heritage Trust. I have received the Queen's Service Order for Public Service for my work in heritage conservation and advocacy, and in 2018 I was awarded the NZIA Gold Medal for Architecture.
- 1.3 I have 48 years' experience as an architect and working experience in the United Kingdom and New Zealand, particularly in the field of conservation architecture. I have undertaken specialist training in conservation method and practice in Australia, the UK the US and Canada. I am experienced in building restoration and the preparation of conservation plans and heritage studies. I have experience in the analysis, design and documentation of conservation works for a wide range of heritage buildings, as well as the design and construction of contemporary new structures. I am the author of the book Old New Zealand Houses 1800-1940. I have contributed to a number of other published works, and I have delivered papers and lectures at conferences and seminars related to conservation practice.
- 1.4 I have assisted several local authorities with the identification of areas of distinctive character and with the preparation of guidelines for the maintenance of existing character. In particular, I contributed to original studies in 1992 which led to the definition and establishment of special character areas under the former Auckland Council District Plan (Isthmus). I have advised a number of other territorial local authorities on issues related to the preservation of historic areas and I have developed guidelines published by these authorities for this purpose.
- 1.5 I have prepared, or contributed to, studies on heritage values which can be identified in urban and other settings, where these studies are intended to assist with the formation of planning policy and rules. These have included studies of historic landscapes associated with significant cultural heritage buildings, conservation plans for historic landscapes and built precincts, and contributions towards the development of master plans and area plans for defined landscapes.

- 1.6 My company specialises in the conservation of heritage buildings, sites and areas, and a major part of the work of the practice is concerned with the maintenance, restoration and adaptation of old buildings. We have prepared in excess of 150 conservation plans for important heritage buildings throughout New Zealand.
- 1.7 We have worked (independently, or in association with other design professionals) on many significant projects to rehabilitate and adapt important heritage buildings, including Pompallier House in Russell, the Stone Store in Kerikeri; (in Auckland) the Civic Theatre, the former Chief Post Office, the War Memorial Museum and the Art Gallery, and a wide range of buildings on the University of Auckland Campus.

The Company has been associated with the Britomart Precinct in various capacities since 1995, and I am currently specialist heritage consultant to the Christ Church Cathedral Reinstatement project.

2.0 Scope of Evidence

- 2.1 I appear as a witness for Eden Epsom Residential Protection (the Society) in respect of proposed Plan Change 21 (the Plan Change) to the Auckland Unitary Plan (operative in part), as lodged with Auckland Council by Southern Cross Hospitals Limited (SXHL).
- 2.2 By way of background, I was engaged by the Society in September 2018 to provide a preliminary assessment of the properties at 151 and 153 Gillies Avenue. My office undertook archival research and carried out inspections of the two existing houses, and I later prepared primary and supplementary evidence to a hearing of the PPC21 in November 2019 before Independent Commissioners. I was also engaged by the Society to prepare and present evidence at the Proposed Brightside Hospital Expansion Resource Consent hearing in December 2020.
- 2.3 This statement has been prepared to support the Society's appeal against the decision by a majority of independent commissioners which found in favour of the Plan Change. I understand that the purpose of the Plan Change is to define an enlarged development site for the purposes of the hospital, with substantially increased bulk and location potential, as either a controlled or restricted discretionary activity.
- 2.4 My evidence is primarily directed to the proposal to remove the character overlay on the new sites, leading inevitably to the demolition or removal of the houses at 151 and 153 Gillies Avenue. I will comment on the intrinsic value and contribution of these houses to the Special Character Area overlay defined in the Unitary Plan.
- 2.5 I have read statements in support of the proposed plan change prepared by Carolyn Hill, John Brown, John Mackay and Amelia Linzey, and I comment in my evidence on the conclusions reached in those reports.

- 2.6 I confirm that I have read, and agree to comply with, the Code of Conduct for Expert Witnesses. This evidence is within my area of expertise, except where I state that I am relying on facts or information provided by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

3.0 Summary of findings

- 3.1 The houses at 151 and 153 Gillies Ave have clear architectural merit and contribute materially to the identified character values of the Epsom special character area overlay (SCAO).
- 3.2 The PPC, if implemented, will result in their demolition or removal from the existing sites.
- 3.3 Potential development enabled by the PPC on these sites will, if consented, be wholly inconsistent in scale, form and mass with the special character defined for the Epsom SCAO.
- 3.4 The effects of the proposed plan change will consequently be contrary to the policies of Part D18.3 for the Epsom SCAO, as outlined in the Unitary Plan.
- 3.5 Similarly, the effects of the proposed plan change, will be contrary to RPS Objective B5.3.1.(2), which anticipates that the “character and amenity values of identified special character areas are maintained and enhanced” (through the Unitary Plan in both its framework and in its implementation).
- 3.6 As Mr Speer notes, these provisions are intended to maintain and enhance special character values for their specific areas in accordance with the special character statements in Schedule 15, and give effect to the RPS objective and policies at B5.3.

4.0 Description of the existing condition

- 4.1 As described in our assessment undertaken on behalf of the Society, the houses at 151 and 153 Gillies Ave have clear architectural merit and, although I do not consider them to be “historic”, they contribute materially to the identified character values of the Epsom North SCAO.
- 4.2 I have attached at Appendix 1 my assessment of the two houses and some information on their character and provenance. This shows that the houses, while they are not in my opinion exemplars of their style, are characteristic of their time and do make an important contribution to Epsom North SCAO, in precisely the manner contemplated by the establishment of the SCAO.
- 4.3 I have attached at Appendix 2 a brief historical narrative describing the establishment and evolution of this part of North Epsom. In my opinion, this shows that precisely why the layering of the natural environment, the streetscape and the built environment, combine to

provide a strong visual coherence and integrity to North Epsom, and that this justifies its inclusion as a special character area in the AUPOP.

- 4.4 The Special Character Area Overlay is described in Chapter D18 of the plan, and seeks to retain and manage the special character values of this part of Epsom. The existing hospital site is zoned Mixed Housing Suburban with no character overlay.
- 4.5 The Council has advised that the subject sites “were subject to building demolition controls in the Auckland District Plan (Isthmus Section) and the special character overlay which applies to the sites was a rollover from the Isthmus District Plan.”¹ This is confirmed by Council built heritage specialist Rebecca Freeman who notes that places were included in the SCA overlay through several public processes that established their values.²
- 4.6 This demonstrates that previous plans, including those preceding the former Isthmus Plan, established the relevance of these signifiers following due enquiry and detailed expert assessment and field evaluation, so that it is clear that the special character status of these sites has been purposefully established. It should also be mentioned in this context that no submission was made to Plan Change 163 in the former Isthmus Plan in relation to these properties, and I am advised that nor was any made in the more recent PAUP process.

5.0 The Proposed Plan Change

- 5.1 The purpose of Proposed Plan Change 21 is to define a new hospital zone over both the existing site at 3 Brightside Road and the adjacent sites on Gillies Avenue. The latter are zoned as Single House Residential in which one to two storey dwellings are generally contemplated up to 8m in height.
- 5.2 The evidence offered on behalf of the Requestor, in respect of the SCAO is founded in the proposition that the identified special character subsists in the landscape features of the sites and that the contribution of the existing houses – irrespective of their architectural merits is inconsequential. This is the burden of the evidence of Ms Hill, Mr Mackay, Mr Brown and others.
- 5.3 Ms Hill has acknowledged that “the houses at 151 and 153 Gillies Ave have architectural merit that illustrate the identified character values of the SCA”³, and I wholly agree with that conclusion. She says further that “The properties as a whole do ... make a positive contribution to the collective character values of the SCA through their landscape features including large trees, hedges, gardens and basalt stone walls” and that “It is considered that

¹ Email dated 4 September 2018 from Panjama Ampanthong to Suzanne Speer

² Rebecca Freeman, in Auckland Council Hearing Report, p 173 and 176 (paragraphs 4.28 and 5.9).

³ Statement of Evidence of Carolyn Joy Hill for Southern Cross Hospitals Limited, Special Character Evidence, 9 November 2020– paragraph 87

their substantial loss would adversely affect the identified character and amenity values of the area”.

- 5.4 I agree that the removal of the houses and the construction of a new building of the scale proposed will significantly and adversely diminish the intrinsic character which the overlay seeks to preserve. The question is not, however, solely one of effects arising from removal of the two houses, but also the corollary effect of insertion into the existing SCAO of a new structure of the bulk and scale contemplated under the proposed Plan Change, as illustrated in Mr England’s renderings.



- 5.5 A further factor is the cumulative effect which flows from the original establishment of Brightside Hospital in the then new building at 3 Brightside Road. This enabled a large institutional building to be placed into a distinctive residential area (although not designated as “special character”), and the proposed Plan Change now seeks to expand the scale and bulk of this insertion, so that the original building can be seen as a Trojan Horse for further diluting the SCAO.
- 5.6 Ms Hill suggests that that the loss of these houses would “not precipitate a cumulative erosive effect on collective architectural character either to the immediate vicinity or to the SCA overlay as a whole.”⁴ I would say that the issue is not one of *precipitating* a cumulative effect - in this case, an “erosive effect on collective architectural character” - but rather of contributing to an existing legacy of cumulative effects, as quoted by Mr Brown in his

⁴ Carolyn Hill: EIC – paragraph 106

evidence at paragraph 61, where he refers to 141 applications for demolition consents in the SCA Overlay under the AUP of which 133 have been granted.

- 5.7 As Mr Brown observes, at paragraph 28, “the Isthmus B1 SCA Overlay does not have blanket demolition controls relating to the demolition or removal of buildings”, and it has always been clear – at least to me - that the overlay did not *prevent* demolition or removal, but rather established rules and assessment criteria to determine the effects of such activity.
- 5.8 There appears to be general agreement among witnesses that the subject sites clearly exhibit the character for which the overlay has been defined, but in my view, these particular sites are important also for the manner in which they provide a “buffer” which supports the integrity of the wider zone, so that the loss of these houses will not only destroy the existing character as it pertains to these sites, but will further erode the extent and distinctive collective character of the wider SCAO.
- 5.9 Ms Hill introduces a new criterion for the SCAO where she states at paragraph 87 that “the houses’ contribution to the SCA overlay is also marginalised by the limited recognisability of a historical or contemporary architectural group in the vicinity.” I am not aware of such a criterion for defining sites in the SCAO, but I do understand that the architectural styles of houses in the Isthmus B overlay are expected to be quite heterogeneous – the uniting emphasis in the B1 subset being significant vegetative cover (and that is not itself expected to be botanically consistent).
- 5.10 Much is made by other witnesses of the generally-contrasting character of zones adjacent to the SCAO, the implication being that the loss of character on the subject sites will have small impact in those contexts. Mr Mackay refers at paragraph 24 to the contribution of sites at 149-153 Gillies Avenue to “what remains of the street’s character”. Mr Brown, at paragraph 51 states that “this is because the consistency of character traits is not prevalent on both sides of the streetscape, to the degree that the character environment is sufficiently expressed to merit controls established by the SCA Overlay”.
- 5.11 This ignores the reality of the planning structure of the city in which differing zones inevitably abut others with differing development objectives and controls. In my view the effects of change must be measured as these impact on the zone within which a site is located, rather than on any other zone or area - except to the extent that the AUP defines development controls for such zones. The SCAO inevitably abuts other zones with contrasting characteristics, and where the urban quality of such abutting zones is not as great as that for which the SCAO is recognised, this cannot be an argument for diminishing the SCAO itself.
- 5.12 For the same reason, it is in my opinion absurd to suggest, as Mr Brown does at paragraph 92, that “in the immediate vicinity of the Site, most of the existing buildings would not be identified as typologies which strongly contribute to the Isthmus B1 SCA Overlay character values, and a good proportion of them have a typology bulk, form and footprint which is

atypical to that described in the character statement". This is simply to state the obvious – that the SCAO has recognised distinctive character in a number of sites within a wider heterogeneous area. As Ms Gilbert describes in her evidence, the western side of Gillies Ave between Alpers Ave and Epsom Ave in particular exhibits a generally consistent character that recognises the values the SCAO seeks to promote and enhance.

- 5.13 It is agreed also that although the houses align with the special character values of the SCAO, they are largely (but not wholly) concealed from the street. In my opinion, this is an inevitable and widespread feature of an area that is defined for precisely the relationship between buildings and their associated landscapes and flora. I agree also that there are other environmental characteristics which have accrued over time such as walls, fences, trees and gardens that actively contribute to the special character of the SCAO. If PPC 21 is approved, the continued retention of these features cannot be guaranteed. In any case, I agree with Ms Gilbert at para 218 that that the proposed protection of parts of stone walls and identified trees under PPC 21 offers no appreciable benefit over the existing planning regime in that respect
- 5.14 In my opinion, the comparative weight given to the maintenance and enhancement of these values is not diminished by the relative (in)visibility of a building of identified character. Visibility from the public realm is only one measure of the intrinsic value of individual buildings in the context of a SCAO. In fact, if the buildings are removed, then the SCAO effectively ceases to apply (as defined under Chapter D.18), or becomes meaningless, since the character area is defined precisely in terms of *buildings* in the suburban landscape, and hence the loss of value is absolute – both to individual buildings and to the character area as a whole.
- 5.15 The relative invisibility of the houses from the public street – certainly from Gillies Avenue, and to a lesser extent in Brightside Avenue - can be recognised as an accident of history, due in part to raising the height of the original stone boundary wall and the density of mature trees (which themselves contribute significantly to the specific character of this locality) – Ms Hill refers at paragraph 100 to the houses being "(deliberately) concealed from the public realm". And yet, this accretion of vegetative cover is precisely characteristic of the relationship between the constructed buildings and their associated landscapes for which this part of the SCAO was defined – in particular, the deep set-back of buildings from the street – which the overlay seeks to retain and manage.
- 5.16 Visibility is not defined by static views from defined locations in the street. It is a quality frequently experienced during movement along the street, in such a way that the physical presence of a building can only be understood through the compilation in the mind of a series of vignettes seen through enclosing foliage or beyond solid objects in the foreground.

- 5.17 In any case, in my opinion there is more than enough visibility of the house at 153 Gillies Avenue to account for its style and character and to adequately account for the inclusion of that property within the SCAO, and this is graphically illustrated by the existing street view provided by Mr England at Viewpoint 02 in Appendix 1-3 to his evidence.



- 5.18 I consider further that, although the house at 151 Gillies Avenue may be less visible, this and its site have particular importance for the features held in common with No 153, and the collective value of the two properties is consequently greater than their sum as individual sites. In my opinion, this fully justifies their inclusion in the SCAO.
- 5.19 “Streetscape” can be defined as the space between the faces of buildings along the street edges. This includes the open spaces on the site historically associated with existing buildings as well as the density and character of the flora in those spaces, and the broader sense of spaciousness that characterises this part of the overlay. This will be wholly destroyed by a development of the bulk enabled by the Plan Change (see also figure 1 on page 12 below).
- 5.20 Under the policies of Part D18.3., developments are required to have regard and respond positively to the area’s identified special character values and context. The removal or substantial demolition of buildings that contribute to the continuity or coherence of the special character area is discouraged. New buildings are “expected to maintain character continuity and coherence; maintain streetscape qualities and cohesiveness; respond positively to existing design/patterns/forms, including relationships between built form and open space; maintain landscape setting; recover and be compatible with existing fabric and features”.
- 5.21 Ms Hill refers at paragraph 105 to the focus of Chapter D18 in the AUP on built form, but observes that the SCAO’s “overall objectives focus on identified special character in the round”. My sense is that her preoccupation with the vegetative cover and boundary condition of these sites – in preference to the primary dwellings on the sites - does not reflect that rounded assessment.
- 5.22 Her argument (at paragraph 109) appears to be that since the two houses “have limited ability to be appreciated as part of an SCA overlay “group” due to the SCA overlay’s

intrinsic diversity of style, their particular location on the unevenly subdivided/developed Gillies Avenue, and their own visual concealment”, then there can be no harm in replacing them with a new building of immensely greater scale and bulk – as long as some of the street walls and some trees remain.

- 5.23 This is echoed by Mr Mackay at paragraph 29, where he says that “PC21 and its Brightside Hospital Plan (including the building setback) will offer better protection to the visible character of the site - the basalt rock walls, trees, hedging and other vegetation on the frontage of the site - than the provisions of the SCA Overlay”, yet ignores the fundamental characteristic of the SCAO that it comprises *buildings* in landscape – not just landscape alone, and that these buildings are residential rather than institutional. The residential scale of the contributory sites will also be overwhelmed through amalgamation of all the sites within the HFH into what Ms Gilbert aptly describes as “large site of a grain that is discordant with the surrounding residential neighbourhood patterning”.
- 5.24 The proposed plan change will be wholly inconsistent with these objectives for the Epsom SCAO, and to argue that the removal of these houses is “in line with the SCAO’s (Isthmus B1) emphasis on landscape qualities” is an oxymoron, since without the associated buildings, the special character area becomes meaningless.
- 5.25 Similarly, the proposed plan change, while claiming authority under RPS Policies at B2.8.2.(3) - to enable “intensive use and development of existing and new social facility sites” - disregards the more prescriptive RPS Objective B5.3.1.(2), which anticipates that the “character and amenity values of identified special character areas are maintained and enhanced.” The fact that (as Mr Brown quotes at paragraph 61) almost 95% of applications for demolition consents in the SCA Overlay under the AUP have been allowed does not suggest scrupulous observance of the Regional Policy objectives – for all that the objectives and rules of the SCAO set out to do so. In my opinion, this demonstrates a lack of rigour in the administration of the SCAO – or that the values for which properties have been identified are a form of lip service to the ideal of urban character – and to my mind this somewhat challenges the integrity of those provisions of the AUP. I disagree therefore with Mr Brown where he says at paragraph 104, that this represents “negligible change at a regional level.
- 5.26 I agree with Mr Brown that case-by-case assessment is required, and I am quite sure that this was the basis for the 133 successful applications to demolish. The special Character Areas are made up of individual sites, and so the cumulative effects of attrition on the SCAO are pertinent. To say therefore, as Mr Brown does, that “the SCA Overlay’s particular function was not intended to serve as a mechanism for individual site protection per se” begs the question of the purpose of any mechanism for planning control as this applies to individual properties. The SCAO – perhaps more than most designated areas of the City – is greater

than the sum of its parts, and the loss of any one site is by definition an outcome that cumulatively diminishes the whole.

- 5.27 Mr Brown refers to medical facilities on other sites in the city, constructed in the first half of the 20th century using “similar architectural elements and materials to domestic properties in the Isthmus B1 SCA Overlay.” I am aware of the instances he refers to and I acknowledge that these can be seen to sit with reasonable empathy within their residential settings – due largely to the scale and architectural detail adopted in those buildings. I do not see the relevance of this reference since this is not the proposition contemplated by the PPC, and nor is it the outcome illustrated in the earlier resource consent application for the site.

6.0 Conclusions

- 6.1 The preoccupation of witnesses for the Council and the Requestor with the landscape qualities derived from existing site structures and vegetation as predominantly defining the special character of these sites fatally ignores the point that the SCAO exists solely because the sites are occupied by buildings of character with agreed architectural merit.
- 6.2 They further overlook the present reality that the lack of protection afforded to the generality of trees and other vegetation under the Unitary Plan means that should these be removed, the existing houses will be afforded much greater prominence.
- 6.3 Mr Brown at least acknowledges this at paragraph 47, where he says “These properties would be more visible, and have a greater contribution, if existing mature trees and hedges and boundary treatments were reduced or removed (also as noted above - contributors in their own right to the character amenity)”.
- 6.4 To say, then, that the PPC will afford “greater protection” to the values for which the SCAO is defined is an oxymoron.
- 6.5 In my opinion, if Proposed Plan Change 21 is approved, the special character values protected by the overlay on the Gillies Ave/Brightside Road sites would be destroyed, and would result in serious cumulative effects on that character within the wider Eden Epsom residential area. The new zone would permit an anomalous over-scaled and dominant presence in an area of very high historical and environmental amenity.



Jeremy Salmond
QSO, M. Arch, FNZIA
15 February 2021

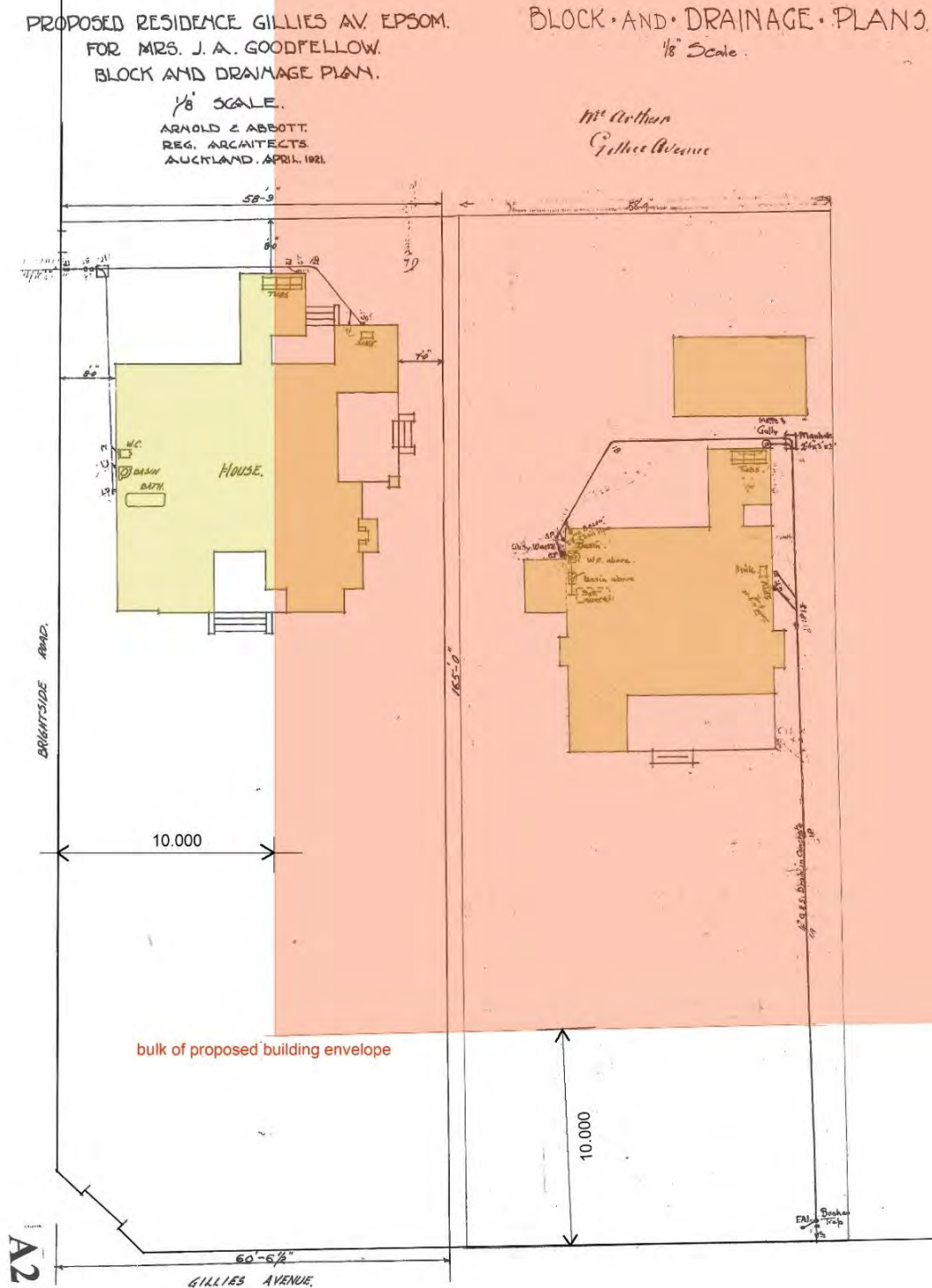


Figure 1 comparison of existing building footprints and permitted bulk enabled by the proposed plan change – based on archival drawings of the 2 houses and on plans by Archimedia submitted with the application.

APPENDIX 1

151 & 153 Gilles Avenue Epsom An Assessment of character values

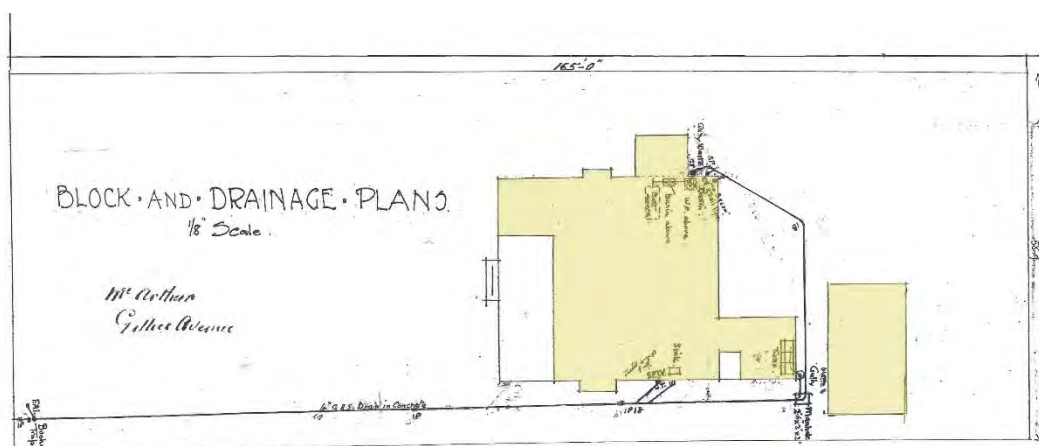
151 and 153 Gillies Ave were built on lot 14, which was purchased by Alexander Imrie Farmer in 1905, but remaining vacant until 1920 when parts were sold to Arthur Cleveland McArthur (151) and to his mother-in-law Margaret Goodfellow (153). McArthur may have inherited the 153 property in 1951 from his mother-in-law.

These two houses, designed in 1920 by the well-known Auckland architectural firm of Atkinson Abbot, who were early advocates of the Arts and Crafts and Bungalow styles, are good examples of their kind, with high individual architectural integrity. While they are not exemplars of the style, to the extent that they do not meet the thresholds for scheduling, they make an important contribution to Epsom North special character area [SCAO], which is defined for a consistency of landscape qualities with varying house styles.

The houses are described in detail as follows (see also Figure 1 above).

151 Gillies Avenue

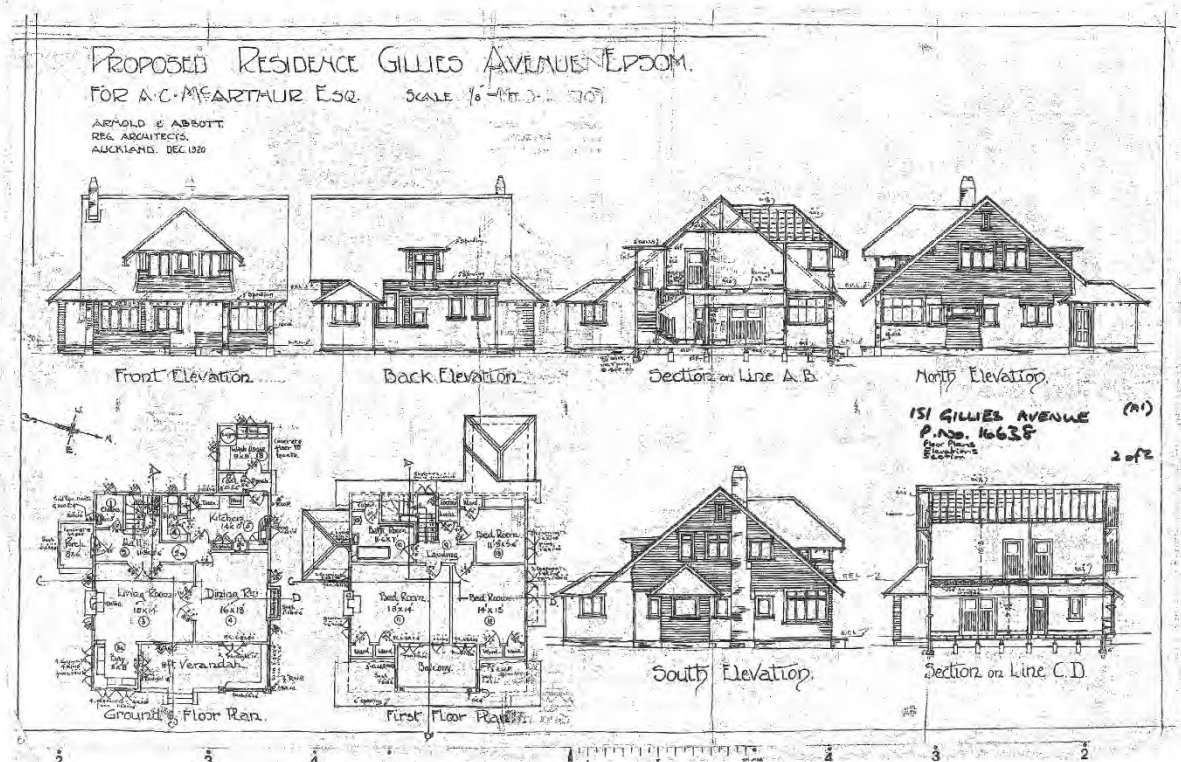
The house is set well back from the street on its 971 m² site; the driveway runs along the southern boundary to a rear garage; the front garden is screened from this by trees, shrubs, and the garden. The location of the house on the site allows the maximum amount of front garden and outdoor living area and greater privacy from Gillies Avenue, which even in 1920s was a main arterial distributor. The house is entered at the side, thus maintaining the privacy of the front garden.



The front garden slopes towards Gillies Avenue and is divided by steps and a row of shrubs into a larger upper and smaller lower garden immediately adjoining Gillies Avenue. The upper garden has a specimen tree with garden beds around the house being marked with irregular volcanic blue stones. The lower garden, possibly developed after the garage was relocated in 1958, has a sundial centrepiece surrounded by a circular garden bed with crazy paved paths radiating off it, one of which leads to a path along the northern boundary leading from Gillies Avenue to the back door. This entry has been closed in with a timber letterbox.

The rear of the house contains the service areas and the garage which was relocated from the front yard in 1958, to align with the back boundary. It has been moved at some stage again to align with the side boundary and added onto.

The garden gives the impression of having been established during the McArthur ownership, and reflects the division of public and private spaces within the site and the desire of the occupants for privacy. It is also a reflection of the popularity of gardening as a middle-class leisure time activity, particularly in Epsom with its easily worked volcanic soil and the presence of many adjoining gardens.



House - exterior

Designed in 1920 by Arnold and Abbott, the dwelling shows English Arts and Crafts and bungalow influences. The original garage was relocated to the rear of the house in 1958.

Original plans show a double storey timber house with steeply pitched roof incorporating a substantial front dormer enclosing a sleeping porch [since filled in], and a smaller rear dormer over the stair hall. A two-storey rear addition has been made with bedroom above a kitchen and entrance porch. Various other minor changes have been made to add doors, windows and rooflights. The house thus remains largely as built.

House-interior

The house is arranged over 2 levels, with the usual arrangement of public rooms and their associated service rooms downstairs, and the more private bedroom spaces and bathroom upstairs. Individual rooms are clustered around a central circulation core, with similar functions grouped close to each other. This plan reflects the contemporaneous desire for convenience and reduced effort in running a house.

The house is entered at the side through the hall, with adjacent toilet, and thence into the living room and dining room, next to the kitchen and rear service rooms. Double doors separate the hall and living room, and living and dining rooms - a characteristic feature of bungalow planning.

Rooms and porches are oriented for northern sun, with service rooms to the south. Indoor and outdoor spaces are well integrated through a generous ground floor porch, with doors leading to the living room and dining room. The porch floor is varnished rather than painted, claiming it as an 'internal' space. The porch upstairs (later enclosed) has access from 2 of the 3 bedrooms.

Other characteristic detailing includes panelled doors, beamed and battened ceilings, and built-in furniture, including kitchen benches, safe, pantry and serving hatch - all since removed. Other surviving features include the sideboard and shelving to the dining room, and wardrobes.

Interior changes include the kitchen and bathrooms, and modernised living room fire surround.

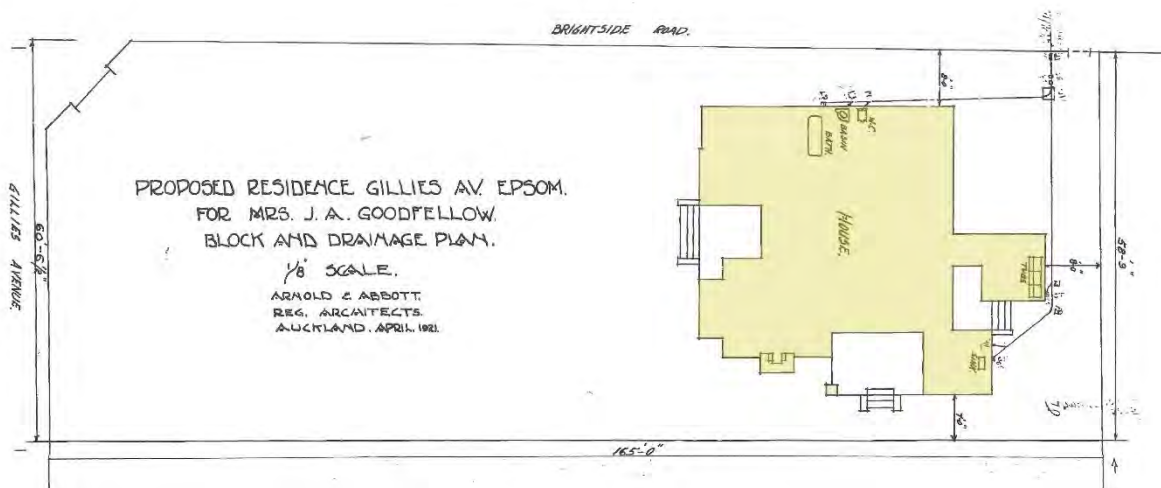
153 Gillies Avenue

Designed in 1920 by Arnold and Abbott this single storey timber house with low-pitched roof, spreading eaves and distinctive gable end ventilators exhibits the distinctive Californian Bungalow influences favoured by this practice.

The house is well set back from Gillies Avenue, on an 849m² site, with a very small rear yard, and is built closer to its side boundary than the neighbouring 151. This allows leaves the greater part of the site for the front garden and outdoor living area, while providing privacy from Gillies Avenue.

The original driveway entrance at the corner of Gillies Avenue and Brightside Road has been closed off. Vehicle access is now via timber gates near the Brightside Road boundary. Pedestrians access is by a gate further closer to Gillies Avenue.

The front garden is a large grassed area, terraced towards Gillies Avenue with a small detached building on the Gillies Avenue frontage assumed to be a later addition. Site boundaries are marked by shrubs and hedging and some mature trees all set behind stone walls.



House - exterior

No floor plans and elevations have been found for 153, other than a block and drainage plan, which shows the floor plate and locations of service rooms. Site inspection shows that the exterior has been little altered since construction, apart from some rear kitchen alterations and an infilled northern porch.

House interior

The house is entered at the front through a generous porch, later retiled and thence to an oak-panelled hall. The living room leads off to the right with the dining room beyond and then kitchen and service rooms behind. Separate access from the hall leads to 3 bedrooms and a bathroom.

Individual rooms are clustered around an internal central circulation core, with similar functions grouped close to each other, reflecting the desire for convenience and the reduction in effort of running a house.

There is evidence of modifications to the bathroom, kitchen and dining room, and the side porch has been enclosed.

APPENDIX 2

151 & 153 Gillies Avenue Epsom - Heritage Assessment

Brief and Background

Salmond Reed Architects has been commissioned by the North Epsom Protection Society to undertake a heritage assessment of 151 and 153 Gillies Avenue Epsom.

In November 2018 Salmond Reed Architects undertook a historical overview of the Special Character Area Overlay – Residential Isthmus B – Mount Eden / Epsom (Part A) to provide an in depth understanding of the SCAO, specifically how this relates to the properties at 153 [Brightside Road corner] and the immediately adjoining properties at 151 & 149 Gillies Ave, [The Everdell Guesthouse], which Southern Cross proposes to demolish to expand their existing Brightside Hospital.

It concluded that the SCAO is a layering of the natural environment, the streetscape and built environment which combine to provide a strong visual coherence and integrity to North Epsom which justifies its inclusion as a special character area in the AUPOP.

This character is not uniformly spread throughout the SCAO, as later post WWII development and that of a more contemporary nature has, in the absence of District Plan recognition and protection, been built in the suburb, intruding into the SCAO. The popularity of the North Epsom and its proximity to Auckland Grammar School, and the city have placed the area under considerable development pressure from new stand-alone and infill 'townhouse' development.

These areas of more recent development are excluded from the overlay, so it has become a sequence of dispersed nodes. Within this pattern, some properties, such as 151 and 153 Gillies Avenue, are subject to demolition removal or relocation rules while the neighbouring property at 149 is not. Any new development on this site must, however, comply with design controls to integrate it into the surrounding environment.

History of the site(s)

In 1840s Auckland it was envisaged that Epsom would be developed for small farm holdings and Mt Eden for market gardens to supply the city. By September 1841, a block of 50 sections, ranging from 5-50 acres were auctioned for small farms. The area was noted for its fertile land, well suited to dairy herds and grain crops. Windmill Road is named after the Bycroft windmill which once stood there.

By the 1850s and 1860s, prominent Auckland families had begun to shift from the central city to the desirable locales of Epsom and Remuera, building splendid mansions on 10 - 20 acres allotments, cultivating gardens, orchards, grazing horses and running some stock. An inventory of the principal estates in the vicinity of Brightside Road is shown below.

In the mid-1850s George Burgoyne Owen built his house 'Brightside', on its 10-acre site, to the design of Colonial Architect William Mason, later adding a ballroom. This large site was subdivided, resulting in the formation of Burgoyne Road [now Brightside Road].

Building consent was granted for the house at **151 Gillies Avenue** by Auckland City Council on 14 January 1921⁵ and a plan dated April 1921 was submitted to Council for another house at number 153. Both houses were designed by architects Arnold and Abbott.

⁵ Block and Drainage Plan, Auckland Council Property File

Richard Atkinson Abbott [1883-1954] attended St John's College and then Kings College (then occupying its Remuera Road site) from 1896-1900. He began his architectural career in the office of Charles Le Neve Arnold who was influenced by contemporary trends in American architecture, particularly the 'shingle style', which made extensive use of unpainted wooden shingles for roofs and walls. Following this he spent time training in England, and a year at the Sorbonne in Paris, before returning to NZ by way of San Francisco, where he also spent some time.

On rejoining Abbott's office in 1910 he became a partner, and the domestic work of the practice reflected American influences, especially the emerging Californian bungalow style which was very popular here in the interwar period.

In 1913 the practice won the competition for the Auckland Grammar School which is probably their best known work and as with most architectural partnership the design is often difficult to attribute to one partner or the other but Abbott is credited with the design due to its clear links with the Spanish Mission style popular on the American west coast.

In 1922 Kings College relocated to its new Middlemore site and Abbott prepared a master plan that was constructed progressively over 30 years and included the main administration building, the Chapel [1925], with later buildings including the war memorial, a library and the assembly hall completed in 1954.

Arnold retired in 1927, and Abbott continued to practise under his own name. Later in his career he was the senior partner in Abbott and Hole which in due course became Abbott Hole and Annabelle.

In 1941 he designed the obelisk on Maungakiekie [One Tree Hill] and was for many years the architect for the Cornwall Park Board of Trustees. Active in the Anglican Church he designed the lych gate at his parish church, St Aidan's Remuera. He designed many branch premises for the BNZ in Auckland; other principal clients included Kempthorne, Prosser and Co and the Dilworth Trust Board.

Little has been written about his domestic work, but in addition to 151 and 153 Gillies Avenue two other houses are known:

- House at 11 Upland Road Remuera (own house)
- House at 9 Wharua Road Remuera, 1913 - Atkinson Abbott designed the additions to this house in the Californian Bungalow style. It is scheduled in the Auckland Unitary Plan (Operative in Part) as a Category B place and is also listed with Heritage New Zealand, Category 2 List number 606.
-

Inventory of Heritage Places

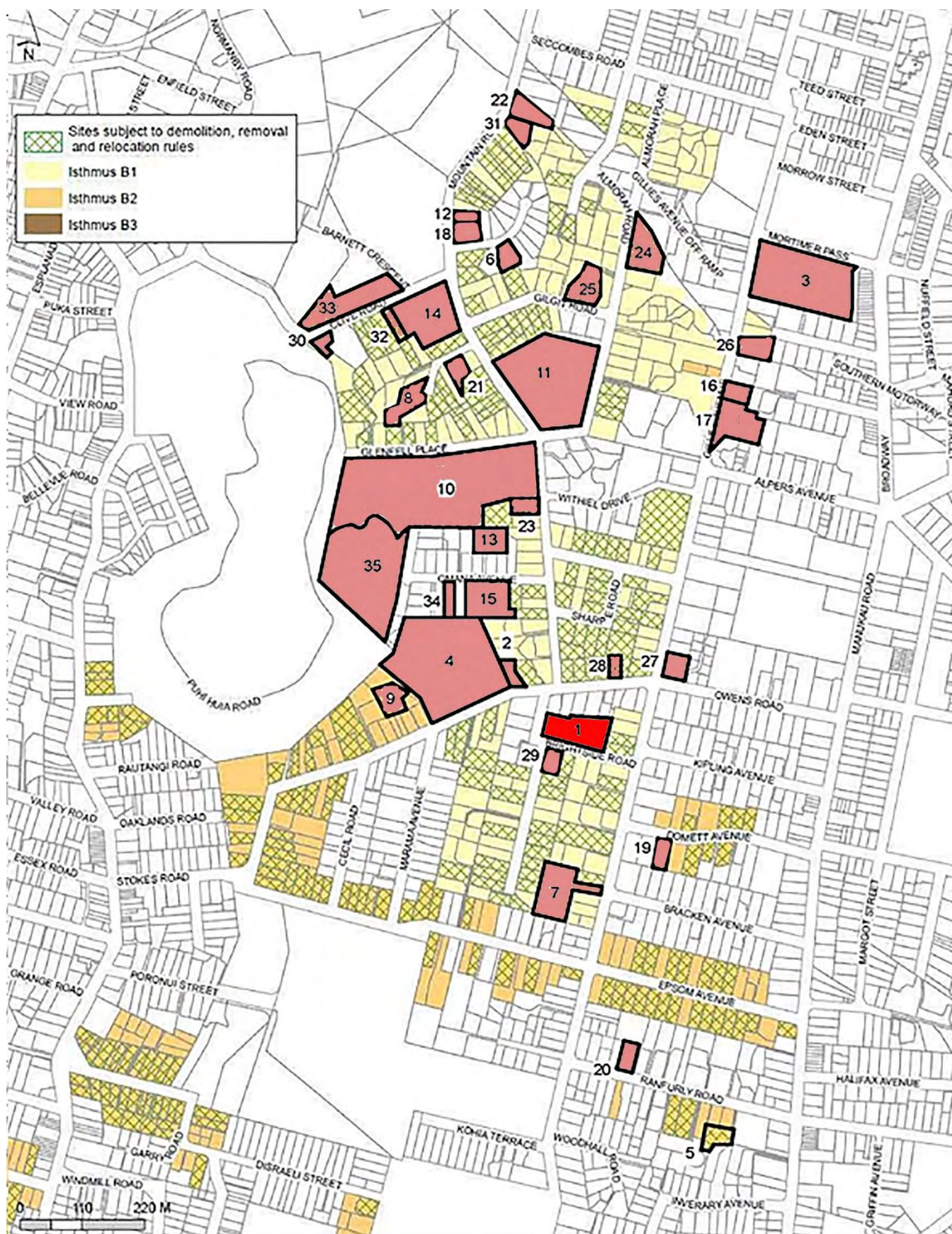
The following inventory identifies a number of properties, notable for their architecture and their associations with leading figures in early Auckland. For clarity the inventory is divided into three parts which approximately correspond to the waves of residential development experienced in the suburb:

1860 – 1900: the first phase, with large sites and gardens;

1900 – 1918: subdivision of large sites into smaller blocks;

1918 – 1939: further subdivision into small sections.

These places are shown on the following map, and are numbered to correspond to the inventory which appears after the map.



Heritage Places North Epsom - overlaid on Special Character Map, Schedule 15
[Brightside Hospital highlighted in red]

1860-1900 : Farmland to estates

1. **Brightside**, 3 Brightside Road, mid-**1850s**, for George Burgoyne Owen designed by Colonial Architect William Mason, with later alterations including a ballroom. The 10-acre property was later subdivided and Brightside Road [formerly Burgoyne Road] was formed. Owen had a passion for trees and plants, establishing an extensive garden with specimen trees, the Jacarandas and Queensland Kauris of Owens Road are a legacy of Owens generosity in giving trees to his neighbours⁶ and it is also said that he bought the first camellias to NZ, one white, one pink⁷. The house was demolished in the late 1990s for the existing Brightside Hospital. The original entrance was from Gillies Avenue, and the stone pillars of that gateway now form the entrance to 149 Gillies Avenue⁸.
1. Stables **1862**, 7 Owens Road, this site adjoins the Pines, with the building now converted to a residential dwelling.
2. **Highwic**, 40 Gillies Avenue, **1862**, for Alfred and Eliza Buckland built to an American pattern book design from the *Architecture of Country Houses* by Andrew Jackson Downing.
3. **The Pines**, 75 Owens Road, **1863**, (probably) for Edward King the last owner, Selwyn Robinson, demolished it in 1968 for the 10-storey apartment block, retaining the name of the original estate, and it retains its fine gardens and trees.
4. **Marivare**, 60 Ranfurly Road, *formerly Windermere*, **1865** for Henry Ellis originally 7 acres, now much subdivided; had tennis courts, croquet lawn, orchard, a house cow and grazing for horses. Latterly lived in by the Russell and Carr families, eight or nine of the original trees including the Spanish Oaks planted by J.B. Russell remain in the Marivare Reserve, corner Manukau and Ranfurly Road, part of which was donated to Auckland City Council. A WWI memorial stone arch, erected by Auckland City Council marks the corner.
5. **Rockwood**, 3 Rockwood Place, c. **1865** for William Aitken enlarged in 1901 to the design of architect Ashley Hunter, relocated in 1957 to allow further subdivision and for Rockwood Place to be created, in 1980 the house was sold with its remaining small portion of land, now 1 Rockwood Place.
6. **Rocklands**, **1866**, 187 Gillies Avenue, for Judge Thomas Bannatyne Gillies politician, judge, and first president of the Auckland Acclimatisation Society. Gillies had a passion for trees and flowers, native and exotic, and assisted by a professional gardener, he planted his 10-acre estate. The house with its original gates remains.
7. **Firth's Castle**, 11 Castle Drive, **1868**, for Clifton Firth later distinctive concrete tower 1873 designed by William Williams, this 18-acre estate had gardens, lawn and an orchard, the house boasting a ballroom.
8. **Lynton Lodge**, 79 Owens Road, right-of-way access from Owens Road, **1870**, now Yaping House youth hostel
9. **Boxley**, 119 Mountain Road (Government House) **1876**, for Arthur Heather a large garden of terraces, and lawns and a variety of trees, many of which survive including Norfolk Pine, Kawaka, Sequoia, North Queensland Kauri, Halls Totara, West Himalayan Spruce, Tulip tree, Port Jackson Fig, Moreton Bay Fig, and lime. Acquired in 1921 by Sir Frank Mappin, who renamed it **Birchlands** and demolished

⁶ Stacpoole, p.12

⁷ Ibid, p.12

⁸ Bush, p.415. No gate was visible during the site inspection at 149. A pair of plastered brick pillars with a timber infill 'fence' panel mark the (former) entry to 153 on the corner of Brightside Road and Gillies Avenue.

much of the Heather house, leaving a later addition. The Mappins property was maintained by gardeners, one of whom was trained at Kew Gardens in England and they continued to plant trees and develop the grounds with a reservoir and tennis courts. Acquiring land bordering Eden Gardens, they added many more trees. The house and garden were gifted to the Crown in 1966, as the Auckland residence for the Governors General.

10. **Harewood House**, 100 Mountain Road for Thomas Macfarlane became the Mater Misericordiae Hospital from **1900**, now the Mercy Hospital, house demolished
11. **72 Mountain Road, 1890** for Professor Sir Algernon Phillips Withiel Thomas moved from its original position. An advocate for the protection of native flora and fauna, the Withiel Thomas Reserve, 5 Withiel Drive, is a unique and outstanding example of forested lava fields and was taken over by Auckland City Council after his death. The existing house at 72 appears to be of the interwar period or possibly a very much altered 1890 house.
12. **Omana**, 9 Omana Avenue, c.**1896**, for J.J. Craig owned by former property developer Mark Lyon gutted by fire in 2002 and now reconstructed.

1900–1918 : Further consolidation and subdivision

13. **Kowhatu**, 89 Mountain Road, Clive Road corner, for Frederick Wilson architect Alexander Wiseman, now Tibbs House, for Auckland Boys Grammar School boarders.
14. **Bramcore**, 6 Omana Avenue, **1901 / 02** for the Hellaby Family architect A.L. Ferneyhough; renamed *Florence Court* by a subsequent owner, originally about 4 acres containing stables and a gardener's cottage. Entrance originally from Mountain Road, part of the land was taken in 1933 for the construction of Omana Avenue and Savannah Street.
15. **Burwood**, 66-68 Gillies Avenue, c.**1905**, architect George Selwyn Goldsbro's own house.
16. **Kiddmore**, 74-76 Gillies Avenue c.**1904** for Alfred Kidd, Auckland City Councillor, one-time Auckland City Council Mayor and parliamentarian, by architect George Selwyn Goldsbro. Remnants of the original garden remain and it was considered to be a rare example of an Edwardian 'arts and crafts' natural 'woodland' garden with native and exotic trees, with volcanic stone walls and steps, a reflecting pool, pergola and tennis courts [later converted to a swimming pool] and also greenhouses, gold fish pond, arbours, planted arches and a rockery.
17. **Ngahere**, 74 Mountain Road, **1907-08** for MacCormick architects Bamford and Pierce.
18. **Waione**, 22 Domett Avenue, **1907-08**, for William Frater architects Bamford and Pierce; known as the 'Butterfly House' due to its unusual floor plan.
19. **Shelford**, **1907**, 89 Ranfurly Road, Alexander Wiseman's own house.
20. **Whitecliffe**, 2 Castle Drive, **1908** for William Elliot.
21. 40 Mountain Road, c**1910** overlooks motorway, for William Commans double storey timber house
22. **Amohia**, 127 Mountain Road, **1912** for J.J. Craig.

23. *Rannoch*, 77 Almorah Road, **1913-15** for American dentist Dr Frederick Raynor architect James Lloyd, arts and crafts style.
24. *Woodend*, 18 Gilgit Road, **1917** for Harry Dean Bamford architects Bamford and Pierce.
25. *Ravenswood*, 58 Gillies Avenue, **1920**, own house by engineer Ralph Palliser Worley.
26. *Friend House*, 33 Owens Road, corner Gillies Avenue, Architect George Selwyn Goldsbro.
27. 41 Owens Road, house by George Selwyn Goldsbro.
28. *Boscobel*, 8 Brightside Road, corner Shiphards Road, **1915** for Richard Gutteridge architects Bamford and Pierce.

1918–1939 : Later development in the Inter war Period

29. *Wharatane*, 26 Clive Road **1926**, for Trevor Lloyd artist, illustrator and cartoonist; architect John Anderson.
30. *Stoneways*, 46 Mountain Road, **1927**, William Gummer's own house (opposite Auckland Boys' Grammar).
31. 8 Clive Road, Auckland Grammar School Headmaster's house,
32. 5-19 Clive Road, Prison Officers' Houses, built as staff accommodation for Mt Eden Prison

Post WWII

33. 18 Omana Road, **1944**, Shieff House by Gummer and Ford
34. 24 Omana Avenue, Eden Garden, 2ha of former quarry land, begun in **1964**, donated to the people of New Zealand in 1965 it is managed by the Eden Garden Society Inc and open to the public for an admissions fee.

Character Assessment

The Natural environment

Auckland is known as the 'City of Volcanoes' having about 50 of them. 'Much of the city is built *over* the Auckland Volcanic Field and much of Auckland City is also built *out of* its Volcanoes'.⁹ North Epsom is no exception, with the underlying volcanic landscape being evident in the early lots and the subsequent subdivision into smaller suburban sections. Many houses are built directly on the lava flows with bluestone used in some part in their construction or in boundary walls, garden edging and in street kerb stones. Some of the houses, such as *Rocklands* and *Stoneways* evidently take their names from the volcanic landscape.

In one instance the lava flow is clearly evident, in the Almorah Rock Forest where native vegetation grows directly on it. This rare ecosystem extends from the Gillies Ave on ramp, to Almorah Road with parts of it in Government House grounds and in the Withiel Thomas reserve, discussed above.

Elsewhere in Epsom, the large lots enjoyed by the early families coupled with the free draining, fertile volcanic soil and Auckland's abundant rainfall encouraged gardening, often on an expansive scale with collections of native and rare exotic plants and trees and these gardens with their wide terraces, croquet lawns, tennis courts and other features were seen

⁹ Haywood et al Volcanoes of Auckland, Volcanoes, The Essential Guide p1.

as an appropriate setting for the grand houses and many gardens occupied the owners lifetime, often with the help of gardeners.

Some of these large sites and gardens remain such as Highwic, the Pines, Rocklands, Government House, Bramcore, Kiddmore and Rannoch, with some smaller sites such as Wharetane are a testimony to keen home gardeners. Later gardens such as Eden Gardens, were established in a former quarry and the top end of Omana Avenue and they continue this horticultural interest, further contributing to the overall character of the area.

Where large sites have been subdivided, substantial trees often now exist in other properties, such as the Kauris and Jacarandas of Owens Road, or as part of a reserve such as Marivare, as discussed in the inventory.

Gardens and trees have been a distinctive part of Epsom since the early days and are part of the 'garden suburb' character and appeal of the suburb.

Streetscape

Present day street names provide a direct historic link to early families, Gillies, Owens, Shipherd, or to the name of their estates or houses, Castle Drive, Rockwood, Brightside and Omana

The Special Character Area Overlay [SCAO] is bisected by the main arterial routes of Gillies Avenue, Owens Road and Mountain Road with most streets running perpendicular to these. All of these streets, with some exceptions, have berms with street trees, sometimes substantial - as in Bracken Avenue, where the trees visually enclose the street. In parts of Owens Road substantial trees overhang property boundaries providing a similar effect.

Bluestone kerbing is evident and houses generally have low hedges or fences, often of bluestone, with generous planted front gardens and large single or double storey houses, mainly of timber construction which are clearly visible from the street. Wide sections allow for off street parking to the side or rear and there are few garages built to the street boundary.

Mountain Road and Owens Road (east) has no berms and Gillies Ave has berms to the western side only

Built Environment

As an affluent suburb close to the city Epsom attracted many notable business and professional people including civic leaders who commissioned well known architects. The SCAO is notable for the large number of such houses, including, but not limited to those identified in the inventory, many of which are recognised through their scheduling in the AUPOP and / or their listing with Heritage New Zealand Pouhere Taonga. A lack of recognition in either of these documents does not indicate an absence of heritage value but an in-depth study of all dwellings is beyond the scope of this desk top assessment.

Of the houses identified, architects such as George Selwyn Goldsbro, and Bamford & Pierce, are well represented as are Gummer and Ford, Alexander Wiseman and John Anderson, with a number designing their own houses. Many of these were of innovative design and were seen as modern and progressive in their day. The SCAO encompasses a variety of architectural styles from the earlier Victorian mansions [1860-1900] to the later 'arts and crafts' houses [1900-1918] and the bungalows of the interwar period evident for example in Shipherd's Ave.

Conclusion

The character of the SCAO as discussed above, is a layering of the natural environment, the streetscape and built environment which combine to provide a strong visual coherence and integrity to North Epsom which justifies its inclusion as a special character area in the AUPOP.

This character is not uniformly spread throughout the SCAO, as later post WWII development and that of a more contemporary nature has, in the absence of District Plan recognition and protection, been built in the suburb, intruding into the SCAO. The popularity of the North Epsom and its proximity to Auckland Grammar School, and the city have placed the area under considerable development pressure from new stand-alone and infill 'townhouse' development.

These areas of more recent development are excluded from the overlay, so it has become a sequence of dispersed nodes. Within this pattern, some properties, such as 151 and 153 Gillies Avenue, are subject to demolition removal or relocation rules while the neighbouring property at 149 is not. Any new development on this site must, however, comply with design controls to integrate it into the surrounding environment.

Salmond Reed Architects Ltd

November 2018

References

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The Changing Face of Mt Eden, 1989, Mount Eden Borough Council.

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From: Janet Dickson
Sent: Monday, 9 May 2022 11:54 PM
To: Unitary Plan <unitaryplan@aucklandcouncil.govt.nz>
Subject: Submission on behalf of Howick / Pakuranga Greypower attached - re AUP and Intensification Act

Please accept this submission from Greypower Chair, Peter Bankers - his computer has failed just now and I'm sending it on his behalf - in the nick of time!

Cheers

Janet Dickson



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To: Jim Stabback CEO Auckland Council and all Auckland Councillors
Auckland Council Plans and Places

Subject: Submission to Auckland Council's response to the Resource Management
(Enabling Housing and Other Matters) Amendment Act 2021 ("The Act")

We find Council's request for feedback to their response to The Act by means of its survey tool https://akhaveyoursay.aucklandcouncil.govt.nz/housing/survey_tools/draft-npsud to be obtuse, confusing and irritating. The questions are poor, the scope and choice of answers is inadequate and slanted towards specific areas only, and its limited notification period makes completing it an almost meaningless exercise.

We therefore choose to respond by addressing salient points.

Firstly, it seems strange that in spite of the AUP delivering over time 900,000 additional homes while taking care of the environment, water issues, infrastructure, special character, heritage, amenity and simple human comfort, this hasty and destructive Act which takes care of none of the above is considered to be a vital improvement. Why?

The AUP is a beautiful, well thought-through and carefully evaluated document, involving years of painstaking work by experts to deliver relevant and effective processes, which more than adequately provide for a modern liveable city.

Some general and specific observations in regard to The Act:

1. Provided that there is adequate infrastructure available to support the projected population growth in the city and metropolitan centres, the proposed intensification centred in these areas is supported, although Auckland City centre may become an ugly slum when effectively "merged" with Newmarket.
2. However the proposed changes fail to incorporate a city-wide assessment of infrastructure capacity, or analysis of the financial costs and benefits of intensification, including location-based prioritisation of infrastructure investments and planned maintenance programmes. The city cannot be managed in a cost-effective manner without a structured long term vision.
3. Future intensification should therefore continue to be targeted to locations already identified for intensification in the current Auckland Unitary Plan (AUP). The introduction of "one size fits all" legislation is not a good reason to rescind well considered planning decisions introduced after careful study in the AUP. For example the current AUP has placed a Single House Zone restriction on some catchments, after careful evaluation of their infrastructure, land, amenities, streams and foreshore.
4. Many catchments e.g. Cockle Bay (from Music Point right round to Beachlands, along with the accompanying inland areas) have old and often non-existent infrastructure, with questionable capacity to accommodate additional stormwater and sewage/wastewater that follows intensification. With much stormwater draining to the sea via streams and with many houses without stormwater, housing intensification will create major risks of stream degradation, erosion, and flooding intensity. Flooding is already increasing in intensity and is likely to continue because of climate change.
5. Auckland Council has had to invest heavily in remediation work in this area to counter stream erosion and flooding damage. Permitting intensification introduces additional risks to the environment and potential liability. This risk can be minimized by restricting development until adequate safeguards are introduced as part of a long-term prioritised development plan for the city. To minimize future flooding risks, any plan change and appropriate codes must require adequate stormwater retention/detention tanks with capacity to accommodate peak rainfall projections resulting from climate change.

6. At a bare minimum Council must reduce the flooding risks by prohibiting development adjacent to all streams within the catchment. The Cockle Bay catchment also has natural infiltration of groundwater and illegally connected stormwater into the sewerage system. Ground movement and increased housing density will exacerbate this.
7. Permitting random intensification in single house zones will make later rehabilitation and or renewal of infrastructure more difficult and expensive. Such investments should precede intensification. This reinforces the need for a structured planned city development plan.
8. The catchment is a key source of drainage into the Hauraki Gulf. There is already quantified evidence of increased sedimentation of the local beach, and a decline of cockle population, to the extent that shellfish gathering was recently banned by the Ministry of Fisheries. Allowing intensification will increase the risks of further degradation and result in Auckland Council failing to fulfil its obligations under the Coastal Policy Statement 2010.
9. If a decision is made to permit any development at all, then this can only be on the basis of a thorough assessment of land stability, water and drainage issues, infrastructure and unexpected consequences, as well as a substantial financial contribution towards the cost of infrastructure enhancement, public liability insurance and risk mitigation in the event of flooding, stream erosion and coastal sedimentation.
10. Existing viewshafts, in particular from Stockade Hill and down to the Howick Village, must be preserved in any revised zoning.

In summary, this one-size-fits-all Act will deliver but one positive: more housing.

It will, unfortunately, deliver a plethora of negatives, including environmental destruction, damaged if not destroyed flora and fauna, cattle-crate accommodation, with no heritage, no amenity, and poor liveability to the point of literally no sunshine in many lives.

So back to our main point: the current AUP, if properly managed, will deliver what we want, what we need, and more, viz: 900,000 homes and genuine sustainability.

This Act spells unmitigated disaster and must be repealed.

We wish to speak at the hearing

Peter Bankers,
President
Grey Power Howick, Pakuranga and Districts Association (Inc)

From:

Sent: Monday, 9 May 2022 11:56 PM

To: Unitary Plan <unitaryplan@aucklandcouncil.govt.nz>

Subject: Governments New Housing Rules Proposal

For all proposals

Higher density over a larger areas will have major impact on AKL infrastructure which at capacity and underdeveloped to support this;

HEALTH - more people in a smaller area is known to create health issues in communities. Auckland health facilities and hospital services like ambulances are already at capacity with some emergency services attendance over an hour wait for urgent needs and long wait times to see doctors due to the requirement for doctors to only see registered patients, so you can't go somewhere else if needing healthcare. This then puts pressure on walk in clinics and hospitals or people delay care.

TRANSPORT - the current public transport routes are not linked directly to key areas like universities and polytechnics around AKL and the ferries do not allow smaller motor vehicles with petrol engines like motorbikes. Speed limits do not cater to scooters (seated) or small lower cc motorbikes which are more environmental which logistically isolates areas of AKL from one another (eg North Shore access to the CBD). This means more congestion with people choosing cars over public transport or light vehicles.

UNIT TITLES ACT 2010 - Requires immediate and urgent review in AKL to keep up to date with the evolving needs of to the growing demand for modern body corporate properties.

HOME OWNERSHIP - 80% of apartments in AKL CBD are owned by investors, creating communities of renters as opposed to encouraging home ownership. NZ is currently at it's lowest rate of home ownership in 70 years.

CRIME + SAFETY - higher density apartments in the AKL CBD have attracted gangs infiltrating buildings and skyrocketing rates of violent crime. Changes to how policing and Facilities Management companies will manage this is required to ensure safety of residents.

QUALITY - inside the dwelling, the council would need to make changes to the code to provide larger footprint for

bedrooms and living spaces and put in place further follow up council inspections. This would avoid developers creating lower quality standard of living and ghetto style apartments which use loopholes in the building code to fit as many people into a space as possible as cheaply as possible for the biggest return.

GREEN SPACES - With more people in smaller areas, more centralised green spaces will be required for leisure / exercise for long term livability. This would need to be either catered to by the Council or factored into the development with strict criteria in place.

PARKING - Carparking is a premium with most developments not catering for visitors and overflow parking moving onto the street. This is mostly due to poor transport routes with public transport and not catering to or encouraging small vehicles use across AKL.

PRESERVATION - existing mature green spaces and historic buildings need to be protected from unscrupulous development. Many important landmarks have been slowly killed off or demolished in AKL for profit. NZ is a very young country and what little historic culture we have should be preserved for future generations to establish a national identity and sense of culture. What is being created in these communities that would warrant and be worthy of preservation for future generations to compensate for what is being taken away. Celebration of local history, culture, natural and architectural helps to build a sense of community pride and unity and a sense of belonging where the community invests in taking responsibility for it's ongoing welfare.

Once these significant spaces are gone, they are gone.

Warm Regards,

Gina

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From: Allan Matson
Sent: Monday, 9 May 2022 11:58 PM
To: Unitary Plan <unitaryplan@aucklandcouncil.govt.nz>
Cc: Civic Trust Auckland <cta@civictrustauckland.org.nz>
Subject: Feedback on 'Auckland's New Housing Rules'

Please find attached **Feedback from Civic Trust Auckland**
on Council's consultation re **Auckland's New Housing Rules**
due 9 May, 2022

for and on behalf of
Civic Trust Auckland
Allan Matson

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Civic Trust Auckland feedback on **'Government's new housing rules: what it means for Auckland'**

Contact name: Audrey van Ryn (Secretary)

Phone (daytime): 368 1516

Email: cta@civictrustauckland.org.nz

Postal address: PO Box 74 049 Greenlane 1546

1. Civic Trust Auckland (CTA) is a non-profit public interest group formed in 1968 with an interest in matters throughout the greater Auckland region. The aims of the Trust include the protection of natural landforms, the preservation of heritage in all its aspects, and the encouragement of good planning for the city and region.
2. CTA has been a submitter since the 1960's on matters of interest to it, mostly at a local level, but also on national matters occasionally where they affect the Auckland region. CTA made submissions through the amalgamation of seven legacy councils on the formation of Auckland Council, and since then CTA has continued to make submissions on various Council documents including the Auckland Plan (and its subsequent 'refresh'), the Long-Term Plan (and its successive rollovers), and the Unitary Plan (and subsequent plan changes).
3. Auckland Council released its ***'Government's new housing rules: what it means for Auckland'*** for consultation on 19 April with a three-week consultation period ending 9 May 2022. Consultation addresses various initiatives that Council propose in order to give effect to new Medium Density Residential Standards (MDRS) introduced by Government through the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 **(the Act)**, and the more intense development enabled by Government's National Policy Statement on Urban Design **(NPS-UD)** gazetted in August 2020.
4. When changing the Unitary Plan for the first time to incorporate the MDRS and to give effect to policy 3 of the NPS-UD, the Act requires that Council must notify an Intensification Planning Instrument (IPI) on or before 20 August. and Council's current consultation *'Government's new housing rules: what it means for Auckland'* is effectively Council's Draft IPI.
5. CTA agrees with the logic of intensifying development within walkable catchments. It also agreed with Council's submission to Government on the Act that there was fundamentally no need to create further theoretical capacity beyond the 900, 000 potential development sites available under the existing provisions of the Unitary Plan, which were intentionally and logically planned for around infrastructure provision, including along transport corridors.
6. In spite of Council's logic, the NPS-UD and the MDSR provisions under the Act will nonetheless come into legal effect in August 2022. Without the additional theoretical capacity before the addition of the NPS-UD and the MDRS, SCAs accounted for just 3.6 % of Auckland, and with

the unplanned increase in theoretical capacity, the retention of the existing SCA's will now surely not unduly compromise the development potential of walkable catchments.

7. CTA supports Council's decision to stipulate as a qualifying matter those areas currently identified in the Unitary Plan as Special Character Areas (SCAs). We consider that elements within the existing SCAs already currently meet the threshold sufficient to meet the test of an RMA s.32 analysis in the notified version in August.
8. CTA does not agree with early signs that existing SCA's look to be further diluted and consider that Council should, as a matter of precaution, notify the existing SCA's in their entirety.
9. CTA acknowledges the work done to date by Council's heritage unit that will underpin the IPI process that will ultimately determine the extent of those SCAs. We do not accept the robustness of the methodology used in relation to dissecting the SCAs and consider the methodology should in itself be part of the plan change consulted on in August 2022.
10. Auckland Council's task from Government was not, in the case of Special Character Areas, to verify what Auckland currently had identified. It was to identify qualifying matters which should be a matter qualifying an area to be exempt from the intensification envisaged under the MDRS and NPS-UD. The Unitary process identified that there was unidentified heritage and character outside what ended up falling under the SCA Overlays. CTA therefore expect to see additions to the existing to the existing SCA's on the basis that they were not complete in the 2016 Decision Version of the Unitary Plan
11. CTA thinks the insight of a former Mayor of Auckland speaking (below) on this matter in the magazine of NZ Historic Places Trust is useful in raising the apparently otherwise unconsidered world heritage status of our period native timber cottages here in Auckland

DICK HUBBARD AUCKLAND

We must preserve our heritage buildings. They are special and give a city character. Not enough attention has been paid to our character buildings and during the campaign I talked of the "about face" situation where currently you need council permission to renovate a villa but no permission to demolish one.

The heritage policies I found at council have been unsatisfactory.

The new council is already taking action. We're

putting greater emphasis on heritage protection. We will be reviewing and developing heritage protection under the District Plan and developing heritage protection policies. We will explore setting up a heritage fund and look at special character zoning and character overlays under the District Plan. We will be working hard to ensure that Auckland retains its unique position of having the largest number of period wooden villas in the world.



12. CTA notes with interest that Council's Deputy Chair of the Planning Committee acknowledges that intensification in some locations may not result in affordable housing



13. CTA endorse Jacinda Ardern's position (below) on the matter of heritage and character.

labour.org.nz/council_must_build_on_heritage_not_destroy_it


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Council must build on heritage, not destroy it

Posted by Jacinda Ardern on July 28, 2016

Auckland Council must move to ensure there are heritage protections in place following recommendations that demolition restrictions be tossed out, Labour's Arts, Culture and Heritage spokesperson Jacinda Ardern says.

The panel considering the Unitary Plan has recommended removing partial protections for neighbourhoods with houses built before 1944.

"This character overlay was a response to a very real problem – the loss of special character buildings. That need hasn't suddenly disappeared.

"Certainly we need to ensure we build both up and out in order to meet the huge demand for housing, but there are ways to do that without losing the character of our communities.

"Our heritage should not be an either/or. We're a young country when it comes to built heritage and we should be doing everything we can to preserve what we have.

"The Council now needs to work with urgency to ensure a solution that safeguards heritage in our communities so that it's not permanently lost," Jacinda Ardern says.

LABOUR





JACINDA ARDERN








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Date of submission: 9 May, 2022

Signature:



Audrey van Ryn

Secretary, Civic Trust Auckland

From: John Duguid
Sent: Tuesday, 10 May 2022 7:32 AM
To: Unitary Plan <unitaryplan@aucklandcouncil.govt.nz>
Subject: Fwd: FEEDBACK ON PROPOSED CHANGES TO ENABLE HOUSING INTENSIFICATION

Good morning team,
Can you please check to make sure this feedback from multiple Parnell residents has been received separately from the Parnell Community Committee feedback?
Thanks,
John

Begin forwarded message:

From: Luke Niue
Date: 9 May 2022 at 9:04:39 PM NZST
To: John Duguid, Megan Tyler
Cc: Andrew Reed "John Bayley
(Bayleys Real Estate Limited)" Peter Guise
Katie Williams
Subject: FEEDBACK ON PROPOSED CHANGES TO ENABLE HOUSING INTENSIFICATION

Dear John and Megan

A residents group here in Parnell has asked me to lodge this submission on their behalf.

It is also coming via on the online portal that has a deadline of midnight today

FEEDBACK ON PROPOSED CHANGES TO ENABLE HOUSING INTENSIFICATION

To: Auckland Council ("**Council**")

Evan and Katie Williams, John Bayley, Warwick James, Andrew and Roie Reed, Peter and Anne Guise, Mike Glucina, Lawrence and Charlotte Sumich, Keryn Smith and Judith Shea, Jenny Shea and the Parnell Community Committee (Inc)

Summary

This feedback is provided on behalf of a group of Parnell residents¹ and the Parnell Community Committee.

We welcome the opportunity to provide feedback on the Council's draft proposed changes to enable housing intensification as required by the NPS-UD Intensification Policies and Enabling Housing Supply legislation.

This submission concerns the area of Parnell that is bordered by St Stephens Avenue to the north west, Takutai Street to the South, and the coastline to the east (**Eastern Parnell**), including the former site of the Queen Victoria School at 27 Glanville Terrace (**Queen Victoria Site**). The Eastern Parnell area is currently zoned:

- A mix of Residential – Single House (subject to the Special Character Overlay) and Residential – Mixed Housing Suburban.
- The Queen Victoria Site is zoned Mixed Housing Suburban, and is subject to the Historic Heritage Overlay Extent of Place (**Historic Heritage Overlay**).

Under the Council's draft proposal, this area is proposed to be upzoned to a mix of:

- Terrace Housing and Apartment Building (**THAB**) zone
- Mixed Housing Urban
- Two Storey Single House zoning

We recognise the benefits of enabling more housing supply in walkable distances from transport and the city centre. However, good quality planning requires a robust evidence-based approach to intensification, which can be readily achieved without destroying the character and amenity of Auckland. Blunt application of the intensification policy will result in poor planning outcomes which will be almost impossible to rectify in the future.

In summary, we seek that the Eastern Parnell area either:

- Retain Residential – Single House and Residential – Mixed Housing Suburban zoning; or
- If those zonings are no longer being retained across Auckland (and as a less preferred option), be zoned Two Storey Single House and Mixed Housing Urban. We oppose any THAB zoning in the Eastern Parnell area.

We seek that the Queen Victoria Site:

- Continues to be subject to the Historic Heritage Overlay.

¹ Miles and Mary Nathan, Warwick James, Evan and Katie Williams, John Bayley, Andrew and Roie Reed, Peter and Anne Guise, Mike Glucina, Lawrence and Charlotte Sumich, Keryn Smith and Judith Shea, Jenny Shea and the Parnell Community Committee (Inc)

- Be zoned Mixed Housing Suburban (preferred) or Mixed Housing Urban (if Mixed Housing Suburban is no longer used).

Eastern Parnell

Parnell is one of the oldest suburbs in New Zealand and its character areas have been a key attraction of Auckland. Those values are consistently being eroded to development. We are concerned that significant parts of Eastern Parnell have been identified as suitable for THAB zoning.

In developing the Auckland Unitary Plan, the Council set a clear direction for the built form and character of Eastern Parnell. The area is a mix of Residential – Single House and Residential – Mixed Housing Suburban, and is importantly largely subject to the Special Character Overlay.

Walkable catchments must be determined on a sound evidential basis. While Parnell as a suburb is located at the city centre fringe, the Site and Eastern Parnell are a significant distance from the city centre and should not be considered within a walkable catchment. The proposed 1200m walkable catchments from the city centre edge are inappropriate because:

- they fail to take into account the steep topography of the area, which sits above the city centre;
- walkable catchments should be identified based on key destinations, such as the train station, university, and downtown office areas. These areas are all between twice to four times as far as the 1200 metres the Council has used to identify walkable catchments.

We are concerned that the Council's identification of a walkable catchment is somewhat arbitrary and does not reflect the steep topography in particular of this area. Calculated accurately, we do not consider that Eastern Parnell would be considered to fall within a walkable catchment.

The Enabling Housing Supply legislation clearly contemplates a nuanced approach being taken to its application, including through the use of qualifying matters. The Council must carefully evaluate the specific context of Eastern Parnell, to ensure an appropriate level of height and density is enabled.

Even if it were considered to fall within a walkable catchment, the special character of Eastern Parnell justifies a lower intensity form of development. The Special Character of the Eastern Parnell area is such that it is entirely appropriate to retain a low-rise level of development across that area.

This has been acknowledged in part by the Council in its draft proposed zoning changes (with a special character overlay applying to some parts of the area). However, we consider that the Council's draft proposals do not go far enough to appropriately recognise the special character of the entire Eastern Parnell area.

We consider that it is appropriate that Eastern Parnell should retain its existing zoning. Alternatively, if those zones are no longer used across Auckland, Eastern Parnell should be zoned Two Storey Single House (for those parts currently zoned Single House) and Mixed Housing Urban (for those parts currently zoned Mixed Housing Suburban). This provides some degree of intensification, while appropriately recognising the special character of this area.

Queen Victoria Site

The Queen Victoria Site was previously occupied by Queen Victoria School. The School has closed but a number of activities, including a pre-school, still operate on the Site. The bulk of the Queen Victoria Site is subject to the Historic Heritage Overlay and the Queen Victoria School building is a scheduled historic heritage place. The scheduling of the Queen Victoria Site places constraints on the development of the Queen Victoria Site, with demolition of any features or subdivision of the Queen Victoria Site requiring discretionary consent. We support the retention of the Historic Heritage Overlay over the Site. However, in recognition of that overlay, we also consider it appropriate that the Queen Victoria Site is zoned Mixed Housing Suburban (preferred) or Mixed Housing Urban (if Mixed Housing Suburban zoning is no longer used).

From: Jeff Benjamin <jeff.benjamin@aucklandcouncil.govt.nz> **On Behalf Of** Complaints
Sent: Tuesday, 10 May 2022 10:47 AM
To: Unitary Plan <unitaryplan@aucklandcouncil.govt.nz>
Subject: FW: Complaint Received: C Waldron, 5/9/2022

Kia ora team,

The below submission was attempted to be submitted by fax on 9.5.22 prior to the submissions closing, however the customer claims our fax was giving an engaged tone.

Please can we accept the submission as it was attempted to be sent on 9.5.22

Ngā mihi nui,

Jeff Benjamin | Customer Issues Advisor
Ph 027 283 1065 | Te Wharau o Tāmaki Auckland House
Auckland Council, Level 21, 135 Albert Street, Auckland 1010.
Visit our website: www.aucklandcouncil.govt.nz



From: Retired MailAddress <retiredmail@aklc.govt.nz>
Sent: Monday, 9 May 2022 9:15 pm
To: Complaints <Complaints@aucklandcouncil.govt.nz>
Subject: Complaint Received: C Waldron, 5/9/2022

Dear C

Thank you for submitting a formal complaint.

We will be in touch within three working days. If we can't resolve your issue straight away, we'll let you know what the next steps are.

Our team is dedicated to providing a timely and professional formal complaint service. [Find out more here.](#)

Below are the details of your complaints for your reference:

Name: C Waldron

Contact Details:

Email address: enquiry@aucklandcity.govt.nz

Preferred contact method: Phone

Address:

Details of your complaint:

9 May 2022

Complaint

Unable to send submission via fax as Auckland Council fax number has a continuous 'Line busy' report.

The submission website is restrictive and does not provide a space for an independent submission.

Please forward our following submission to the appropriate department and phone to confirm our submission has been accepted.

Our submission

All Personal details are to be kept confidential

To: Auckland Council, Fax: 09 301 0100, 9 May 2022

We object to NPS-UD, MDRS and the Act.

Councils and the Government Political and Environmental Proposals to Cause Climate Change.

People have bought houses under the covenant specifically for the zone and environment of areas and incurred financial expenditure.

Trees and plants will die if they do not continue to receive the required amount of sunlight.

Detrimentially affecting birds and native wildlife, ...

Council and the Government are making a climate change.

All people, including people with immobility, health and disability issues require sunlight in indoor and outdoor living areas, all will suffer with the proposed changes.

Building is the biggest contributor to landfill; removal, demolition of houses, trees, plants is contrary to council's motto to reduce landfill and care for the environment.

New building material is an ever increasing drain on the earth's resources with many of the new building materials being faulty and toxic and a danger to peoples health. And the workmanship of the new buildings are very substandard from the beginning and it has been said that they will not last five years and will become a colossal problem. Demolition potential in five years.

Re: Covid and other pandemics

Single house zoning works perfectly, providing social distancing, access to sunlight in your home and in your yard,

exercising in your garden.

Compound Cluster Facilities for housing in existing established areas will only increase traffic and council will be causing a parking problem. Cluster housing is detrimental to the existing infrastructure of the existing areas and will cause more pollution to our waterways and harm to marine life and to human health.

Public footpaths make walking a dangerous hazard, footpaths are cracked,uneven, slippery and never repaired.

Public transport will not provide access to many areas and is very time consuming,slow and expensive. Public transport is not reliable. A person must have a car to enable an efficient and productive lifestyle.

There are large deforested cleared areas of land (not in existing areas)ready to become completely new large subdivisions where people can buy into the Compound Cluster Facilities for housing lifestyle, if they choose.

Requested outcome:

9 May 2022

Resolution

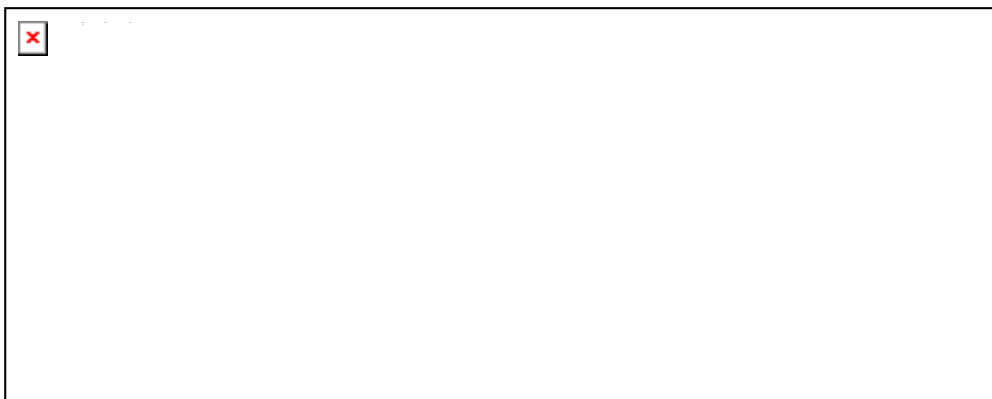
Phone to confirm Auckland Council has received and accepted our submission within the required timeframe.

And ensure Auckland Council fax number is operative.

Attached Documents:



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From: Shruti Jani
Sent: Tuesday, 10 May 2022 2:53 PM
To: Unitary Plan <unitaryplan@aucklandcouncil.govt.nz>
Subject: FW: New MDRS rules - does anyone know how the Council are going to treat resource consent applications after Saturday, 20 August 2022?

This one too....

Ngā mihi nui
Shruti Jani – PA to General Manager, John Duguid
Plans and Places, Chief Planning Office

From: Colin Hardacre
Sent: Thursday, May 5, 2022 11:45 AM
To: Ian Smallburn ; John Duguid

Cc: Ian Gibson Mark White (Resource Consenting)
James Dowding

Subject: Fw: New MDRS rules - does anyone know how the Council are going to treat resource consent applications after Saturday, 20 August 2022?

Hi Ian and John
I hope you are well. All good here.

Although I think I could do with a one-week holiday on a tropical island - I have always wanted to go back to Noumea, New Caledonia and the Amadee Lighthouse for some reason – before the National Policy Statement on Urban Development, Medium Density Standard Rules and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act kicks in and kicks off.

I just wonder whether or not the Council are going to or can give some direction to the Planning

Profession regarding whether or not resource consent applications can use the new Medium Density Standard Rules Soft after the Council Publicly Notify the Plan Change on Thursday 18 August?, Saturday 20 August or Monday 22 August?

Obviously, a lot of my clients want to use those new MDRS standards from that August date as per the questions I posed to other planners below.

Obviously makes a big difference to clients doing residential projects. However, I don't want to commit my clients to having resource consent application plans, supporting infrastructure, traffic et cetera reports design under the MDRS rules which won't be available to be used immediately and/or until the zoning issues are sorted out et cetera.

Some feedback/advice/direction would be appreciated, if at all possible.

Kind regards
Colin Hardacre

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From: Colin Hardacre

Sent: Wednesday, May 4, 2022 1:37 PM

To: Alex Findlay ; Alice Lin ; Amanda de Jong ;

; Anita Kulasic ; 'Antony Yates' ; Baris Chung ;

; 'Chris Kitson' ; Claire Phillips ; 'Craig

Magee' ; Douglas Sadlier ; Hamish Henderson ; 'Iain McManus' ; 'James Hendra' ; Janelle Smith ;

Joseph Gray ; Kahlia Thomas ; Karyn Kurzeja ;

Liz Stewart ; Mark Weingarh' ; Michael Lawrie ; Mike Hu ; Nafis Rashid ; 'Nicole Bremner' ; Oleg

Palinich ; Olivia Bretherton ; Raj Maharjan ; Sally Halpinplanning ; Simon Yates ; Steve McKenzie ;

; 'Tania Richmond' ; 'Vaughan Smith'

Subject: New MDRS rules - does anyone know how the Council I going to treat resource consent applications after Saturday, 20 August 2022?

Hi all

I hope you're well. All good here.

Although I could do with a week on a tropical island before the National Policy Statement on Urban Development, Residential Mixed Housing Is density zones and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act kicks in and kicks off.

I know that this may be a bit early on in the piece but does anybody know how the Council are going to treat resource consent applications after Saturday, 20 August 2022 soft – to my knowledge it is the operative date – in regard to Residential Management (Enabling Housing Supply and Other Matters) Amendment Act regarding:

1. Section 77M Effect of incorporation of MDRS and district plan or new applications for resource consent and on some existing designations - and "a new application" ?

2. Section 77M (4)?

3. Section 77M (9)?;

4. Section 86BA Immediate legal effect of rules and IPI prepared against ISPP - is the Council going to treat an up zoning under the MDRS to "Residential Medium Density Urban zone "a new residential zone" – going up from the old Unitary Plan "Residential Mixed Housing – Suburban" and therefore the new MDRS rules cannot be used until the zoning is resolved in one – 2 years time as the zoning and Medium Density Residential Standard Rules are linked?

5. If so, do we have to do a two-stage resource consent application with stage 1 – 3 dwelling units on a site with lot one and a joint owned access lot or commonly owned access lot around that – Lot 2 to be just vacant land. Then come back with another resource consent application to get the required 1,2,3, 4, 5, 6 or whatever additional residential units on the site using the MDRS.

I and a client of mine have been told that we can only lodge applications using the MDRS density rules on or after that date of 20 August that the Council going to notify the MDRS Plan Change?

I've also been asked to withdraw least one application and start again as I cannot use or mention the MDRS. The application has infringements now but will comply using the MDRS density rules. I'm not totally convince from my reading of section 77M that the Council are correct on this but...

I note that these new MDRS rules have been called "Density Rules" which is interesting in relation to the Wallace, Brabant and Orr versus Auckland Council High Court case for 44 Ventnor Road.

Also by the looks, we – or more particular I at the stage – are going to have trouble with the Council over the MDRS Part 2, Density rule 15 Outdoor living space (per unit), and the use of a "balcony, patio or roof terrace, is at least 8 m² and has a minimum dimension of 1.8 m²; and is accessible from the residential unit for a ground-level unit for a unit in the new Residential Mixed Housing Urban Zone.

I've already been told that I can't use that that new MDRS balcony provision as the application has got the front door, stairs, hallway and bedrooms at the ground level and the first floor level contains the open plan kitchen, dining room and lounge.

In that case, I have also been told that we don't comply under the new MDRS Density rules if we make the units 3 levels with ground level car parking in the laundry – we must provide a 20 m² ground-level outdoor living court adjacent to the garage even if the occupiers have to walk down from the first floor level bedrooms and/or 2nd level open plan kitchen, dining room and lounge area with a complying 8 m² deck with a minimum 1.8 m dimension.

That is, if the residential units design has any ground floor activity – including the front door and hallway – we need 20 m² ground level outdoor living court regardless. No ifs. No buts. If I don't do that then that is a Decline as we will be contrary to the 3 policies regarding day-to-day read residential unit functionality and liveability for future residential owners and occupiers under policies 5, 6 and 10.

Or is it just wait and see time?

Interesting times ahead for all.

Kind regards
Colin Hardacre
Hardacre Planning Ltd

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

Public Act 2021 No 59
Date of assent 20 December 2021
Commencement see section 2

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Part 1

Urban intensification policies and other matters

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77L Further requirement about application of section 77I(j)

A matter is not a qualifying matter under section 77I(j) in relation to an area unless the evaluation report referred to in section 32 also—

- (a) identifies the specific characteristic that makes the level of development provided by the MDRS (as specified in Schedule 3A or as provided for by policy 3) inappropriate in the area; and
- (b) justifies why that characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD; and
- (c) includes a site-specific analysis that—
 - (i) identifies the site to which the matter relates; and
 - (ii) evaluates the specific characteristic on a site-specific basis to determine the geographic area where intensification needs to be compatible with the specific matter; and
 - (iii) evaluates an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 while managing the specific characteristics.

77M Effect of incorporation of MDRS in district plan on new applications for resource consents and on some existing designations

- (1) This section applies in relation to the consideration by a consent authority of an application made under section 88 for a resource consent (a **new application**)—
 - (a) for an activity to which the MDRS are proposed to apply in an area in a relevant residential zone; and
 - (b) that is lodged on or after the date on which a specified territorial authority notifies its IPI incorporating the MDRS in its district plan in accordance with section 80F(1) or (2), as applicable.
- (2) The consent authority considering the new application must consider the plan or proposed plan and apply section 104(1)(b)(vi) in the following way:
 - (a) the provisions of the district plan or any proposed district plan (other than the IPI) cease to have effect in relation to the consideration of the new application; and
 - (b) the objectives and policies set out in clause 6 of Schedule 3A and proposed in the IPI to be included in the district plan in accordance with section 77G(5)(a) apply in determining that new application.
- (3) Subsection (2)(a) applies to the extent that the provisions referred to are inconsistent with the objectives and policies—
 - (a) set out in clause 6 of Schedule 3A; and

- (b) proposed in the IPI to be included in the district plan in accordance with section 77G(5)(a).
- (4) This section does not apply in relation to any area or site that—
 - (a) is a qualifying matter area (within the meaning of section 86BA(7)); or
 - (b) is in a new residential zone notified in the IPI.
- (5) Subsection (6) applies if a designation for which the Minister of Education is the requiring authority—
 - (a) is included in the specified territorial authority's district plan; and
 - (b) the designation applies to land that—
 - (i) is in a relevant residential zone; or
 - (ii) adjoins a relevant residential zone.
- (6) Works undertaken under a designation of the kind referred to in subsection (5) may rely on the provisions of the relevant residential zone that incorporate the density standards in Part 2 of Schedule 3A if those provisions are more lenient than conditions included in the designation.
- (7) Any objectives or policies of a regional policy statement or proposed regional policy statement do not apply to the consent authority's consideration of the new application to the extent that they are inconsistent with the objectives and policies in clause 6 of Schedule 3A as notified in the IPI.
- (8) This section does not affect the operation of subpart 7 of Part 5.
- (9) To avoid doubt, the MDRS are irrelevant to the consideration of a new application unless and until the MDRS are notified in the relevant IPI.

Intensification requirements in non-residential zones

77N Duty of specified territorial authorities to give effect to policy 3 or policy 5 in non-residential zones

- (1) When changing its district plan for the first time to give effect to policy 3 or policy 5, and to meet its obligations under section 80F, a specified territorial authority must use an IPI and the ISPP.
- (2) In carrying out its functions under subsection (1), the territorial authority must ensure that the provisions in its district plan for each urban non-residential zone within the authority's urban environment give effect to the changes required by policy 3 or policy 5, as the case requires.
- (3) In carrying out its functions under subsection (1), a specified territorial authority—
 - (a) may create new urban non-residential zones or amend existing urban non-residential zones:

Schedule 1

New Schedule 3A inserted

s 17

Schedule 3A

MDRS to be incorporated by specified territorial authorities

s 77G

Part 1

General

1 Interpretation

- (1) In this schedule, unless the context otherwise requires,—
- construction** includes construction and conversion, and additions and alterations to an existing building
- density standard** means a standard setting out requirements relating to building height, height in relation to boundary, building setbacks, building coverage, outdoor living space, outlook space, windows to streets, or landscaped area for the construction of a building
- subdivision** means the subdivision of land, as defined in section 218(1).
- (2) Terms used in this schedule that are defined in section 77F have the same meaning in this schedule as they do in that section.
- (3) Terms used in this schedule that are defined in the national planning standards have the same meaning in this schedule as they do in those standards.

2 Permitted activities

- (1) It is a permitted activity to construct or use a building if it complies with the density standards in the district plan (once incorporated as required by section 77G).
- (2) There must be no other density standards included in a district plan additional to those set out in Part 2 of this schedule relating to a permitted activity for a residential unit or building.

3 Subdivision as controlled activity

Subdivision requirements must (subject to section 106) provide for as a controlled activity the subdivision of land for the purpose of the construction and use of residential units in accordance with clauses 2 and 4.

4 Restricted discretionary activities

A relevant residential zone must provide for as a restricted discretionary activity the construction and use of 1 or more residential units on a site if they do

not comply with the building density standards in the district plan (once incorporated as required by section 77G).

5 Certain notification requirements precluded

- (1) Public notification of an application for resource consent is precluded if the application is for the construction and use of 1, 2, or 3 residential units that do not comply with 1 or more of the density standards (except for the standard in clause 10) in the district plan (once incorporated as required by section 77G).
- (2) Public and limited notification of an application for resource consent is precluded if the application is for the construction and use of 4 or more residential units that comply with the density standards (except for the standard in clause 10) in the district plan (once incorporated as required by section 77G).
- (3) Public and limited notification of an application for a subdivision resource consent is precluded if the subdivision is associated with an application for the construction and use of residential units described in subclause (1) or (2).

6 Objectives and policies

- (1) A territorial authority must include the following objectives in its district plan:

Objective 1

 - (a) a well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future:

Objective 2

 - (b) a relevant residential zone provides for a variety of housing types and sizes that respond to—
 - (i) housing needs and demand; and
 - (ii) the neighbourhood's planned urban built character, including 3-storey buildings.
- (2) A territorial authority must include the following policies in its district plan:

Policy 1

 - (a) enable a variety of housing types with a mix of densities within the zone, including 3-storey attached and detached dwellings, and low-rise apartments:

Policy 2

 - (b) apply the MDRS across all relevant residential zones in the district plan except in circumstances where a qualifying matter is relevant (including matters of significance such as historic heritage and the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga):

Policy 3

- (c) encourage development to achieve attractive and safe streets and public open spaces, including by providing for passive surveillance:

Policy 4

- (d) enable housing to be designed to meet the day-to-day needs of residents:

Policy 5

- (e) provide for developments not meeting permitted activity status, while encouraging high-quality developments.

*Subdivision requirements***7 General subdivision requirements**

Any subdivision provisions (including rules and standards) must be consistent with the level of development permitted under the other clauses of this schedule, and provide for subdivision applications as a controlled activity.

8 Further rules about subdivision requirements

Without limiting clause 7, there must be no minimum lot size, shape size, or other size-related subdivision requirements for the following:

- (a) any allotment with an existing residential unit, if—
 - (i) either the subdivision does not increase the degree of any non-compliance with the density standards in the district plan (once incorporated as required by section 77G) or land use consent has been granted; and
 - (ii) no vacant allotments are created:
- (b) any allotment with no existing residential unit, where a subdivision application is accompanied by a land use application that will be determined concurrently if the applicant for the resource consent can demonstrate that—
 - (i) it is practicable to construct on every allotment within the proposed subdivision, as a permitted activity, a residential unit; and
 - (ii) each residential unit complies with the density standards in the district plan (once incorporated as required by section 77G); and
 - (iii) no vacant allotments are created.

9 Rules about common walls

For the purposes of clause 8(a)(i), if a subdivision is proposed between residential units that share a common wall, the requirements as to height in relation to boundary in the district plan (once incorporated as required in section 77G) do not apply along the length of the common wall.

Part 2

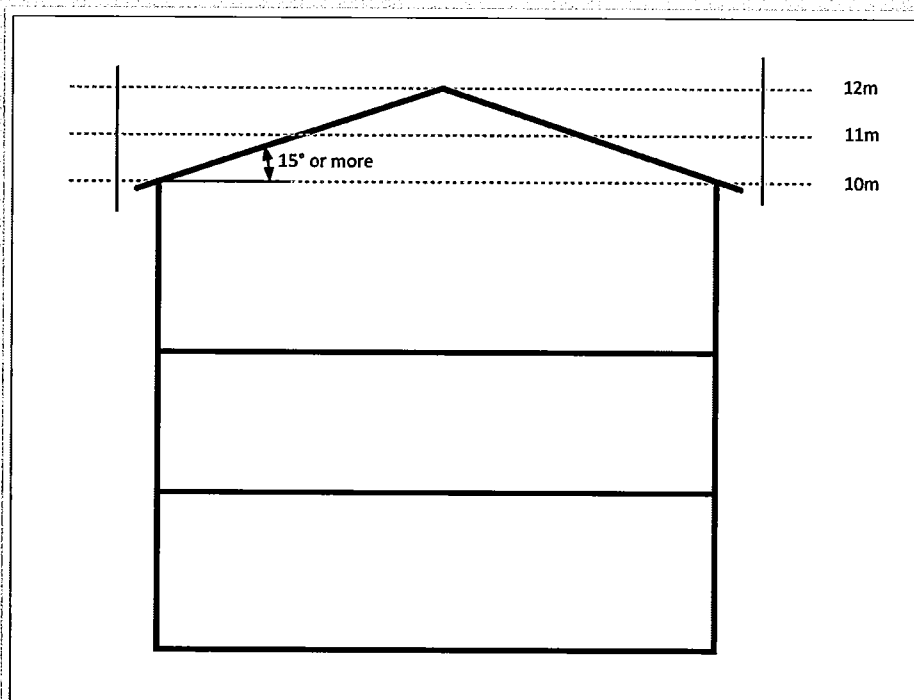
Density standards

10 Number of residential units per site

There must be no more than 3 residential units per site.

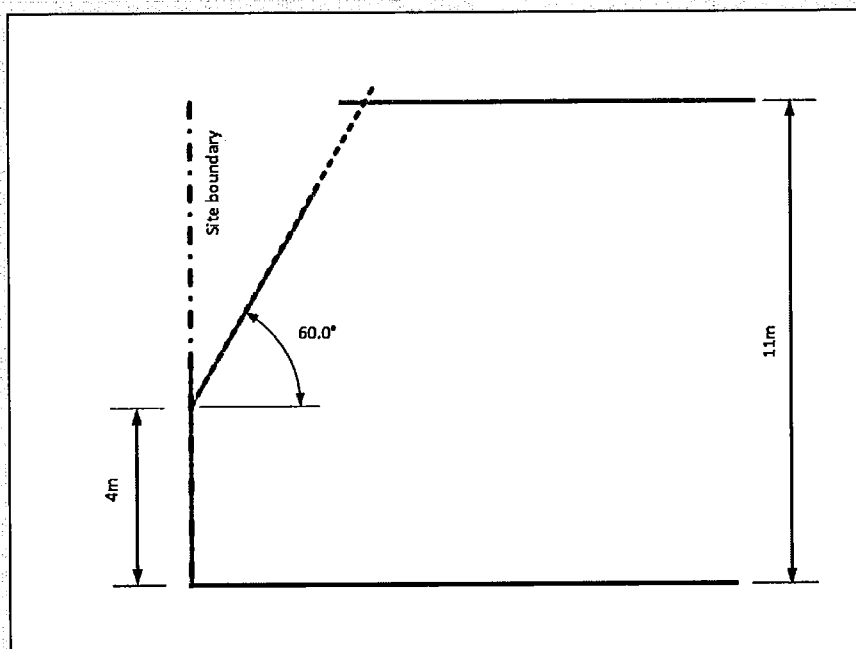
11 Building height

Buildings must not exceed 11 metres in height, except that 50% of a building's roof in elevation, measured vertically from the junction between wall and roof, may exceed this height by 1 metre, where the entire roof slopes 15° or more, as shown on the following diagram:



12 Height in relation to boundary

- (1) Buildings must not project beyond a 60° recession plane measured from a point 4 metres vertically above ground level along all boundaries, as shown on the following diagram. Where the boundary forms part of a legal right of way, entrance strip, access site, or pedestrian access way, the height in relation to boundary applies from the farthest boundary of that legal right of way, entrance strip, access site, or pedestrian access way.



- (2) This standard does not apply to—
- (a) a boundary with a road;
 - (b) existing or proposed internal boundaries within a site;
 - (c) site boundaries where there is an existing common wall between 2 buildings on adjacent sites or where a common wall is proposed.

13 Setbacks

- (1) Buildings must be set back from the relevant boundary by the minimum depth listed in the yards table below:

Yard	Minimum depth
Front	1.5 metres
Side	1 metre
Rear	1 metre (excluded on corner sites)

- (2) This standard does not apply to site boundaries where there is an existing common wall between 2 buildings on adjacent sites or where a common wall is proposed.

14 Building coverage

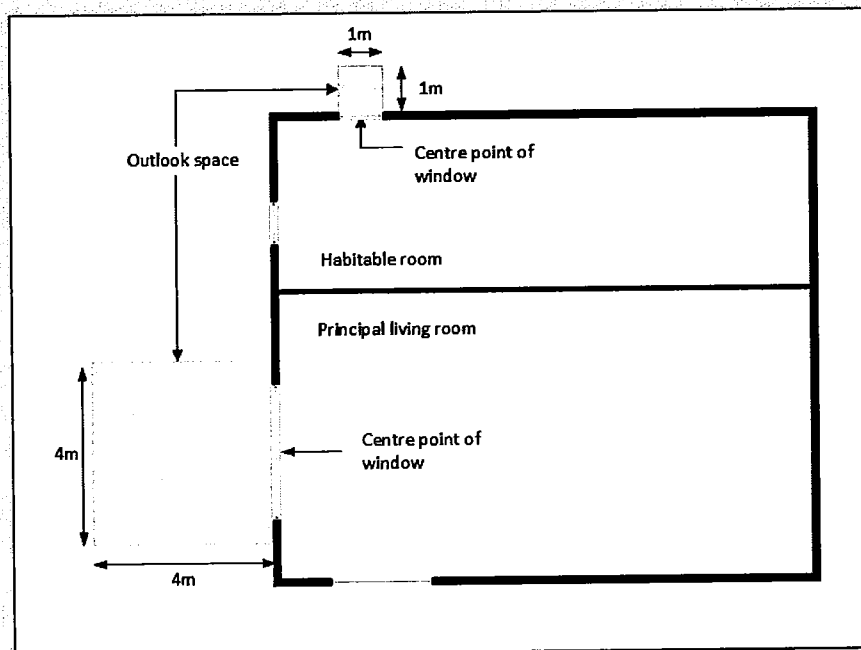
The maximum building coverage must not exceed 50% of the net site area.

15 Outdoor living space (per unit)

- (1) A residential unit at ground floor level must have an outdoor living space that is at least 20 square metres and that comprises ground floor, balcony, patio, or roof terrace space that,—

- (a) where located at ground level, has no dimension less than 3 metres; and
- (b) where provided in the form of a balcony, patio, or roof terrace, is at least 8 square metres and has a minimum dimension of 1.8 metres; and
- (c) is accessible from the residential unit; and
- (d) may be—
- (i) grouped cumulatively by area in 1 communally accessible location; or
- (ii) located directly adjacent to the unit; and
- (e) is free of buildings, parking spaces, and servicing and manoeuvring areas.
- X (2) A residential unit located above ground floor level must have an outdoor living space in the form of a balcony, patio, or roof terrace that— X
- (a) is at least 8 square metres and has a minimum dimension of 1.8 metres; and
- (b) is accessible from the residential unit; and
- (c) may be—
- (i) grouped cumulatively by area in 1 communally accessible location, in which case it may be located at ground level; or
- (ii) located directly adjacent to the unit.
- X 16 **Outlook space (per unit)** X
- (1) An outlook space must be provided for each residential unit as specified in this clause.

- (2) An outlook space must be provided from habitable room windows as shown in the diagram below:



- (3) The minimum dimensions for a required outlook space are as follows:
- (a) a principal living room must have an outlook space with a minimum dimension of 4 metres in depth and 4 metres in width; and
 - (b) all other habitable rooms must have an outlook space with a minimum dimension of 1 metre in depth and 1 metre in width.
- (4) The width of the outlook space is measured from the centre point of the largest window on the building face to which it applies.
- (5) Outlook spaces may be over driveways and footpaths within the site or over a public street or other public open space.
- (6) Outlook spaces may overlap where they are on the same wall plane in the case of a multi-storey building.
- (7) Outlook spaces may be under or over a balcony.
- (8) Outlook spaces required from different rooms within the same building may overlap.
- (9) Outlook spaces must—
- (a) be clear and unobstructed by buildings; and
 - (b) not extend over an outlook space or outdoor living space required by another dwelling.

 17 Windows to street

Any residential unit facing the street must have a minimum of 20% of the street-facing façade in glazing. This can be in the form of windows or doors.

 **18 Landscaped area**

- 
- (1) A residential unit at ground floor level must have a landscaped area of a minimum of 20% of a developed site with grass or plants, and can include the canopy of trees regardless of the ground treatment below them.
 - (2) The landscaped area may be located on any part of the development site, and does not need to be associated with each residential unit.

Hi

Forwarding below email to Phil Wilson, as requested by the sender. I assume this relates to the NPS-UD consultation.

You'll note it was received last Sunday but it took some time for me to find the right place to direct this too. . I'll also forward a few other similar emails Phil received last week.

Ngā mihi,
Anna

Subject: Urgent Consultation - pls forward

Pls forward to the appropriate dept at Auckland Council

" We the Citizens of Auckland reject the Government's order to destroy over 7000 heritage homes to make way for intensification."

"We call for a referendum on this issue!

" We wish to speak to this consultantion"

Signed

Lisa Prager

Verity George

Anne Speir

Anne Andrews

Leonard Prager

Zen Joseph

For and on behalf of

The Westmere Heritage Protection Ass.

From: Anna Bray **On Behalf Of** Phil Wilson
Sent: Monday, 16 May 2022 12:51 PM
To: Unitary Plan <unitaryplan@aucklandcouncil.govt.nz>
Subject: FW: Intensification issue

Hi

Forwarding below email to Phil Wilson, as requested by the sender. I assume this relates to the NPS-UD consultation.

You'll note it was received last Sunday but it took some time for me to find the right place to direct this too. I'll also forward a few other similar emails Phil received last week.

Ngā mihi,
Anna

From: Raewyn Alexander
Sent: Sunday, 8 May 2022 12:04 pm
To: Phil Wilson
Subject: Intensification issue

Dear Phil Wilson,

As a citizen of Tamaki Makaurau Auckland, I reject the Government's order to destroy over 7000 heritage homes to make way for intensification.

I call for a referendum on this issue, ask the people.

I wish to speak to this consultant, in a public forum. I want to see what infrastructure will be first improved, sewage, parking, roading, parks, tree planting (hugely important),

schools, health services, and more. Intensification alone is not viable.

Forward this email to the appropriate department, please. Then kindly confirm by email.

Sincerely,
Raewyn Alexander BIC

Essential NZ Poems - top ten best seller - Penguin Random House

Nothing and Nowhere (but Love) 2017 - available world-wide

www.amazon.com/Nothing-Nowhere-Love-Raewyn-Alexander-ebook/

Publishing - www.bookcouncil.org.nz/writers/alexanderraewyn.html

My art - https://www.facebook.com/Raewyn-Alexander-Illustration-117794882036660/?view_public_for=117794882036660

Miles Hughes Achievement Award - for Innovation, Perseverance, and Effective Involvement in Independent Publishing

From: Anna Bray **On Behalf Of** Phil Wilson
Sent: Monday, 16 May 2022 12:52 PM
To: Unitary Plan <unitaryplan@aucklandcouncil.govt.nz>
Subject: FW: Planned Changes on Removing Heritage Protection

Hi

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Ngā mihi,
Anna

From: Linda Hill
Sent: Sunday, 8 May 2022 2:45 pm
To: Phil Wilson
Subject: Planned Changes on Removing Heritage Protection

(The Council website is difficult to navigate, hence I am sending this to you and ask that you forward to the appropriate department. I would also request acknowledgement that you have received my email and forwarded as requested).

People of Auckland are proud of their local history, but don't always express how much they value a place until it's threatened. Because it adds character and distinctiveness to an area, heritage is fundamental in creating a 'sense of place' for a community. For these very reasons, I wish to voice my objection to the planned changes that involve removing protection to heritage homes in central Auckland i.e Ponsonby, St Mary's Bay, Freemans Bay, Parnell etc. This nonsensical proposal must be rejected by the Council.
Thanking you Linda Hill

From: Anna Bray **On Behalf Of** Phil Wilson
Sent: Monday, 16 May 2022 12:53 PM
To: Unitary Plan <unitaryplan@aucklandcouncil.govt.nz>
Subject: FW: Re Government Planned Changes to Heritage Protection

Hi

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Ngā mihi,
Anna

From: julia Woodhouse
Sent: Sunday, 8 May 2022 3:56 pm
To: Phil Wilson
Subject: Re Government Planned Changes to Heritage Protection

Please reject the Government's order to destroy our City.

" We the Citizens of Auckland reject the Government's order to destroy over 7000 heritage homes to make way for intensification."

We call for a referendum on this issue!

I wish to speak to this consultant.

Please forward this to the appropriate department and send me a confirmation by email.

Regards
Julia Woodhouse

-----Original Message-----

From: Anna Bray <Anna.Bray@aucklandcouncil.govt.nz> On Behalf Of Phil Wilson
Sent: Monday, 16 May 2022 12:53 PM
To: Unitary Plan <unitaryplan@aucklandcouncil.govt.nz>
Subject: FW: Lisa Prager - Send submission today to... | Facebook

Hi

Forwarding below email to Phil Wilson, as requested by the sender. I assume this relates to the NPS-UD consultation.

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Ngā mihi,
Anna

-----Original Message-----

From: Darryl Ojala
Sent: Sunday, 8 May 2022 5:20 pm
To: Phil Wilson <Phil.Wilson@aucklandcouncil.govt.nz>
Subject: Lisa Prager - Send submission today to... | Facebook

I'm saying NO to the proposed change to residential areas, such as st Mary's bay, Ponsonby, Herne bay, Freemans bay, grey Lynn, arch hill, we need to preserve these streets and areas, they are historic and our heritage Darryl ojala, resident Grey Lynn https://www.facebook.com/lisa.prager.52/posts/5004966542922641?src=email_notif

Sent from my iPhone

[Can you candidate? You can. Visit [voteauckland.co.nz](https://www.voteauckland.co.nz).]
<<https://www.aucklandcouncil.govt.nz/elections/Pages/default.aspx>>

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