

BEFORE THE ENVIRONMENT COURT

Decision No. [2016] NZEnvC 140

IN THE MATTER the Resource Management Act  
1991 and of appeals pursuant to  
Clause 14 of the First Schedule of  
the Act

BETWEEN SOUTH EPSOM PLANNING  
GROUP INCORPORATED AND  
THREE KINGS UNITED GROUP  
INCORPORATED

(ENV-2016-AKL -000001)

NGATI TE ATA WAIOHUA AND  
NGATI TAMAOHO TRUST

(ENV-2015-AKL -000158)

Appellants

AND AUCKLAND COUNCIL

Respondent

AND FLETCHER RESIDENTIAL  
LIMITED

Applicant

Hearing dates: 13 June 2016 – 24 June 2016

Court: Environment Judge JA Smith  
Environment Judge BP Dwyer  
Environment Commissioner ACE Leijnen  
Environment Commissioner WR Howie

Appearances: Mr R Enright for South Epsom Planning Group and  
Three Kings United Group (and agency appearance for  
Ms M Bilsland and Ms A Houghton)



Ms JC Campbell and Ms A Linterman for Auckland Council

Mr W Loutit, Ms K Stubbing and Ms J Donnelly for Fletcher Residential Limited (Fletchers)

Ms C Kirman and Ms A Devine for Minister for the Environment and Housing New Zealand Corporation (s 274 party)

Mr G Smith and Ms L Vink for Auckland Volcanic Cones Society (s 274 party)

Ms M Batistijich and Mr L Kearns for Auckland Transport (s 274 party)

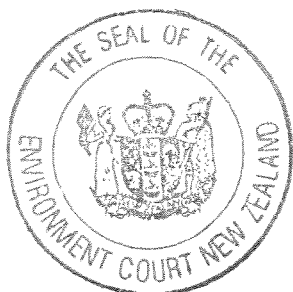
Date of Decision 29 July 2016

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### INTERIM DECISION OF THE ENVIRONMENT COURT

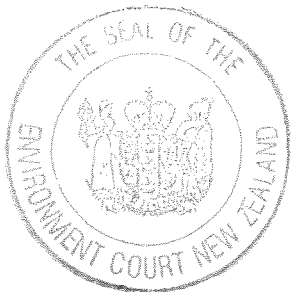
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- A. The objectives of PC372 are the most appropriate way to achieve the purpose of RMA insofar as development of the Site for residential and open space purposes is concerned. We also conclude that the provisions of PC372 are potentially the most appropriate way to achieve the objectives, provided those provisions are altered to address the issues and achieve the outcomes which we have identified in this decision.**
- B. We issue this decision as an interim decision to enable the parties to discuss and refine PC372. The Court's Commissioners will be available to assist in that process if required.**



**C. In order for us to approve the final form of PC372, it will be necessary to adequately address the following issues or achieve the following ends, having regard to the comments we have made in the identified paragraphs of this decision:**

- **Amend Objective 2 - paragraph [55];**
- **Address the integration/connectivity issue - paragraphs [91] - [92] and [188];**
- **Provide for the recognition or protection of volcanic features which we have indicated is appropriate - paragraphs [117], [119], [122] and [124];**
- **Address the view shaft issue - paragraph [131];**
- **Address the building form issue - paragraph [140] – [146];**
- **Delete Superlot G – paragraph [152];**
- **Include appropriate rules to ensure delivery of the new sports fields - paragraph [166];**
- **Provide further information as to use of the sports fields for stormwater storage - paragraph [185];**
- **Address the placement of buildings and alignment of open space at the interface of the Site and Grahame Breed Drive/the Town Centre - paragraph [193];**
- **Address communal open space provisions - paragraph [195];**
- **Provide appropriate zoning provisions for the Whare Manaaki - paragraph [200];**
- **Address the issues which we have identified regarding minimum dwelling unit sizes - paragraph [214];**



- Ensure key roads are zoned separately, or as Structural elements – paragraph [83] and [144];
- Address and provide more certainty around site preparation provision – paragraphs [204] - [212].

D. For the sake of completeness we advise that except where we specifically state to the contrary (e.g paragraphs [91] - [92] and [153]) we have not made any final determination as to the adequacy of provisions advanced by Fletchers in its closing submissions. For the reasons which we have identified in paragraph [217] we do not consider that it is appropriate to do so until all parties to these proceedings have had the opportunity to comment on those amendments.

We will allow a period of 20 working days from the issue of this decision to enable the parties (other than Fletchers) to consider its findings and to file and serve memoranda commenting on the matters set out above. At the conclusion of that process we will convene a judicial conference with a view to making directions for resolution of the outstanding issues, whether by way of mediation, expert witness conferencing or otherwise.

Any party may seek further directions/clarification by notice in writing at any time.

E. Costs are reserved to be dealt with (if appropriate) at the conclusion of these proceedings.



## REASONS FOR DECISION

### Introduction

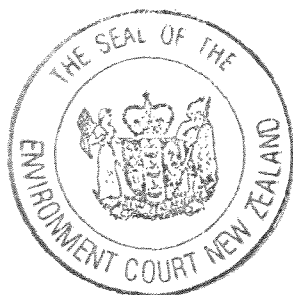
[1] South Epsom Planning Group Incorporated and Three Kings United Group Incorporated (jointly – the Appellants) appeal a decision of the Auckland Council (the Council) approving Proposed Private Plan Change 372 (PC372) to the Auckland District Plan – Auckland City Isthmus Section (the District Plan).

[2] PC372 was a plan change requested by Fletcher Residential Limited (Fletchers) pursuant to the provisions of Part 2 of Schedule 1 of the Resource Management Act 1991 (RMA). The plan change sought the rezoning of 21.6 ha of land situated in the Three Kings area of Auckland to enable the redevelopment of a quarry owned by Fletchers for residential and open space purposes. This included 15.1 ha of quarry land as well as reserve land (approximately 6.5ha) administered by the Council and owned by either the Crown or the Council. We will refer to the overall combination of land subject to PC372 as the Site.

[3] The Appellants were submitters in opposition to PC372. Their notice of appeal sought either cancellation of the Council decision approving PC372 or alternatively a range of substantive amendments to the plan change. It became apparent to the Court after perusing the evidence and joint witness statements lodged before hearing that the real issue was not whether development of the kind proposed by Fletchers should be enabled to proceed, but rather what the form of that development should be.

[4] In addition to the parties which we have identified above, the following parties appeared before the Court:

- Auckland Transport;
- Auckland Volcanic Cones Society Incorporated;



- Housing New Zealand Corporation;
- Minister for the Environment;
- Anne Houghton;
- Margaret Bilsland.

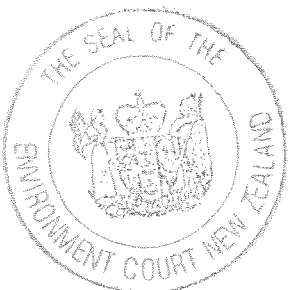
## Background

[5] Three Kings is a suburb situated on the Auckland Isthmus, 6kms or so south of the Auckland CBD. It lies within an area of the City represented by the Puketepapa Local Board. The suburb gets its name from a group of volcanic cones situated in this vicinity, which Maori called Te Tatua-a-Riukiuta (the belt of Riukiuta). The cones have been extensively quarried and developed since the time of European occupation of Auckland and have largely disappeared. The name Te Tatua-a-Riukiuta now often refers to the last remaining volcanic cone of the group. Its European name is Big King. Witnesses commonly referred to the remaining cone as the *maunga* (mountain) and that is how we will also refer to it. The remaining unquarried and undeveloped part of the maunga is part of a reserve called Big King Reserve. The Reserve rises to a point of RL120 (Auckland datum). A combination of paths and steps enable access over the Reserve, which is a popular walking area. A Council water tank is situated on the peak of the maunga.

[6] Fletchers own the last remaining quarry in this area. Winston Aggregates (now part of the Fletchers group) has been working the quarry since the 1920s. We understand that quarrying was originally undertaken without any form of planning approval and in latter years that activity has been permitted under the Business 7 Zone of the District Plan. Extraction of rock from the quarry has been largely completed and Fletchers is currently in the process of filling the quarry with clean fill pursuant to a consent granted by the Court in 2011.<sup>1</sup>

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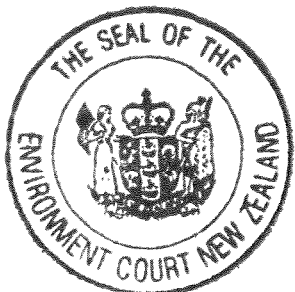
<sup>1</sup> The Court issued an interim decision on the filling application under Decision No. [2011] NZEnvC 130 on 18 May 2011 and then a final decision as a consent order on 26 July 2011 under No [2011] NZEnvC 214. ([2011] NZEnvC 214)



[7] The quarry is nearly rectangular in shape. Its northern boundary adjoins a small industrial/commercial centre whose appearance from many viewpoints is dominated by a prominent storage building known as Kennards building. The eastern boundary adjoins Mount Eden Road. The northern portion of the quarry's western boundary adjoins Big King Reserve and the maunga sits to the northwest of the quarry. The southern portion of the quarry's western boundary and most of the southern boundary adjoin reserve land administered by the Council as part of the Three Kings Reserve (not to be confused with Big King Reserve). Due to the relative locations of the parts of this reserve and how it engages with the Site we refer to the area to the west as Western Park and that to the south as Southern Reserve. Grahame Breed Drive defines the eastern portion of the quarry's southern boundary. The Three Kings town centre (the Town Centre) and a developed sports field on the remaining part of Three Kings Reserve sit to the south of the Southern Reserve and Grahame Breed Drive. The Town Centre is Three Kings' primary commercial area, containing a supermarket and other commercial activities.

[8] In the north-eastern corner of the quarry property there is an elevated, unquarried area level with Mount Eden Road which has been designated by the Government as a Special Housing Area (SHA) and residential development is under way. Apart from the SHA, Fletchers' land comprises an excavated working quarry with the quarry edges rising up steeply to meet the adjoining land.

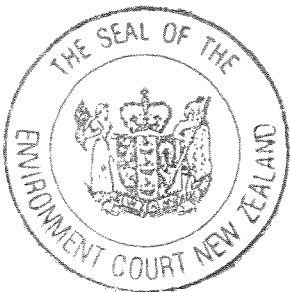
[9] A March 2016 Contour Plan provided to the Court (Exhibit B) showed that the lowest point of the quarry at that time was RL45 as compared to RL77 at the interface of the Site with the Town Centre and RL76-78 along the Mount Eden Road boundary of the quarry. At the present time the quarry presents as a large hole in the ground, which must be filled to an approximate level to enable development to occur in it. That filling has been proceeding in accordance with [2011] NZEnvC 214. The conditions of



consent require a final fill contour to be consulted on and settled prior to or as part of consideration of the quarry's final use. There are currently no consents to fill or use the reserve land. Fixing the appropriate level of fill was the question which undergirded all others in these proceedings. It was also at the heart of residents' concerns expressed by the Appellants. The failure to consult on and settle final fill contours prior to advancing PC372 explains the appeals, at least to some extent.

[10] Just under 5 ha of the remaining land incorporated into the Site is Crown land administered by the Council, with the balance (in the order of 1.5 ha) being Council owned reserve. We will discuss these areas in considerably more detail later in this decision as the quantum and layout of reserves and open space to be provided under PC372 was the subject of extensive debate before us. However, some brief description is necessary at this time for a general understanding of the development advanced by PC372.

[11] Western Park (which adjoins the south western boundary of the quarry) is the largest (approximately 3.1 ha) parcel of the Crown/Council lands included in the Site. Part of the park was originally a quarry reserve and part was set aside as open space for state housing established in this area. Western Park is now a somewhat barren sports ground containing a soccer field with no changing or spectator facilities. The outer edges of the basin shaped park comprise steep batters 6 – 10m high formed by the quarrying. These are in grass or scrub depending on the slope and give the park an amphitheatre-like quality. The slopes are bordered at the top by houses originally built by the Housing Corporation on Fyvie, Smallfield and Barrister Avenues. In turn, Western Park is elevated above Fletchers' quarry to its east. The soccer field sits at an elevation of RL72. As the quarry is filled its ground level rises and [2011] NZEnvC 214 allows the ground level of the quarry to match that of the soccer field as a maximum until or unless another contour is adopted.





[12] Southern Reserve (which adjoins the southern boundary of the quarry) contains just over 2 ha. This is a rough, scrubby area previously used by the Council as a quarry and then for waste disposal and is not presently suitable for any recreational use. Most of the land in the reserve sits at a contour of about RL60, but at its southern edge there is a steep bank which rises up to meet the Town Centre at RL77. Small areas of reserve at the top of the bank are used as a Council works depot, carpark and (formerly) a dog pound.

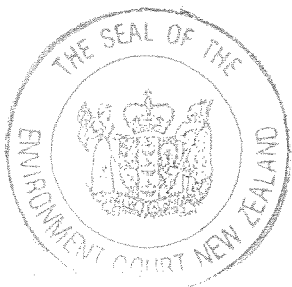
[13] The areas of Crown/Council owned land which we have described presently have a mix of Business 7 and Open Space zoning.<sup>2</sup> These parcels of land are to be transferred to Fletchers pursuant to a land swap agreement entered into between it, the Council and the Crown. They are then to be developed by Fletchers in conjunction with its own land in accordance with plans advanced by Fletchers and enabled by PC372.

[14] The Council decision of 2 November 2015 incorporated into PC372 a Zoning Map showing the proposed zoning mix for the Site (predominantly Open Space 2 and 3 and Residential 8b Zones) and a Concept Plan guiding application of the zoning provisions. Overlaying both of these documents was a Master Plan advanced by Fletchers giving a more detailed view of the development which it proposed on the Site. Although the Zoning Map and Concept Plan were intended to enable the Master Plan to be put into effect, the Master Plan itself was not to be incorporated into the District Plan by PC372. The Master Plan presented to the Court at the commencement of the hearing was referred to as Master Plan 19H1 and a copy is appended to this decision as **Attachment 1**.

[15] In addition to the Zoning Map and Concept Plan, PC372 included a comprehensive suite of objectives, policies and rules amending and

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<sup>2</sup> Two small accessways have a Residential 6A Zoning, but that is of no significance in our considerations.



extending the current provisions of the District Plan, similarly intended to enable the Master Plan to be put into effect. All of these documents were subject to ongoing changes during the course of our hearing.

[16] By reference to the documents which we have described above, the intended outcome of PC372 can be summarised in the following terms:

- PC372 was promoted on the basis that it would enable the development of up to 1500 dwelling units in stages on the Site. However, the evidence which we heard suggested that the ultimate outcome of the development proposed by Fletchers would be somewhere between 800 and 1200 dwelling units;
- Development of dwelling units is to occur on the quarry edges, on the quarry floor and around parts of the existing open space in the southern and south-western part of the Site (i.e. on parts of the Southern Reserve and Western Park);
- Fletchers' intention was for about 56 per cent of the development to take the form of *cascading apartments* situated along the Mount Eden Road and Grahame Breed Drive frontages of the Site. Having access to both a road frontage and the lower floor of the quarry, it is intended that such apartments could be up to nine-storeys high with four-storeys above the road and up to 5-storeys founded in the quarry. The cascading apartments will be situated furthest away from the maunga and will be the most intensive and tallest development on the Site;
- Less intensive development involving garden apartments and terrace houses (we are uncertain as to the distinction between the two) would take place in the lower levels of the quarry (described as the Riu Precinct). There would be a general reduction in height as the buildings get closer to the maunga;<sup>3</sup>
- Open space would be reconfigured from its present arrangements and extended. Two full sized, side by side sports fields would be

<sup>3</sup>Master Plan 19H1 broke up the areas for development into Apartment Lots A01-A11 and Superlots A-G where we understand apartments would also be developed, but to a lesser degree of height and intensity than in the Apartment Lots.

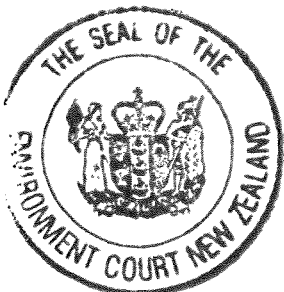


established on land which is presently either quarry or part of the Southern Reserve;

- A Whare Manaaki would be established as a facility for meeting, educational and cultural activities for Tangata Whenua. The final position and design of the Whare and related infrastructure have not been determined;
- Western Park would be reduced in size. An apartment building situated on an area called Superlot G would be constructed on part of the Western Park. The remaining area of the Western Park would become open space for informal recreation or be incorporated into a walkway system linking the proposed dual sports fields, the open space on Western Park, the maunga and the Town Centre;
- The remaining lower slopes of the maunga presently in Fletchers' ownership would become reserve and a designed wetland system would be established to accommodate stormwater;
- All of these developments would be enabled by filling the quarry to an approximate maximum contour level of RL60. The Site would be integrated with the higher Town Centre and Mount Eden Road through a plaza (at the southern end adjacent to the Town Centre), steps/stairs, ramps and lifts.

[17] The above is a brief outline of the proposals advanced by Fletchers under PC372. We will return to a number of those matters in more detail elsewhere in our appraisal of the plan change. That appraisal will consist of consideration of the following issues:

- Statutory requirements for plan changes;
- Regional policy documents;
- Section 32 RMA;
- Fill levels;
- Volcanic features and issues;
- Building heights;
- Superlot G;



- Open Space;
- Earthworks and site preparation;
- Minimum dwelling unit size.

### **Statutory requirements for plan changes**

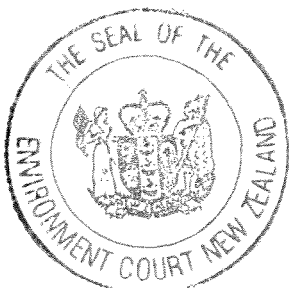
[18] The underlying principle applicable to consideration of PC372 is found in s 72 RMA, which provides that:

The purpose of the preparation... of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the Act.

[19] Sections 74 and 75 RMA then go on to identify a series of specific requirements for preparation and change of district plans and their contents. The Environment Court in *Appealing Wanaka Incorporated v Queenstown-Lakes District Council*<sup>4</sup> summarised the obligations of territorial authorities (and the Court) when considering the preparation or change of a district plan in these terms:

Apart from their formal requirements as to what a district plan must (and may) contain, those sections impose three sets of positive substantive obligations on a territorial authority when preparing or changing a plan. These are first to ensure the district plan or change accords with the authority's functions under section 31, including management of the effects of development, use and protection of natural and physical resources in an integrated way; second to give proper consideration to Part 2 of the RMA and the list of statutory documents in section 74 and section 75; and third to evaluate the proposed plan or change under section 32 of the RMA.

[20] On appeal to this Court we must also have regard to the local authority's decision. We have done so and note that the Council approved PC372 but record that the changes to the approved form which were advanced at our hearing were so substantial as to render the Council decision of limited assistance in determining many of the issues before us.



<sup>4</sup> [2015] NZEnvC 139.

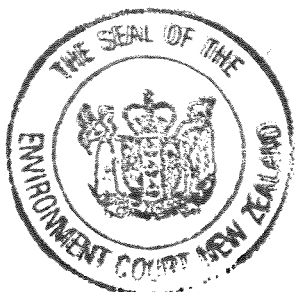
[21] Insofar as the first requirement identified in *Appealing Wanaka* is concerned, there was no dispute that the Council was acting in accordance with its functions under s 31 in receiving and determining PC372. There were no infrastructural or servicing issues which were in dispute before us under the head of management of effects in an integrated way. We understand that the Site's requirements for stormwater, waste water, water supply, roading, access and traffic services can all be adequately met and integrated with services provided in the surrounding area.

[22] The integration issue which was central to our considerations in this case, was limited and specific, namely the need for integration with or connectivity between development on the Site, the Town Centre, nearby reserves/open spaces and the maunga. In the first instance, this came down to determination of the issue which was front and centre in our considerations. That was the minimum level to which filling of the quarry must occur before development should proceed.

[23] Any consideration of Part 2 RMA must be undertaken in the context of the common agreement of the parties that the Site was generally suitable for the development proposed and the finding of the Council in that regard. The primary Part 2 matters under dispute were effects relating to fill levels and building heights, open space and impacts on the maunga. These will be addressed in our discussion of specific issues. Before doing so we consider the two remaining requirements identified in *Appealing Wanaka*, namely the statutory documents and s 32 RMA. We address these as separate topics in their own right.

### **Regional policy documents**

[24] PC372 is a request for a plan change under Schedule 1 RMA, clauses 21-29. Pursuant to clause 25 the Council concluded that it would accept the request (clause 25(2)(b)) and notified it. Accordingly the



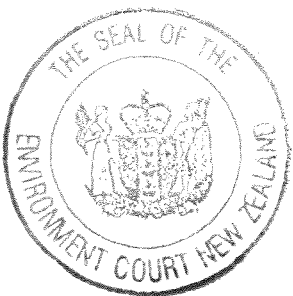
procedure under clause 29 has been followed, with adoption of the relevant parts of Schedule 1.

[25] Nevertheless, even a private plan change must comply with s 75 RMA as to the extent of the plan change. Section 75(1) requires a plan change statement of objectives and policies and the rules to implement those policies. Subsection (2) provides other matters that the plan change may state. Importantly for the purpose of this discussion, s 75(3) requires that a plan change must (inter alia) give effect to the relevant provisions of any regional policy statement. (The first two instruments identified in s 75(3) are not relevant in this case).

[26] Section 75(4) provides that a plan change may not be inconsistent with any water conservation order or a regional plan or any matters specified in s 31. No party suggested that PC372 was inconsistent with any of these instruments.

[27] There is only one operative regional policy statement in the Auckland region. Although parties were quick to refer to the Auckland Unitary Plan process (PAUP), it was accepted that this document had not reached the stage where the decisions of the Commissioners were available, nor where the decisions of the Council had been made. The parties also seemed to accept that the provisions of the PAUP were themselves in contention and there were significant differences in the positions in respect of a number of key matters.

[28] The PAUP is not an RMA process but is a special statutory process. Although the conclusions of that process will be deemed to constitute regional policy statements, regional plans and district plans they nevertheless have limited effect until such time as they become operative. All parties seemed to accept that the operative Auckland Regional Policy



Statement (RPS) is the relevant document for the purposes of this assessment.

[29] The provisions of the RPS are, in some respects, highly directive and mandatory. In *Auckland Regional Council v North Shore City Council*<sup>5</sup> the Court of Appeal noted that the RPS could have directional policies and may make out prohibitions. Subsequently, statutory changes to s 75 required district plans to give effect to regional policy statements.

[30] The Environment Court has confirmed on a number of occasions that some provisions of the RPS are mandatory (*Tramlease v Auckland Council*).<sup>6</sup> Any doubt as to the effect of s 75 was addressed by the Supreme Court in *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd*<sup>7</sup> where it was noted that policies (New Zealand Coastal Policy Statement) can be binding on decision makers.

[31] Chapter 2 of the RPS, which deals with the regional overview and strategic direction, adopts imperative wording in many of its provisions and identifies the questions of growth and urban structure as being of major significance. This mandatory approach is reflected in policies such as 2.6.2 (Strategic Policies – Urban Containment). Nevertheless there are strategies for urban structure involving high density centres and corridors (2.6.5) and it can be seen that in 2.6.5.2 that redevelopment for high density centres might be appropriate if they comply with Policies 2.6.5.3 - 2.6.5.10.

[32] More directly important in this case is 2.6.6, which deals with urban structures and dictates the methods by which changes might occur. 2.6.6.8 requires:

ARC and TAs shall promote appropriate redevelopment... through reference to Appendix A and Appendix H [utilising]:

<sup>5</sup> (1995) 1B ELRNZ 426, [1995] 3 NZLR 18, [1995] NZRMA 424.

<sup>6</sup> [2015] NZEnvC 133, [2015] NZRMA 343.

<sup>7</sup> [2014] NZSC 167.



- (i) Structure Planning: Regional Practice and Resource Guide 2005 ...;
- (ii) NZ Urban Design Protocol;
- (iii) Integrated Catchment Planning Guide;
- (iv) Auckland Regional Open Space Policy;
- (v) The Regional Land Transport Strategy;
- (vi) National Guidelines for Crime Prevention through Environmental Design in New Zealand.

[33] 2.6.6.14 notes:

Significant new areas proposed for urban development and existing urban areas proposed for significant redevelopment are to be provided through the structure planning process that, as a minimum, meets the requirements of Appendix A: Structure Planning.

[34] In 2.6.7 there is a discussion of the reasons for such urban structures and towards the end of this discussion states (inter alia):

To maximise the efficient use of the land resource and to support an integrated multimodal transport network, high density forms of residential living are encouraged with the use of District Plan statutory methods such as minimum density controls to ensure that lower density development does not eventuate, compromising the ability of a centre to accommodate growth.

Planning for intensification must also take account of features or places of cultural or historical significance to the Region or nation. These may be important to the identity of the Region or locality. Areas of significant natural heritage value should also be avoided.

Changes should be planned and managed so that activity patterns which provide appropriately for social, economic and cultural wellbeing and the health and safety of the community are reinforced, and opportunities to make better provision for those matters and to improve amenity values are realised. Increases in residential population in High Density Centres and Intensive Corridors and in future urban areas will require appropriate provision and enhancement of amenities, particularly the quality and accessibility of the commercial cores of town centres, community infrastructure and open spaces.

[35] The RPS then goes on to questions of urban design, and under 2.6.9.3 – Methods – Urban Design at point 3 it notes:

Significant new areas proposed for urban development and existing urban areas proposed for significant redevelopment (such as areas identified in Schedule 1 or where the redevelopment requires a district plan change) are to be provided through the structure planning process that as a minimum meets the requirements of Appendix A Structure Planning.





[36] We doubt that PC372 itself can be said to be the structure plan envisaged by the RPS, given that it was intended that a plan change will follow on from the structure planning process. Before examining what document may meet the requirements, we turn to Appendix A of the RPS itself.

[37] Appendix A consists of some nine pages of requirements, being variously required at strategic, regional and district planning levels. That relating to structure planning commences at page 5 of Appendix A. Importantly, it notes at the commencement of the scope of the structure planning process:

...It tests more general planning assumptions from higher level, more strategic documents, builds on relevant technical assessments, and provides a basis for future development options/scenarios, and a preferred option. It may identify where more detailed work, including master plans, may be needed. Structure plans guide future development and redevelopment through being an input into more detailed master plans and subdivision plans.

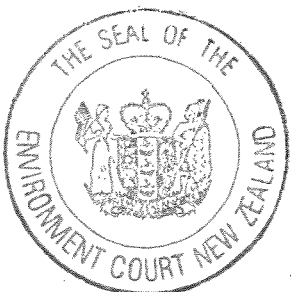
[38] There are a significant number of matters to be covered in structure plans. We note within the general scope and outputs at page 6 *regionally significant or outstanding landscapes*), and the need for open space and green networks and at the top of page 7:

- The feasibility of creating green networks, environmental restoration and/or other means to protect biodiversity, and the requirement for the establishment and retention of riparian protection yards, esplanade reserves or marginal strips between land use activities and water bodies and coastal waters;
- ...
- The provision for adequate levels of social infrastructure (including open space) in the context of wider regional and sub-regional networks.

[39] Importantly, at page 7 under 4 it notes:

In areas to be (re-)urbanised structure plans will also consider:

- The preferred urban form and design of the area, whether this fits efficiently and effectively with the values of the wider city/district and sector of the region, including existing urban character and aesthetic coherence;
- How to achieve the optimal densities, in High Density Centres and Intensive Corridors, particularly those served by public transport;



- The maintenance and enhancement of urban amenity values, throughout the change period and into the longer term;

...

[40] and as part of the final bullet point:

- ...and how transitions between and within the area to be (re-)urbanised and other areas with different activities and uses, and/or different densities are to be managed.

[41] At paragraph 6 on page 9 it notes:

The process will produce a plan that guides development so that the form and intensity of development is consistent with the strategic outcomes for the sector (north, west, central and southern), broader local area, and appropriate to the character of the land in the structure plan.

[42] and at paragraph 7 it notes:

For example, in urban areas the Structure Plan will identify the key desirable urban design (including structure) outcomes and the future pattern of significant land uses, including:

- Values to be protected, and land uses consistent with such protection that may support local character and amenity values;
- The scale and intensity of development, having regard to the urban density required to support the public transport (see Appendix H);
- Key infrastructure requirements including roads, schools, open space, including reserves and land required for public access and other community utilities and facilities, and the timing of their availability;
- Arterial and local roads, the range of public transport modes, and the transport network, and how traffic will be managed in the area;
- Safe and attractive walking and cycling routes...;
- High Density Centres and Intensive Corridors and/or other commercial, industrial or mixed use areas and their integration with the transport system, with the wider urban area, and vice versa;
- Land to be reserved for environmental protection purposes, including hazard avoidance and mitigation, flood protection and green networks and their integration with the wider area.

[43] We conclude that these provisions require a structure planning process as part of urban development or significant urban redevelopment (as PC372 unquestionably is). Such a structure plan would have informed the decisions to be made in respect of PC372 and identified a number of significant issues relating to open space, connectivity, the protection of



significant features, and the integration of this area with the surrounding neighbourhood.

[44] We understand that PC372 was filed just after the publication of a plan called the Three Kings Plan (which was prepared in August 2014).<sup>8</sup> Although adopted by the Puketepapa Local Board, this plan has apparently never been adopted by the Council. On the face of it therefore, there is no structure plan for this area. Nevertheless, the Three Kings Plan appears to be a real attempt to address the matters in Schedule A of the RPS.

[45] At page 9 of the Three Kings Plan it recognises *five key moves*, being the most desired changes that can be delivered during the next thirty years. These are to:

- recognise and restore the mana of Te Tātua o Riukiuta/Big King and enhance the public open space network;
- revitalise the Three Kings town centre;
- encourage high quality residential development;
- improve connections between people and places; and
- develop a sense of local character and identity around the presence of Te Tātua o Riukiutu/Big King.

[46] That appears to be recognition of the values to be protected and land uses consistent with that protection, as identified in Appendix A, paragraph 7.

[47] Key move 1 – Open space context and issues recognises a number of features including the quarry. This again appears to address some of the issues under paragraph 7, particularly in respect of open space and environmental protection. This is reinforced by the actions identified,

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<sup>8</sup> Application for plan change was filed in September.



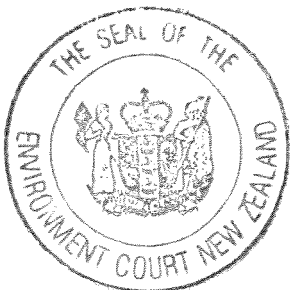
including retaining views to Big King from the Town Centre and main arterial routes, advocating for the rehabilitation of the landscape character through adequate and appropriate contours for all developed land and (1.3) providing appropriate and legible pedestrian and cycle connections to Big King and other reserve land, particularly from the Town Centre. This results in a spatial strategy map.

[48] Key move 2 is expanded further through Town Centre context and issues and then key moves for revitalisation of the Town Centre spatial strategy. That seeks to improve connections between Big King Reserve and the Town Centre, access along Mount Eden Road and Mount Albert Road and focussing activity on the Town Centre.

[49] Key move 3 moves to residential context and issues and identifies the segregation of the Town Centre from the developed quarry. The spatial strategy deals particularly with how the various areas might be utilised. It recognises the re-development of the quarry, but importantly addresses issues relating to the western open space. It identifies that the greatest residential capacity is provided within walkable distance within, of and to the Town Centre.

[50] The character context also deals with the issue of both the Town Centre and Big King and how these areas can be integrated. It does not envisage a specific plan change to achieve these results, but rather sees future planning being developed as part of the PAUP process and as part of the longer-term planning for the Site.

[51] The Three Kings Plan appears to address the majority of items envisaged for a structure plan and forms a reasonable basis for the consideration of future development of the area. There is no other document that has been suggested as substituting for the Three Kings Plan and in the absence of such a document PC372 would appear to be non-



compliant with the requirement of the RPS for a structure plan. The Three Kings Plan, in broad terms, can assist in evaluating whether the plan change gives effect to the RPS itself.

[52] In the end result, the objectives of the Three Kings Plan reflect the same issues identified by the witnesses before this Court. Key among those was the need to emphasise the Town Centre and the connections (both visual and physical) between any development within the quarry, the maunga and the Town Centre. In particular, the connection between the Town Centre, the Three Kings Reserve and any other significant regional features identified within the quarry area will need to be protected and amenity and open space generally enhanced within this area.

### Section 32 RMA

[53] The third *Appealing Wanaka* evaluation which we undertake is that under s 32, which relevantly provides:

- 32 Requirements for preparing and publishing evaluation reports
- (1) An evaluation report required under this Act must –
- (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
  - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by –
    - (i) identifying other reasonably practicable options for achieving the objectives; and
    - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
    - (iii) summarising the reasons for deciding on the provisions; and
  - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
- (2) An assessment under subsection (1)(b)(ii) must –
- (a) identify and assess the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for –
    - (i) economic growth that are anticipated to be provided or reduced; and
    - (ii) employment that are anticipated to be provided or reduced; and
  - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
  - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.



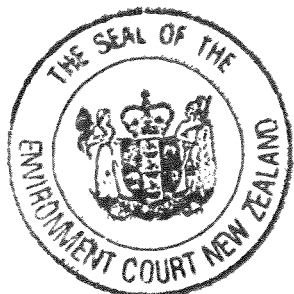
...

[54] The evaluation to be undertaken by us in terms of s 32(1)(a) is an examination of the extent to which the objectives of PC372 are the most appropriate way to achieve the purpose of the RMA. In addition to relying on existing relevant zone objectives and policies, PC372 introduces three relevant objectives, being:

- Objective 1  
To enable higher density residential development which integrates with the Town Centre, surrounding open spaces and community facilities and which supports the vitality of the adjoining town centre.
- Objective 2  
To ensure that redevelopment within the concept plan respects the volcanic landscape of Te Tatua-a-Riukiuta, the cultural heritage of the area and the history of the quarry land.
- Objective 3  
To enable the infrastructure and site works that are necessary to support development within the Concept Plan and to ensure that such infrastructure is effective, robust, sustainable in the long-term and each sound environmental practice.

[55] We understood there to be general acceptance that the objectives above were consistent with the requirements of s 32(1)(a). The only matter which appeared to remain at issue in that regard was use of the word *...respects...* in Objective 2. We consider that Objective 2 should use the words *...recognises and provides for...* consistent with s 6 RMA. Subject to that amendment we concur with the common position that the Objectives are consistent with s 32(1)(a) and are the most appropriate way for PC372 to achieve the purpose of the RMA.

[56] That finding leads to an examination of whether or not the provisions in the proposal are the most appropriate way to achieve the Objectives having regard to the matters set out in s 32(1)(b)(i)-(iii). That examination in



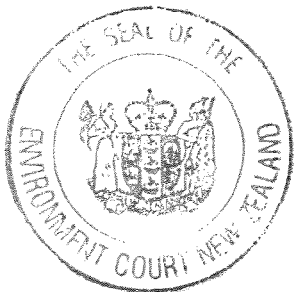
turn brings us to consider the following specific aspects of PC372 which we have previously identified, namely:

- Fill contours;
- Volcanic features and issues;
- Building heights on Site;
- Built form;
- Superlot G;
- Open space issues;
- Earthworks and site preparation;
- Minimum dwelling unit sizes.

***Fill contours***

[57] It became apparent to the Court on reading the material provided for our hearing that the single most significant decision to be made concerning PC372 was the extent of filling that was to take place in the quarry. This decision would drive configuration of development on the Site, how that development would be integrated with the surrounding environment (particularly the Town Centre), how the development would interact with and affect the maunga, how and where services would be established and the layout of open space/sports fields and their integration with residential development, the maunga, other sports fields and the Town Centre.

[58] The issue of fill levels in the quarry has been a live issue at least since the issue of [2011] NZEnvC 214, which had imposed a condition negotiated by the parties (Condition 77). This established a consultation process for preparation of a proposed final contour plan, which was to form part of any plan change or resource consent application for development in the quarry at the cessation of clean fill operations. [2011] NZEnvC 214 had set a maximum contour level above which the site could not be filled (Condition 56). This saw fill levels on the east and north close to road level, sloping to existing levels at Western Park and the Southern Reserve. This



was an interim level only, with final levels to be resolved through the process established by Condition 77.

[59] In May 2014 Fletchers wrote to the Council regarding consultation under Condition 77 and attached to that letter (Exhibit Q) a final Contour Plan showing the ground contours descending from RL64 in the north eastern corner of the quarry to RL59 at the lowest point of the proposed sports fields in the southern sector of the Site. The Contour Plan showed a bench at RL60 near the interface between the Site and the Town Centre at RL77, a difference in elevation of 17m. The RL60 bench continued along the eastern side of the quarry area so that there was a similar difference between the bench and Mount Eden Road at RL75-78.

[60] What is surprising is that there is no evidence Fletchers consulted with the parties identified in Condition 77 in the manner required. Condition 77 provides:

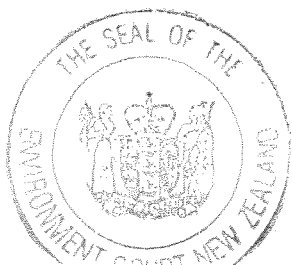
**Finished Contour Plan and Landscaping**

77. Not less than 24 months prior to the cessation of fill operations, or not less than 6 months prior to the consent holder submitting any Plan Change or resource consent application in respect of the end use of the site, or not less than 1 month following the notification of any Council plan change applying to the site (whichever of those is the earlier), the consent holder shall consult with relevant stakeholders (including South Epsom Planning Group, Three Kings United Group, Auckland Council, iwi and the Auckland Volcanic Cones Society) in respect of a proposed Final Contour Plan.

The consultation shall involve consideration of the following:

- The desirability of an integrated final landform, and a more usable and efficient open space network surrounding the site.
- How the landform might best relate to the surrounding topography, in particular Big King Reserve, Hunters Quarry, and the Council Sites.
- Whether the contour should rise toward Big King Reserve on the northern part of the site, and if so how this rising contour is to be provided.

The Final Contour Plan produced by the consent holder, after having had regard to the feedback obtained through the stakeholder consultation, shall be submitted to the Manager and shall form part of any Plan Change or resource consent application sought by the consent holder in respect of the site, or in the event of a Council Plan Change shall be promoted by the consent holder through the submission process.





For the avoidance of doubt, once a final fill contour plan is approved for the site (either through a plan change process or further resource consent), then the identification of the upper 5m of fill (and the obligations and restrictions imposed by this consent in respect of that upper 5m) shall be by reference to that approved final fill contour plan.

Within 3 months of the completion of the fill works a qualified surveyor shall certify that the finished contour levels match those set out in the finished contour plan and the site is to remain vacant with no further building or earthworks to be conducted on the site in the following 3 month period (following the completion of fill), then the site shall be hydroseeded or otherwise sown with appropriate ground cover to the satisfaction of the Manager.

[61] Several of the stakeholders to be consulted, particularly the Appellants, gave evidence they were not consulted within the timeframes set out. We conclude that consultation did not occur as envisaged in Condition 77, and that Fletchers failed to adequately address:

- An integrated landform;
- Relationship to the Council reserve sites;
- Whether the contour should rise to Big King in the north, and if so how.

[62] The final Contour Plan was really an afterthought to the Master Plan produced at the hearing on our directions. The only document showing overall site contours was a Master Plan with several spot ground levels shown on it. We were not shown any stakeholder feedback or how that was incorporated into a Contour Plan. We reluctantly conclude this condition was ignored in preparing the plan change with an expectation that Condition 77 would be supplanted by PC372.

[63] The spot ground levels were the basis on which PC372 together with its Concept and Master Plans were advanced to the Council. At the commencement of its case, Fletchers provided to the Court a version of Master Plan 19H1 showing proposed contour levels based on these fill levels.



***The evidence on fill levels under PC372***

[64] The reasons for choosing RL60 were described in these terms by Fletchers' witness, Mr KJ de Keijzer (an urban designer who had been involved in the design of the development since 2013):<sup>9</sup>

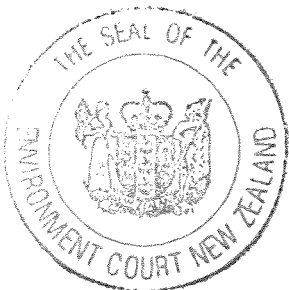
I consider a final fill level to approximately RL60 as the optimum level. This would create a generally 15-17m height differential between the finished valley floor and surrounding streets. The benefits for this level differential are:

- Creation of an exciting hillside community adjacent to the Three Kings Town Centre;
- The creation of a diverse network of open spaces, each with a different quality allowing different users and activities to occur;
- Along with the innovative cascading apartment typology described later in this evidence, most of the proposed density could be contained against the quarry slope whilst minimising the height of buildings above surrounding streets;
- Achieve desired development targets whilst still providing appropriate open space and diverse built form;
- The cascading apartments, which would contain the majority of the density, allow other, less intensive forms of housing typologies to be introduced in other precincts, maintaining appropriate housing diversity. A general reduction in height deferring to the maunga is applied across the site;
- Exposed scoria slopes allow stormwater drainage and connection into the aquifer; and
- Introduce new sightlines to the maunga by keeping built form in the Riu precinct low and fine grained.

[65] Mr de Keijzer's views in that regard were confirmed by a number of witnesses for Fletchers.

[66] Mr RKH Mah was the project's urban designer and architect and like Mr de Keijzer had been involved in it since 2013. He concurred with Mr de Keijzer's evidence as to the ability to contain the bulk of the cascading apartment buildings against the existing quarry slope. He considered that the plaza, public lift, stair and ramp system proposed to connect the development with the Town Centre, as well as a public lift and stairs to

<sup>9</sup>, Mr de Keijzer, evidence-in-chief, paragraph [10.5].



connect the eastern boundary of the quarry to Mount Eden Road, provided universal access to these areas.

[67] Mr AJ Ray provided urban design peer review evidence of Fletchers' urban design witnesses.<sup>10</sup> Mr Ray was the only one of Fletchers' urban design witnesses who addressed the 17m height difference between the Site and the adjacent areas in any detail in their primary evidence. He acknowledged the challenges which this brought with respect to connectivity but considered that these challenges had been resolved by Fletchers' design and were compensated for by the benefit of increased density available through the proposed topography. In his rebuttal evidence, he appeared to acknowledge inadequacies in the design for connectivity with the Town Centre but contended that any shortcomings in this regard were due to the owners of that land allegedly not engaging with Fletchers on this topic.

[68] Fletchers' primary landscape witness (Mr JA Lord) addressed issues of connectivity in both his primary and rebuttal evidence. He expressed the view that the proposed 17 metre vertical difference between the Town Centre and the southern end of the Site presented an opportunity to enhance views to the maunga which would not have been available if the quarry had been filled to a higher level.

[69] Ms RV de Lambert provided peer review evidence of landscape and open space design issues pertaining to PC372. She concurred with the evidence of the other witnesses for Fletchers on these topics.

[70] The Council provided evidence on the issue of connectivity /integration from two witnesses, Mr LA Jew, (Principal Landscape Architect

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<sup>10</sup> Something which the Court neither encourages nor regards as necessary. We deal with that evidence here only because of the detailed discussion by Mr Ray on the issue of height difference.



for the Council) and Mr M D Reeve (an independent specialist urban designer).

[71] Mr Jew acknowledged the particular importance of the finished level of the quarry floor in terms of integration of the proposed development with the Town Centre, the maunga, surrounding residential development and reserves. He acknowledged that connections could potentially be better if the quarry floor was elevated. Notwithstanding that acknowledgement, he considered that an elevation difference of about 15m between the development and Town Centre enabled establishment of a pedestrian friendly connection between the areas and that overall the proposed connections would adequately integrate the development into the surrounding environment.

[72] Mr Reeve supported the proposed fill level which he acknowledged would result in a ground level approximately 15 to 17m below the surrounding lands. He considered that although filling the quarry to a higher level would allow for a more direct connection with the wider environment, there were significant urban design benefits in the lower level proposed by Fletchers, namely:

- Allowing views over the development to the maunga from the public realm and the cascading apartments;
- Increased density through the use of cascading apartments with less visual impact on surrounding properties;
- Reduced timeframes for filling and constructing the development which would allow housing to be delivered more quickly.

[73] Mr Reeve was of the view that the proposed ramp, staircase and lift proposal advanced by Fletchers would adequately integrate the development with the Town Centre.



[74] The Minister for the Environment provided evidence on these issues from Mr GR McIndoe (an architect and urban designer). Mr McIndoe supported Fletchers' proposals. He acknowledged that the height differential would impact on ease of connectivity but considered that to be minor in this case and consistent with the kind of level change accommodated in other parts of Auckland and elsewhere in New Zealand. He was of the view that Fletchers' access proposals by way of lift and pedestrian connections provided adequate connectivity.

[75] The Appellants' expert witnesses on this issue were Mr RLC Reid (a landscape architect and urban designer) and Ms EJ McCredie (an architect and urban designer).

[76] Much of Mr Reid's evidence (together with supporting plans and illustrations) revolved around the presentation of an alternative plan for development of the quarry (the RRA Plan) that Mr Reid had prepared at the request of the Puketepapa Local Board. The RRA Plan produced a housing yield of up to 1250 dwelling units on the quarry, with considerably different proposals for layout, reserve/open space and dwelling development than those proposed by PC372.

### ***The RRA Plan***

[77] Regrettably, much of the evidence which we heard and cross-examination which took place in these proceedings related to the comparative merits of the proposal enabled by PC372 and that shown in the RRA Plan. Although s 32 requires consideration of options, we consider it is implicit in that requirement that the options being considered have a degree of practicality and reality about them so as to enable a reasonable comparison to be made.

[78] The RRA Plan had been prepared without any assessment of the costs of undertaking the development which it showed, nor its financial



viability. No traffic impact assessment had been done. There had been no consultation as to the practicality of the RRA Plan with Fletchers as the land owning entity, nor with the owners of the Town Centre, nor with the Housing Corporation, nor with the Council, all of whom own adjoining land. There had been no consultation with iwi or the Council's Parks Department. All of these parties have a direct interest in the form of development which might take place on the Site. No evidence was presented as to ability to provide infrastructure to service the RRA Plan which is a significant issue particularly insofar as drainage is concerned. In our view these shortcomings disqualify the RRA Plan from serious consideration as a reasonably practicable option for development of the Site and the extent of evidence and time given over to discussion of that plan was a diversion from what should have been the primary focus of the hearing.<sup>11</sup> We accept that there will be alternative development possibilities to those proposed by Fletchers on this 21.6 ha Site but we did not need the RRA Plan to convince us of that.

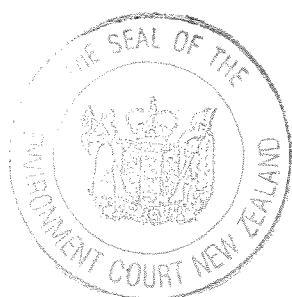
### ***Integration of fill levels with Town Centre***

[79] Notwithstanding those comments, Mr Reid's evidence was particularly helpful to the Court in a number of respects. Of all the witnesses in these proceedings he gave the most detailed analysis of contour levels on the Site and surrounding lands and the likely outcomes of filling in a series of potential contour scenarios. This assisted the Court in addressing the fundamental issue in these proceedings, namely whether development of the Site ought to proceed on the basis of the fill contours initially proposed by Fletchers or some other levels.

[80] Mr Reid's view was that the depth of the proposed development below the surrounding environment was a fundamental problem with PC372. He was critical of the outcomes to which this led in terms of connectivity of the development with surrounding lands, including

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<sup>11</sup> We recognise that the RRA Plan was prepared for different purposes than it appeared to be advanced for in this hearing.

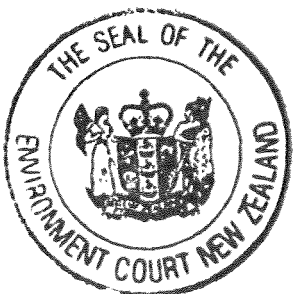


integration of the reserves and open space areas. He contended that there had been insufficient consideration given by Fletchers to analysis of alternatives involving a lift in the fill contour.

[81] Ms McCredie's views were consistent with those of Mr Reid. She identified the shape and level of the Site as one of the key issues for this development. Ms McCredie pointed to the problems created by the difference in levels between the Site and adjoining reserves and other land. She considered that the difference in levels was too great for integration of the development with the surrounding area and that consequently it was a poor fit with the neighbourhood.

[82] Ms McCredie pointed to the difficulty in obtaining walking access to the Town Centre from the quarry floor because of the difference in levels and did not consider that these difficulties were overcome by the proposals for ramps, stairs and lifts advanced by Fletchers. Ms McCredie was aware of a number of the examples advanced by other witnesses as to the use of these techniques but made a point which none of the other witnesses had identified, namely that the only walking access from the quarry floor to the Town Centre was a long circuitous walk or the ramps, stairs and lifts which are proposed. Although these may be adequate if there are other means of walking access (as there are in a number of other examples promoted) Ms McCredie considered they were inadequate as the only means of foot access. She was of the opinion that connectivity/integration would be improved if the level difference was reduced from 17m (the equivalent of a 6-storey building) to 6-9m (the equivalent of a 3-storey building).

[83] Ms McCredie criticised the reliance PC372 (and some of Fletchers' witnesses) placed on assessment criteria to be employed at the time of any building consent to achieve a positive interface between the Site and its surrounding environment. What we took from Ms McCredie's evidence was the importance of setting the key structural elements of PC372 in place,



including fill levels, the provision of connections, street layout and open space.

[84] We found Ms McCredie's evidence well aligned with the provisions of the RPS, the Three Kings Plan and Condition 77 of [2011] NZEnvC 214. In particular, the integration of landform, relationship with the Council reserves and revitalisation of the Town Centre are all challenged by the 17m rise from the quarry floor. Levels closer to RL72 mean better integration with the Western Reserve and an easier rise to the Town Centre. RL 68 would mean a rise to Western Park (4m) and another 5m to the Town Centre in this regard. Ms McCredie stressed the need for key deliverables to be secured through rules rather than assessment criteria and identified the importance of fixing the fill level as a structural feature in planning development of the Site. Other witnesses acknowledged that there would be better integration with more fill although Fletchers' and the Minister's witnesses considered the 17m difference acceptable.

[85] In addition to the expert witnesses we received evidence for the Appellants from Ms K Collins (a local resident with three children aged 7 years and under) who summed up the practical challenges in negotiation of the grade differences. She was critical of the reliance on a lift (which will have a capacity limitation) being impracticable for groups of children/sports teams, and the impracticalities of taking a pushchair and small children on foot on the alternative footpath route via the road network. with its length as well as the need to contend with the slope.

[86] We consider that there is considerable merit to the observations of Mr Reid, Ms McCredie and Ms Collins. It is unfortunate that Fletchers' witnesses appeared to give only limited consideration to the benefits of lifting fill levels in terms of connectivity and integration of the Site with the surrounding environment. Such consideration as was given appeared to be largely confined to a comparison between RL60 and filling to the level of Mount Eden Road (which some of the witnesses apparently understood to





be the Appellants' desired outcome) rather than to some other level which might improve integration.

[87] We found this failure somewhat surprising in light of Objective 1 of PC372 which highlights the need for integration in these terms:

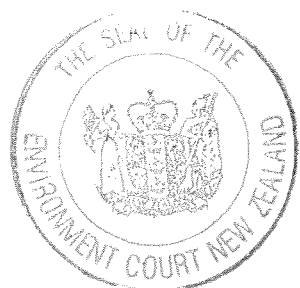
To enable higher density residential development which integrates with the Town Centre, surrounding open spaces and community facilities and which supports the vitality of the adjoining town centre.

[88] It was apparent to us from the evidence which we heard that Fletchers' initial proposals for contour levels were driven by a desire to maximise the number of dwelling units on the Site and minimise the time until filling was completed. We consider that this has been achieved at the cost of integration, which is also part of Objective 1. We observe that Objective 1 is entirely consistent with Moves (a), (b) and (d) of the Three Kings Plan, which seek enhancement of the open space network, revitalisation of the Town Centre and improved connections between people and places.

#### ***Conclusion as to fill levels***

[89] We conclude that connectivity plays a key part in the ultimate quality and function of the open spaces proposed by PC372. The relative levels of the various open spaces are inextricably linked to the connections between the new sports fields, Grahame Breed Drive, the Three Kings Reserve, Western Park and the maunga. These connections are also fundamental to integration of residential development on the Site with the Town Centre.

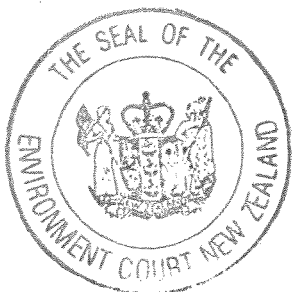
[90] To the extent necessary, we state that we accept the views of Mr Reid and Ms McCredie that the fill levels initially proposed by Fletchers for PC372 do not lead to appropriate integration of the development with the Town Centre or surrounding open spaces, and do not accord with Objective 1 of PC372. We say *to the extent necessary* because it appears to us that, by the end of the hearing, Fletchers had reached a similar conclusion. In



his closing submissions, Mr Loutit presented an amended Contour Plan (Diagram FO8-85(b)) with finished ground heights for two development scenarios, which, he advised, represent a 4m lift from Fletchers' original proposal, with consequential amendments to the proposed Zone rules.

[91] Although this proposal goes some way to address the shortcomings identified, we are presently uncertain if it is adequate to enable integration of the Site in accordance with Objective 1. In light of the evidence of Mr Reid and Ms McCredie, we consider that the minimum contour level at the interface of the lower Site and bank rising to the Town Centre ought to be RL68, being within 9m of the height of the Town Centre. Diagram F08-85(b) shows the sports grounds in both scenarios at RL63, with what we understand to be a landscape terrace at RL65-67 at the southern end of the Site.

[92] We accept that Fletchers' proposal potentially enables resolution of the integration issue, but we require considerably more detail as to how that is to be achieved in practice and incorporated into the structure of PC372. We require the contour level (RL68) we have identified at the interface of the lower Site and the bank rising to the Town Centre to be *locked in* and the Concept Plan and Rules of PC372 to adequately achieve that requirement. Diagram F08-85(b) does not provide sufficient detail to satisfy us as to the adequacy of integration/connectivity nor are we satisfied that the plus or minus 1m provision proposed in Development Control Rule F3(a)(i) is appropriate. These proposals were part of a suite of amendments advanced by Fletchers in its closing submissions which other parties have not had the opportunity to consider and where it is clearly appropriate that they do so. We will provide an opportunity for that to happen. We appreciate that the requirement for a lift in ground levels might lead to a substantially different approach to the form and layout of development on the Site. Obviously that is a matter for Fletchers and its advisors.



## Volcanic Features

[93] Auckland is unique in being the only major city in the world situated on an active volcanic field. Almost all of the Isthmus area within the District Plan is covered by volcanic features and materials of some kind. Most notable are the volcanoes, with those remaining identified.

[94] The RPS contains extensive provisions relating to volcanic features. The Court discussed these in some detail in *Tramlease v Auckland Council*.<sup>12</sup> At paragraphs [23] to [37] of that decision the following principles can be gathered:

- (i) that the Regional Policy Statement as it relates to volcanic features has provisions which force mandatory requirements and the combination of the wording of those provisions in 6.4.19 and section 75C of the RMA;
- (ii) that provision 5 requires that urban intensification and high density centres in corridors identified in Schedule 1 shall be undertaken consistent with Policy 6.4.19.1-4. This makes it clear that, even in high density centres, the provisions of the Policy Statement in relation to volcanic features takes priority. There is no doubt in other areas where high density is being considered this would be further reinforced;
- (iii) that regionally significant volcanic features are demonstrated on Map series 2a, which identifies Big King Reserve adjacent to the Fletcher site as a regionally significant volcanic feature;
- (iv) that 6.4.19.1 identifies that there can be other volcanic features of local, regional, national or international significance which should be managed in an integrated manner to protect their multiple values including social, cultural, historical, geological, archaeological, scientific, ecological, amenity, open space and landscape values and to maintain the range and diversity of volcanic features within the context of the wider Auckland and Franklin volcanic fields.

[95] Accordingly, while all volcanoes on Map series 2a are regionally significant volcanic features, we conclude that use of the phrase *volcanic features* can also include a wider range of other volcanic features not identified on Map series 2a, depending on their relative significance. We also conclude (and there was no dispute between the parties) that Big King/the maunga which bounds the Site is an outstanding natural feature identified in Map series 2a.

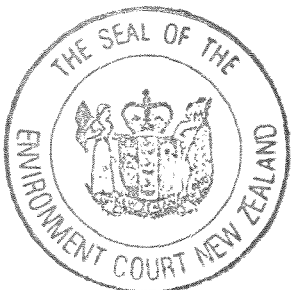


<sup>12</sup> [2015] NZRMA 343

[96] It appeared to be recognised and agreed by the expert witnesses that the question for the Court in relation to volcanic features which are not in Map series 2a is their relative significance in order to fit within the provisions of 6.4.19.1. We accept that, although all of the isthmus area is on a volcanic field and that that field is of significance overall, this does not mean that every element within it is of significance. It was not the position of any party that the significance of the volcanic field prevented urban intensification.

[97] It was explicitly agreed by all parties in this case that the Site is appropriate for significant residential intensification even though it is next to the maunga and is situated in and around other parts of the Three Kings volcanic feature and within the tuff ring of that feature. Notwithstanding that agreement, there are a number of questions/issues relating to volcanic features which impact on the development which might appropriately be enabled by PC372 and the form which such development might take. These are:

- Are there other significant volcanic features?;
- The centre cone;
- Other remnant elements;
- Are these other elements volcanic features?;
- Significance of other volcanic features;
- The north-west basalt;
- The remnants at Fyvie and Barrister bluffs;
- The Grahame Breed Drive exposure;
- Sightlines, landscape and volcanic features;
- View contour to Big King.



***Are there other significant volcanic features?***

[98] The RPS identifies that there may be additional volcanic features. The clearest discussion of this is in the reasons for the volcanic features and view shafts – 6.4.21. On page 25 it identifies:

The volcanic features have a range of values that are identified in Issues 6.2.5 and 6.2.6. Further information on the value of many of these features is also contained in Appendix B of this RPS. Objective 6.3.7 and the policies in 6.4.19. afford a high level of protection to the Regionally Significant Volcanic Features and in particular the volcanic cones, in recognition of their international, national and regional significance and their strong association with the character and identity of the Auckland region. The Regionally Significant Volcanic Features are also finite resources that cannot be created elsewhere. Once lost or significantly modified, they cannot be restored or re-created. Hence, the focus of the policy is on the protection of values and avoidance of adverse effects of activities, such as building, structures and earthworks or land disturbance, that are physically or visually intrusive.

**Smaller scale volcanic features such as lava caves and exposures are important for their geologic and scientific values, and sometimes for their historical and recreational values. Retaining the existing range and diversity of the features is important as part of the overall volcanic heritage of the Auckland Region.**

(emphasis added)

[99] And later:

An integrated approach to the management of the region's volcanic features is required to ensure that their values are identified and protected and their relationship with the surrounding area is maintained.

[100] The RPS intends to enable features other than those identified on the maps to be managed, maintained and enhanced as to their values. For example, Policy 6.4.19.2 provides in part:

The physical and visual integrity in values of regionally significant volcanic features shall be protected by:

...

(iii) ensuring activities on land surrounding or adjacent to the Regionally Significant Volcanic Features shown in Map series 2a, or those parts of the volcanic feature described in Appendix B, but not shown in map series 2a are managed so that significant adverse effects on the values of the features are avoided, remedied or mitigated, and where practicable the values are enhanced.

[101] Policy 6.4.19.3 further provides:

Subdivision, use and development shall be managed to ensure that the overall contribution of the volcanic cones identified in Map series 2a as outstanding



natural features to the landscape character of Auckland is maintained, and where practicable enhanced, including physical and visual connections to and views between the volcanic cones.

[102] Turning to Appendix B of the RPS, items 118 to 131 include the volcanic landforms of the Auckland area, and Three Kings is noted as one of these dating from the period 20,000-50,000 B.C, with the following statement:

Many of the features identified as contributing to the regional significance of Auckland's volcanic landforms have been damaged by infill, drainage, quarrying or other development. However, the remnants may retain high significant value as partial or exposed records of geological activities. In these cases protection is sought for those remaining values which are not within operative quarry zones or where quarrying is an existing or approved use.

[103] And at item 120:

Now almost completely quarried away, the Three Kings area provided a miniature, but complete collection, of volcanic structures – scoria cones, tuff cones and craters; explosion pits, horseshoe rings and breached craters; dykes and flows, tuff, scoria and lapilli beds. There is also an extensive 200 m cave system, with individual chambers up to 10m wide. The primary heritage feature of value is the remaining cone which is a reserve, and the quarried face of the tuff ring.

### ***The centre cone***

[104] It is clear from these descriptions that it is not just the remaining cone (Big King) that is of interest in our considerations but also the various volcanic formations within and including the tuff ring. To that end, there is an exposure of tuff ring to the north-east of this site which is not marked as part of Map series 2a, but would clearly be within the description of features.

[105] Although the District Plan does not advance matters significantly further, it nevertheless reinforces the requirements of the RPS identifying Big King as an outstanding natural feature and protecting views to and from it. Further, it includes on the planning maps an identification of archaeological and geological features. A reference to the descriptions therein indicates this includes the geological feature of the maunga together



with cultural alterations, pa and the like. This feature is marked along the common boundary with the quarry on the north-western side.

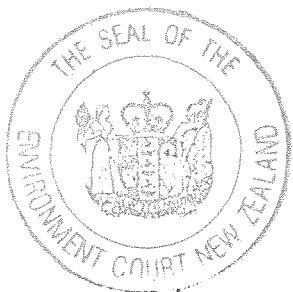
[106] It is also clear from our inspection and from the evidence given by the relevant witnesses, that quarrying has exposed the side of the cone and revealed the scoria therein. In the north-western corner the quarrying has also exposed an emergent basalt cone. Other evidence produced for Fletchers established that this was known as the Centre Cone, one of the Kings. The emergent cone appears to have been an up-thrust of basalt that did not result in eruption and therefore sat underneath the scoria cone, which has subsequently been quarried away.

[107] There did not seem to be serious arguments from the experts that this constituted a remnant of a cone and may retain high scientific value as a partially exposed record of geological activity. It was not previously protected because it is in the Business 7 Zone where quarrying is permitted. Given that we are now examining imposition of a Residential Zone, its protection is mandated by the RPS if it is of significance.

***Other remnant elements***

[108] Witnesses discussed three other volcanic features on the Site which are exposures or remnants made visible by the quarrying activity and marking the limits of quarry activity in each case.

[109] The first is the Fyvie exposure. This exposure is in the corner between the quarry and Western Park. The common description by the geologists and other experts was that this was part of a former cone. We assume that the only reason it was not quarried away is because it was not on land zoned for quarrying. Western Park itself had formerly been quarried and the bowl-like residual area is what remains after the quarrying has been completed. To the south of Fyvie Avenue is the Barrister Avenue exposure which we were told constituted the other side, or part of, the cone



features. Witnesses were unable to identify if it was the same feature, although one witness did suggest this. Others suggested that the Fyvie and Barrister exposures may have been separate cone features, but nevertheless both are remnants of the boundary of quarrying. In the case of the Barrister exposure, this may have represented a limit for development for quarrying because of the hardness of the rock.

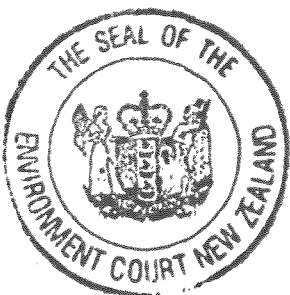
[110] The final exposure is one that is on the boundary of Fletchers' land and into the quarried area operated formerly by predecessors to the Council, which had been a quarry reserve and later an open space general reserve. The witnesses agreed that this was a lava lake feature perched on the edge of a scoria cone, possibly the same feature that includes Barrister Avenue and perhaps even Fyvie Avenue. It is more likely that it is lapping on one of the several cones that existed in this area. It was common ground that this was a rare feature in the Auckland volcanic field and Dr J Lindsay (the Appellants' expert witness on volcanology) was of the view that it held both geological and general scientific interest.

***Are these elements volcanic features?***

[111] There is no doubt at all that all of these elements:

- Are volcanic features;
- Represent remnants of quarrying activity;
- Are parts of former cones or volcanic eruptions within this tuff ring.

[112] We did not understand any witness to essentially dispute this. Quite clearly, the quarry has been established in this position because of the scoria cones that were situated there and the basaltic rock on the site; some of which appears to have been quarried, and some which may have been too hard to mine or was on the boundaries of the property.





[113] There was some suggestion that, as these elements had previously been underground they should not be regarded as volcanic features because they had been created by quarrying. We cannot understand or agree with that position. Over the last 100 years the quarrying activity has substantially changed the landscape and nature of this environment. There appears to have been significant quarrying below pre-European ground levels – both by Fletchers and its predecessor, and also by the various Councils that have had access to the area. We note that the area to the north was formerly Hunter’s quarry.

[114] All of this has changed the topography and the landscape of the area but left some significant exposures as a result. One example is the cut face on the western side of the Fletcher property towards Big King. Another is the northern face on the boundary of Hunter’s quarry and now the Kennards building. There are also scoriatic cuts along Mt Eden Road.

[115] We agree that not all of these are significant, but nevertheless they represent a significant change to the topography and, in themselves, indelibly create new features and landforms through the works that have occurred. We do not consider that we can assess these features on some primordial basis prior to the intervention of nature or man. All of the volcanoes in Auckland have been modified to some extent, but that does not mean they do not have significance. Similarly, the features in this area have been exposed and altered through the quarrying activity that has occurred. The question is not whether they are only created or exposed through the mining activity, but whether they have significance.

### ***Significance of other volcanic features***

[116] Policy 6.4.20.4 of the RPS provides:

Territorial authorities shall identify and appropriately protect locally significant volcanic features (including, where appropriate, areas referred to in Policy 6.4.19.2(iii) or identified through Methods 6.4.20.3A)...



[117] One method by which a local authority could do so is during a plan change. Given that none of these features were identified in PC372 the question arises as to whether they should be so identified and protected. At the current time the District Plan only identifies Big King Reserve, Duke Street, Mt Eden Road, Fyvie Avenue, Delhi Terrace, Connelly Avenue, Hill Pa and associated Māori habitation sites and scoria cone. It does not identify the wider features or area. In respect of this Site, the reasoning for that could have been that it was an active quarry zone. As it changes its use, therefore, the obligation to consider identification and protection arises again.

[118] In this regard, Mr Jew (giving evidence as a landscape architect for the Council) agreed with Mr Reid and Dr Lindsay that there are volcanic elements related to the Three Kings volcanic feature within the Site. These included Barrister Avenue bluff in the south-western corner, the Fyvie Avenue bluff on the western boundary and the bluff adjacent to Grahame Breed Drive in the south-eastern corner. Mr Jew did not go on to discuss the significance of these features, however he did say that the zoning plan had been modified to allow a greater distance or clarity between the eastern face of the maunga and any proposed built form. He also said that these modifications have the potential to allow for the construction of a public road between these elements, enhancing the visibility of the quarry walls and creating a clearer demarcation between the public and private realm.

[119] By the end of the hearing the Applicant appeared to have accepted that the Fyvie and Barrister Avenue exposures were of significance so as to warrant retention as open space and not having any structures against them. It was also acknowledged that the remnant basaltic cone in the north-western corner of the quarry (not mentioned by Mr Jew) was of significance and should be protected by an area of public land (Open Space 1 or 2) around it. This also gave greater separation between the quarried walls of The Big King Reserve and any housing. In respect of the Grahame



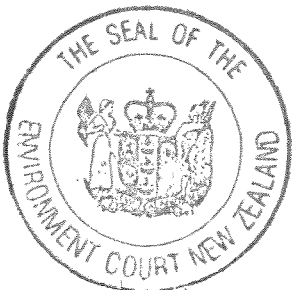
Breed Drive exposure, there was a view that part of this remnant could be retained, but allowing around half of the feature to be removed towards Grahame Breed Drive to allow the construction of the sports fields and apartments on Grahame Breed Drive.

[120] To that extent, Fletchers' modified position was that it would construct the proposed apartment from the corner of Grahame Breed Drive (we assume over or including the existing building operated by WaterCare for pumping) allowing a public area with an overview of the Site and towards the maunga, then allowing another building to the west, joining with proposed building A02 (being the plaza centre). This would require removal of around 30m of bluff but would enable the lava lake to still be exposed and a public area to be established on the flat area where the dog pound is currently situated. This would also have the effect of preserving the basaltic rock exposure on Grahame Breed Drive itself.

### ***The north-west basalt***

[121] There was little in the way of evidence as to the significance of the basaltic feature in the north-western corner of the quarry. Clearly the degree of its significance affects the measures of protection, maintenance or enhancement that are appropriate. No witness was prepared to say that the basaltic upthrust was necessarily an outstanding natural feature but several witnesses described the feature as significant, very significant or important. We are satisfied that this feature is of at least local and probably regional significance for the following reasons:

- It appears to be the centre cone prior to quarrying;
- It represents an unsuccessful volcanic upthrust showing the emergent basaltic feature underneath the scoria cone;
- It is proximate to the Big King Reserve and therefore enhances knowledge and importance of that volcanic feature;



- Its position in relation to the walls of the quarry enables the scoriatic formations that once covered this feature to be visible, and enhances understanding and context in the immediate surroundings.

[122] Accordingly, we have concluded that this feature must at least be protected, and preferably enhanced, to reinforce both the Big King feature behind it, the quarry walls (being remnant scoria cuts) and the relationship of the centre cone to the original volcanic features of the Three Kings.

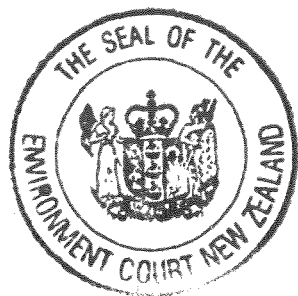
### ***The remnants at Fyvie and Barrister bluffs***

[123] These are on the boundaries of the Site and in our view have gained local significance through their position on both sides of the Western Park. The Fyvie bluff creates a connection point visually from the south towards Big King Reserve. From several positions both on Grahame Breed Drive and when viewed from certain positions in Fyvie and Smallfield Avenues, the connection between the Barrister bluff and Fyvie bluff and the maunga is visually maintained. There is a track near the exposure boundary with the quarry accessing Big King Reserve which appears as a pathway to Big King when viewed from the south.

[124] We have concluded that both exposures have some significance (local) as pointers to and markers for the Three Kings location and the Big King cone. Several witnesses described them as bookends that might be seen as the remaining sentinels of the Three Kings.

### ***The Grahame Breed Drive exposure***

[125] This lava lake feature is of geological interest and we accept Dr Lindsay's evidence that it is also of scientific interest given the emergent state of knowledge in respect of the Auckland volcanic field. Significant work on the volcanic field is currently being done in Auckland. Recent investigations have suggested that there are far more volcanoes in the field



than were originally thought and that this is still an active field. Not only does the lava lake on top of the scoria establish a chronology for the various events but we accept Dr Lindsay's evidence that it is both rare regionally and of some importance. It is clear that the feature has already been partially removed through quarrying and Fletchers intends that further quarrying occur to cut further into the feature back towards Grahame Breed Drive.

[126] The degree of protection and enhancement required turns on a more delicate assessment of the significance of this feature. Our initial reaction was to require its preservation given the strong wording of the RPS. However, we recognise that at least some portion of the feature is currently within the quarrying zone and accordingly could be removed as of right. However, this would not enable Fletchers to move the feature as far back as it now proposes. For these reasons a more subtle understanding of the relationship of open space to the various features and the sight lines obtained is needed in order to assess whether Fletchers' proposal might be acceptable. This is because it is now proposing that some land on top of the feature would be retained as public land, overlooking the remnant feature towards the quarry and Big King Reserve further away.

***Sight lines, landscape and volcanic features***

[127] This leads us neatly to a more contentious issue contained within the RPS relating to volcanic landscapes, landforms and sight lines. In the *Tram Lease*<sup>13</sup> case the Court discussed in some detail the application of view shafts which are explicitly contemplated within the RPS. In this case there are proposed to be several Site view shafts in PC372 to protect sight lines towards the maunga. These are in addition to those view shafts identified within the RPS itself.

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<sup>13</sup> *Tram Lease & Ors v Auckland Council* [2015] NZEnvC 133, [2015] NZRMA 343.



[128] There is a general height control in relation to the surrounds of Big King of 9m which Fletchers seeks to remove – at least in respect of the Western Park area which is covered by this control. Given Fletchers' acquiescence to removal of Superlot G from that area (subject to the Court's findings in that regard)<sup>14</sup> there is no particular reason that the Western Park (being Open Space 2) would require any change to the general height requirement. Due to the changing nature of Fletchers' case this was not clarified, however we assume for current purposes that no change to the height control or view shafts is sought if Superlot G is removed.

[129] Currently it is proposed that there be several view shafts towards the maunga across the Site, which were annexed in the two alternatives, 21F and 19K, attached as page 24 and 25 of the proposals produced at the close of the case. These view shafts consist of:

- One (coloured green) from the approximate depot position towards the 120 contour of Big King;
- One from the plaza area to several points towards the 120 contour of Big King;
- One from Grahame Breed Drive adjacent to the plaza to the 120 contour of Big King;
- Another from Kingsway Avenue extension;
- One from the commencement of Haul Road adjacent to the SHA turnoff.

[130] A new view shaft has now been added from Grahame Breed Drive in the approximate position of the residual public land now proposed on top of the lava lake feature. These view shafts give multiple coverage over areas for the most part already identified as open space.



<sup>14</sup> We will address that in a following section of this decision.

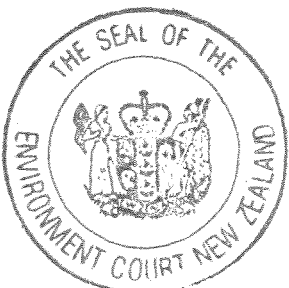
***View contour to Big King***

[131] The obvious issue that arises for the Court is why the RL120 contour has been chosen as the termination point for the view lines. The RL120 contour is the approximate position on which the reservoir feature is constructed, and is the very top of the remnant cone. There is a very strong shoulder at the RL100 contour which represents the more dominant Big King view. No evidence was given as to how the 120 contour was selected, and we suspect the 100 contour has not been chosen because it would have a significantly greater impact in terms of width of the shafts over the site.

[132] The choice of Big King termination point would make little difference to views from the depot, the plaza, or that adjacent to the plaza on Grahame Breed Drive. It is also unlikely to make any significant difference to the view from the lava lake position, depending on the position of the adjacent buildings. Nevertheless, the widening out of that view (rather than the lowering per se of it) may prevent the edges of adjacent buildings from being able to be constructed so close.

[133] However, there would seem to be a greater consequence for the view shaft from Kingsway. The proposed narrower shaft essentially seeks to avoid impacting on two buildings – A08 and A09. The site contours in this area are higher and the top of buildings likely to be close to the RL90 contour, with eight floors. The view shaft from a position 1.5m above the entry to Mount Eden Road is likely to be around RL81.5m. Taking in the wider boundaries of Big King to the RL100 contour it is likely to impact on the more northerly arm of the view shaft, although is unlikely to have any impact on the southerly arm.

[134] According to the diagrams provided by Fletchers, it is unlikely that any buildings would be impacted if the RL100 contour was adopted for the lava lake view shaft. In respect of the Haul Road/SHA viewpoint, it is likely



that the Kennards building would limit the views to the north in any event just short of the RL100 contour, and accordingly there would be no additional impact.

[135] Our view is that it is not unreasonable to try and ensure that there is a visual connection from each of those viewpoints to the RL100 contour of Big King. We acknowledge that this may need to be moved slightly to limit impacts, and accordingly the parties would need to consider whether the full context of Big King at the RL100 contour could be included.

[136] It is our present view that sight lines to the 100m contour of the maunga would have a more realistic prospect of enhancing the visual connectivity between the various viewpoints and the maunga, and are likely to have minimal impacts upon development. We note in particular that this is on the assumption that development within the quarry floor itself will be kept at a reasonable level of around RL80 on the western side, rising towards RL90 at A08 and A09, and then RL95 on Mt Eden Road. In that regard the buildings having the least impact upon view shafts towards the maunga, given the viewing points that would be available, will be those at A02 and A04, and A05 and A07, where further height might be available. This discussion leads us to consider the connection between built form and visual and amenity issues.

### **Building height within the Site**

[137] We consider that there should be no built form on the walls of the quarry to the north and west. We agree that there should be a public road separating open space from the built area.

[138] For reasons that will be discussed in due course it may be that an Open Space 1 zone would be most appropriate for the land which is to be vested in the Reserve Trustees. In relation to the western area there is no particular reason for any height control beyond that appropriate for Open



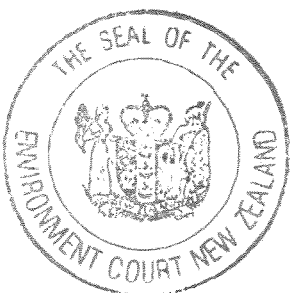


Space 2 (9m). Any facilities that might be constructed in this open space would easily be within this control and this would also be true for all of the open space for the formal fields in the centre area. Similarly, if any built structure at all is justified within the walkway around the periphery of the site or the proposed wetlands this would be well within the standard controls for open space.

### **Built form**

[139] Fletchers accept that the floor of the quarry needs to be subservient to the maunga and allow views to the maunga over any development in it from Mt Eden Road apartments. We recognise that visual connectivity between the maunga and the other areas can be maintained if built form is reduced towards the north-western corner of the Site but gradually increased as development moves to the east and south. The height control for the Town Centre commences at around 101.5 (and rises given the topography of the land towards Mt Albert Road). We can see sound reasons to signal the Town Centre by allowing rising building form towards the south and towards the centre of Grahame Breed Drive.

[140] Fletchers has made various changes in respect of height as these proceedings have advanced. As a general observation, these largely appear to be within scope.<sup>15</sup> However in the first instance, we would have considered that the central plaza area (A02, A04(a)) might carry built form one floor less than the Town Centre. This would mean that from views to the north there would be a signal of rising built form with the Town Centre building envelope still above it. We conclude this would strongly signal the presence of the Town Centre in that area. This would allow for potential height in the order of RL97.5m. We are flexible as to the final RL height, provided it is lower than the Town Centre.



<sup>15</sup> Ultimately this will be determined in light of Fletchers' final proposals having regard to this decision.

[141] We anticipate that building A01 would be significantly lower because it is on a shoulder moving towards Barrister Bluff which has a termination height of around RL83. We consider that a terminating height in respect of that building in the order of RL90 would be appropriate.

[142] In relation to buildings adjacent to the corner of Mt Eden Road and Grahame Breed Drive and the public area, we consider that there should be a strong signal that the Town Centre is accessible in that area and that buildings in the order of RL95 would be appropriate. We consider that this is also the case for A07 but we would expect A08 to be stepping down to be more in keeping with the height of the buildings in the SHA which appear to be terminating at around RL90. Something in the order of 92m or 93m appears to be appropriate for A08.

[143] Similarly the height of buildings A09 and A10 can reflect the rise up towards toward the SHA but nevertheless should be somewhat lower than those buildings, showing the rising form. We consider that something in the order of RL90 would be appropriate. We have no particular views on A11 which simply demarcates the boundary towards the industrial/commercial/residential area to the north. Accordingly, we would consider something in the order of RL95 to be appropriate.

[144] This leaves the lower lying land on the central quarry floor for consideration. We consider that a graduation from a low (in the order of RL80) adjacent to the north-western corner of the Site gradually rising towards the south-east to something in the order of 90m RL (for example A12), as being appropriate. This would have repercussions as to the number of storeys which might be constructed given the fill levels that the Court has identified, but nevertheless overall is likely to yield a similar intensity development to Fletchers' initial proposition and within the range (800-1200 dwelling units) indicated by Fletchers' witnesses.

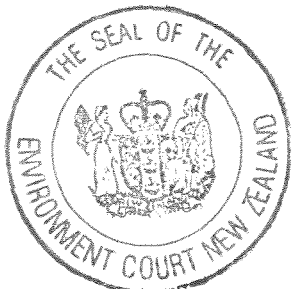


[145] As we have already discussed, given the clear constraints and requirements of the RPS and District Plan, the various controls discussed relating to six volcanic features of significance, sight lines and building heights together incorporate to create both a connectivity between the regional features and the surrounding areas, both in a physical and visual sense. These steps will strengthen the role of the remnant exposures in connecting the maunga with the volcanic field, of which it is part, within the tuff ring. These height controls will maintain and enhance those features while allowing the integration of high density development in and around it. Finally, we would expect the building alignment and roads to be aligned with key views to the maunga.

[146] In terms of actual rules to achieve these outcomes, we have already made clear the need for a finished fill level contour plan to be included in the PC372 Concept Plan. If height is measured from the ground levels established by the contour plan, it appears to us that the standard approach adopted in the District Plan for the Residential 8 zones of a maximum height and number of storeys may be appropriate. We understand this approach would bring together the concept for height limits to be adopted in the application of the Residential 8b Zone as it was originally conceived for the plan change. From the Court's perspective, while overall height should be clearly managed, the addition of a number of storeys has an impact on urban design matters concerning the character of building fronting a street or open space. This concept was clearly in the mind of several urban design witnesses, who tended to refer to buildings by the number of storeys they might accommodate.

### **Superlot G**

[147] Superlot G is a proposed allotment situated on the southern side of Western Park. We were not given its precise dimensions but it was clearly an allotment of some size because it was initially intended that a five story apartment complex (reduced to three during the hearing) would be erected on it. In his closing submissions Mr Loutit indicated that Fletchers was



prepared to abandon its proposal for Superlot G but sought a ruling from the Court in that regard.

[148] There are a number of factors which operate against approval of Superlot G:

- It would occupy actively used public open space which, as a matter of basic principle, we consider ought be retained and enhanced for open space purposes rather than given over for private development;
- We conclude that the proposition about enhancement of the quality of reserves, which might justify development of apartments on the unused Southern Reserve as part of a quid pro quo for development of the sports fields on quarry land, does not apply to the actively used Western Park;
- We conclude that establishment of Superlot G is inconsistent with both Urban Design Policy 2.6.8 of the RPS which seeks to ensure long term protection of public open space and Open Space and Recreation Activity Objective 9.3.1 of the District Plan which seeks the conservation of existing open space to the maximum reasonable extent;
- The diminution in size of Western Park which would result from establishment of Superlot G reduces its usefulness and flexibility for use as open space;
- We accept Ms McCredie's evidence as to potential privatisation effects on the remaining balance of Western Park which might come about if apartments are constructed on Superlot G;
- We accept Ms McCredie's evidence as to the disconnected nature of Superlot G which does not meet the Objective of integrating built elements with the Town Centre because it is not part of an integrated street system;

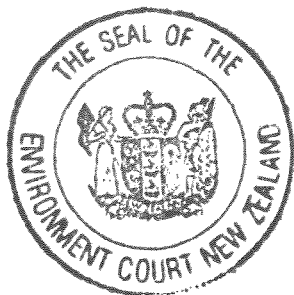


- A number of witnesses raised the potential adverse effect of a ring of apartments extending some 750m or so around the rim of the Site creating a wall effect. Removal of Superlot G (the western most extension of the wall) mitigates and reduces that potential effect.

[149] The primary argument advanced in favour of Superlot G was that it would provide surveillance by apartment residents over Western Park thereby enhancing the safety of its users. Although it seems self evident that safety in parks and other open spaces may be enhanced if those areas are overlooked by residential buildings, we have some difficulty with the implied proposition that the need for safety of itself justifies the construction of otherwise inappropriate residential buildings on public open space.

[150] The only evidence before the Court about the need for surveillance of Western Park for public safety reasons came from Mr BS Liggett. He is Development Planning Manager for the Housing Corporation which owns a number of properties in the streets surrounding and overlooking Western Park. Mr Liggett testified as to the Corporation receiving complaints from tenants about activities in the Park. These were primarily of people gathering in areas which he identified as being a platform on the maunga and at the foot of the slopes surrounding the playing field.

[151] The first of these areas would not be overlooked from Superlot G in any event. Western Park itself is already overlooked by a number of the Housing Corporation properties surrounding it. Mr Liggett advised that the Corporation has intensification plans in this area which would lead to construction of four and possibly five storey buildings overlooking the park. Additionally, Fletchers' proposals envisage an apartment building (A01) near the south eastern corner of Western Park and the Whare Manaaki may potentially be established near the park. Clearly there is likely to be a considerable intensification of residential buildings and numbers of people



in the vicinity of Western Park which will increase surveillance opportunities without the need for an apartment building on Superlot G.

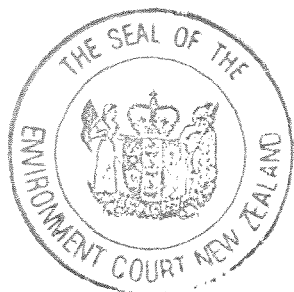
[152] When all of these factors are taken into account we determine that proposed Superlot G is not an appropriate way to achieve the objectives of PC372 because of the adverse factors we have identified in paragraph [147](above). We exclude it from the plan change.

### **Open Space**

[153] One of the matters which was primarily at issue in this proceedings was the adequacy of the reserve/open space proposals contained in PC372, and how those proposals contributed to integration of the Site with its surrounds. A key issue for the Court regarding the open space provisions of the plan change is whether there is enough open space. While it is accepted that there is a present need for more sports fields (irrespective of any demand created by PC372), it is necessary to identify the additional demand imposed by PC372 to calculate what a reasonable contribution to meet that demand is.

[154] It was Fletchers' position that in considering this issue it is necessary to take into account the quality of new open space being provided by it (two new full sized sports fields). We accept that resolution of this issue is not based entirely on the amount of open space, but on a combination of the qualities of the open space and the quantum of land set aside for open space. Put simply, there is a balance to be found between quality and quantum. We consider those issues under the following heads:

- Existing provision;
- Proposed provision;
- Is there enough space by reference to relevant instruments/guides;
- Quality of open space to be provided;



- Determination of what is adequate;
- Conclusions as to open space.

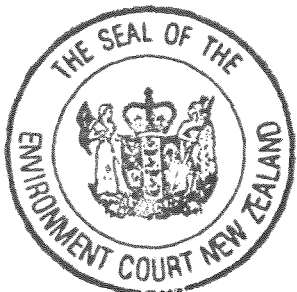
[155] While we examine these issues we have also considered the appropriate fit of the open space zone regime as PC372 adopts existing provisions of the District Plan.

***Existing provision***

[156] As we have noted the Site includes land under the control of the Council presently owned by both the Crown and the Council. The land is held in several titles with different descriptors but vested as Reserve under the Reserves Act 1977.

[157] The Western Park is currently zoned Business 7 which is a zone for quarry purposes. Quarrying ceased many years ago and (as also noted previously) the park contains a bare soccer field. The northern side of the park rises higher as it approaches Big King and there is a path at the eastern edge of the soccer field which connects via a staircase to a pedestrian path up to Big King. This path forms a *bridge*, as Mr Reid referred to it, connecting Big King via Western Park to the Southern Reserve and an existing driveway up to Grahame Breed Drive. This driveway is approximately on the alignment proposed in PC372 for Grahame Breed Drive Extension. This access through Southern Reserve is presently a formed vehicle driveway leading to a flat parking area next to the soccer field. It is closed off at the top so that only Council approved vehicles use it (as a service access to the reserve land). We were told it is not used for public access purposes other than for pedestrian access.

[158] There are two public pedestrian walkways leading from Fyvie Avenue (to the west) set between houses which lead to the Western Park. We understand that one of these walkways has been blocked off by a resident living in the house adjoining it. There are three similar public



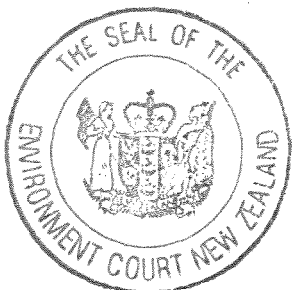
walkways into Western Park from Smallfield Avenue (to the south), one of which is of sufficient width to accommodate motor vehicle access. We observed this particular access being used for casual parking. It is unformed and would not provide practical vehicle access once it meets the park due to the steep embankment. There is also a walkway from Barrister Avenue to the Western Park. Leading off a cul-de-sac at the head of Barrister Avenue opposite the Western Park connection, there is a walkway leading to the Southern Reserve at a position near the Council Parks Department depot. Accordingly there is potential for a well-connected community via existing walkways and open space to the Town Centre.

[159] Southern Reserve occupies the space between the Town Centre and the southern end of the quarry. This land is split level<sup>16</sup> and split zoned. The lower northern area adjoining the quarry is zoned Business 7 and contains about 2ha. This area was the site of quarrying and organic waste disposal by previous local authorities. It is undeveloped, unkempt and not currently used by the public.

[160] The elevated southern area adjoining Grahame Breed Drive is Open Space 3 for organised recreation. The elevated south western corner is zoned Open Space 4 for community purposes and is the site of the Council depot. There is a formed car park on the northern side of Grahame Breed Drive which we were told serves as overflow parking for a nearby community centre (The Fickling Centre), library and the Three Kings Reserve playing field all located on the southern side of Grahame Breed Drive. The playing field is a multipurpose facility so that there is a focus on organised sport adjacent to the Site which makes it desirable to integrate the reserve/open space facilities proposed by PC372 with these existing facilities.

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<sup>16</sup> 17 metre difference c.f paragraph [11] (and elsewhere).





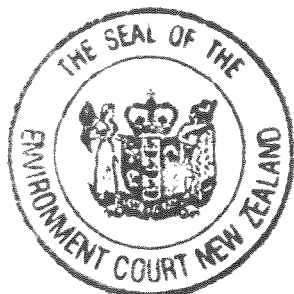
[161] The remainder of the elevated section of the Southern Reserve is largely closed off for public access. It contains a (now abandoned) dog pound adjacent to the Grahame Breed Drive lava lake outcrop.

***Proposed provision***

[162] Witnesses explained that in discussions over the formulation of PC372 the Council encouraged Fletchers to address a shortage of formal sports fields in the area. This allowed Fletchers to consider the existing reserve land in their development layout. The result was the design of a multipurpose sports field to be located within the quarry which will be able to accommodate two full sized soccer/rugby fields or a cricket oval as well as ancillary space for informal recreation. Under the land swap arrangement between Fletchers and the Council this new open space area was to be transferred to Council ownership in return for the transfer to Fletchers of parts of the Western Park and Southern Reserve.

[163] The final ownership is unclear of a strip of land which will be sandwiched between the southern edge of the proposed extended Grahame Breed Drive and the Town Centre which is to be rezoned (from Open Space 3 and 4) to Business 2. We were told the new zone will provide for 24m high buildings. This will include an area directly in front of a relatively recent apartment building on adjoining residential land to the south. We heard no evidence regarding this new zone. It appears to be acceptable to all parties and we assume is relied upon to enable commercial development which will front onto Grahame Breed Drive. This will sleeve the existing rear view of the Town Centre buildings and assist in creating a linkage between the Town Centre and residential development.

[164] In addition to the proposed new sports fields, PC372 provides for an area of open space at the edge of Big King Reserve and the maunga. Ownership of this open space will be transferred to Tupuna Taonga o Tamaki Makaurau (the land owning Trust of the Tamaki Collective). This

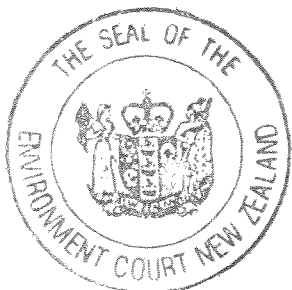


space will integrate with the existing Big King Reserve and contains for the most part very steep land remnants of the quarry face. This part of the Site will also accommodate another access road designed to connect the Site with Mt Eden Road along the alignment of an existing quarry haul route. It is proposed that this land be zoned Open Space 2.

[165] There is also additional Open Space zoned land to be added to provide for the stormwater infrastructure proposed to serve the new development. This involves a wetland area to the north near the existing exposed volcanic feature in the northwest of the site and a narrow wetland/stormwater facility running down the eastern edge of the Site connecting to overflow flood storage which will be provided by the playing fields in high rainfall events. This system forms part of PC372 encapsulated in Diagram F08-85(d) – Stormwater Management Concept Plan. These areas are to be zoned Open Space 2.

***Is there enough open space?***

[166] PC372 enables the transfer of existing reserve land to Fletchers to be used for the development of apartments in exchange for the creation of new open space (to be zoned Open Space 3) containing the two co-located playing fields and ancillary areas which will be vested in the Council. The location of the playing fields is generally accepted by all parties, being reasonably proximate to the existing Three Kings Reserve (albeit at a much lower level). The land swap agreement requires the full formation of the sports fields by Fletchers. The mechanism for that arrangement currently falls outside PC372 which simply zones the necessary area of land and enables its development for this purpose. During the course of the hearing Fletchers, through Mr JR Duthie (its planning witness), introduced some staging rules into PC372 designed to address the delivery of the sports fields. In our view appropriate rules are certainly necessary as the plan change stands on its own irrespective of land ownership and private undertakings.



[167] A number of Council strategy reports or non statutory guidelines have been relied upon to ascertain demand. Witnesses referred to a *rule of thumb* set out in Council guidelines but thought this to be inappropriate because it related to *greenfields* development rather than *brownfields* development.<sup>17</sup> We were also appraised of the rules which apply to subdivision and new dwellings in Part 4B – Financial Contributions of the District Plan (ie the development enabled by the PC372 but not PC372 itself). More importantly there is policy guidance provided in the RPS and Part 9 Open Space and Recreation section of the District Plan. We have considered all of these in reaching our determination on quantum.

[168] The Council has adopted a non statutory document entitled *Parks and Open Spaces Interim Provision Guidelines For Greenfield Developments and Urban Areas, August 2014*. In its Introduction, it is stated that the guidelines:

...describe the outcomes sought by Auckland Council for the provision of open space within both greenfield developments and the existing urban area to deliver the objectives of Auckland Council's Parks and Open Spaces Strategic Action Plan, the Sport and Recreation Strategic Action Plan and the requirements of the Auckland Unitary Plan.<sup>18</sup>

[169] Distribution, quantity and configuration of open space are addressed. The purpose of the document seems to be described in the following extract:

Use of the guidelines

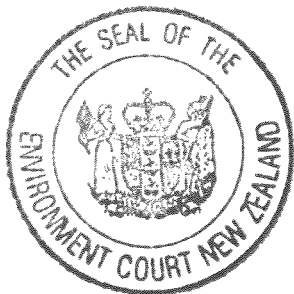
The guidelines are intended to be a tool to inform the planning and design of the open space network within greenfield developments **and existing urban areas**. A successful open space network responds to the local context and therefore it is expected that variation in the provision of open space will occur across Auckland.<sup>19</sup>

(Our emphasis)

<sup>17</sup> We are unsure if the Site is *greenfields* or *brownfields* although ultimately we do not have to decide that.

<sup>18</sup> Parks and Open Spaces Interim Provision Guidelines for Greenfield Developments and Urban Areas August 2014, page 2.

<sup>19</sup> Parks and Open Spaces Interim Provision Guidelines for Greenfield Developments and Urban Areas August 2014, page 3.



[170] This document (inter alia) sets a default guideline for greenfields development of 2 hectares of open space per 400 units. This is the *rule of thumb* referred to by witnesses and equates to 50m<sup>2</sup> per dwelling unit. We understand that this is designed for greenfield situations to address new demand for local open space both for informal recreation, sport, and civic functions. It is explained in the guidelines that the quantity of open space needs to contribute towards achieving the full range of experiences across the open space network. The observation is made in the document that some of the experiences (such as suburban parks and local sports parks) may be located outside the property boundaries of a development. In such circumstances this may mean less land is required within a development, particularly small developments. The guidelines also refer to green infrastructure and conservation open space being able to contribute up to 50% of local recreation open space requirements where it has demonstrable recreation benefits. No quantum is set out for open space provision in existing urban areas as it will depend on the characteristics of the area.<sup>20</sup>

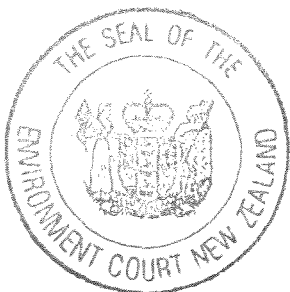
[171] The guidelines set out the following reference to quantity specific to open space within the urban area:

Existing urban areas

Auckland Council does not have a target for the amount of open space that should be provided relative to the population within existing urbanised areas. This is because the open space network is largely in place in urbanised areas and there are constraints on significantly increasing the amount of open space, such as the cost and availability of suitable land.

The Parks and Open Spaces Acquisition Policy sets out criteria for prioritising open space acquisition opportunities within the existing urban area. To meet the needs of a growing population, the acquisition policy prioritises land acquisition towards areas where there is:

- High levels of expected population growth
- Relative poor access to informal recreation open space



<sup>20</sup> Parks and Open Spaces Interim Provision Guidelines for Greenfield Developments and Urban Areas August 2014, page 11.

- Low capacity within the existing open space network<sup>21</sup>

[172] A map follows the above extract which is designed to inform decision making regarding opportunities for acquisition of open space. While the Site is not specifically identified it is clear there is a moderate shortfall in open space land to the north and west of the Site.

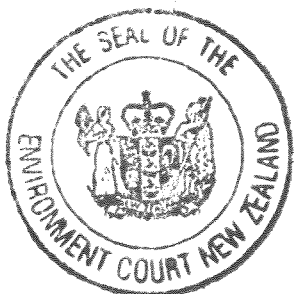
[173] We were told that the contribution this rezoning would make to housing supply would be significant being up to 1200 - 1500 new dwellings. Accounting for a spread of dwelling type we were told this would bring some 3000 additional residents to this local. While we are somewhat unclear about the contended *significant* contribution PC372 will make to Auckland's overall current housing supply in light of uncertainty as to numbers of dwellings and period of delivery, it will certainly enable a significant addition to the immediate local area. That additional housing leads to a new or additional demand for open space. Further, the supply of open space is a key issue when we are enabling higher density housing typologies which have limited access to private open space.

[174] We accept that in addition to public open space, private communal open space can contribute to the open space requirements for apartment typologies and provision for these spaces seems to be indicated in Fletchers Master Plan. However, these spaces do not enter the balance sheet, when we consider the appropriate contribution to community open space resources. (We will address the issue of communal open space later in this decision.)

[175] In terms of the Council guideline document, we are left without a clear quantum of contribution of open space required but some guidance that there will be a need /demand which needs addressing as PC372 enables a discrete area of high population growth and there is a known

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<sup>21</sup> Parks and Open Spaces Interim Provision Guidelines For Greenfield Developments and Urban Areas August 2014, page 9.



existing shortfall in land for organised sports type of open space in the vicinity.

[176] We note that the RPS strategic policies regarding Urban Design (2.6.8) direct us that management and promotion of change in existing urban areas should occur so that there is *...long term protection of public open space, and improvement in the quality, quantity and distribution of local open space*. The District Plan encourages maintenance and enhancement of open space including the conservation of existing open space land to the *...maximum reasonable extent possible*.<sup>22</sup> Further in Chapter 4B – Financial Contributions of the District Plan at Objective 4B.4.1.1 and relevant policies we are specifically guided to seek to provide for the open space needs of new residents and all new residential development either by way of cash or land.

[177] Finally in this regard we consider District Plan Financial Contribution rules which set a requirement which would be applied to development at time of subdivision or new dwelling consents. These provisions seek to ensure that financial contributions are levied fairly on all residential development. This includes applying them to all forms of residential development and subdivision and assessing the likely additional demand generated by the development.<sup>23</sup> As explained in the Expected Outcomes section of these provisions, the majority of contribution will be in cash rather than land. This seems logical in light of the demand for infill residential sites on the Isthmus. Cash contributions will enable development of existing reserves to allow them to be used more intensively and to purchase additional areas of land. These provisions support the Council's motives for rationalisation of open space land included in PC372.

[178] However it is pertinent to note that the required open space contribution from development or subdivision in the District Plan rules when

<sup>22</sup> Chapter 9 – Open Space and Recreation Activity Objective 9.3.1 and relevant policies.

<sup>23</sup> Chapter 4B – Financial Contributions Objective 4B.4.1.2 and relevant policies.



applied to the development enabled by PC372 (say 1200 dwelling units) would be in the order of 3.6ha. This is explained in the following table where we set out the method of calculation employed in the District Plan:

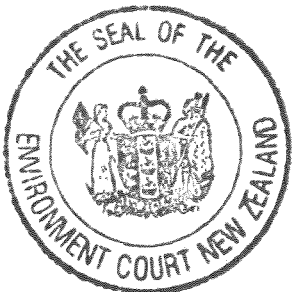
Land contribution	30m <sup>2</sup> per unit – in this case @ 1200 unit = 3.6ha
Cash contribution	(site value(\$)) x 30) divided by Site Area in square meters

[179] Both Mr Duthie and Mr GJ Lawrence (the Appellants' planning witness) set out various methods of accounting for the land currently in reserve status/Open Space zoning and that to be added through substitution/land swap and the proposed zoning regime. We use Mr Lawrence's figures which were based on Mr Duthie's maps to produce the table below:

Existing Council reserve holdings	Retained reserve/or in open space	Proposed Fletcher new/additional open space
6.01ha	2.7ha Retained part of Western Park, retained part Southern Reserve	2.7 sports and connection to remaining Western Park
		1.3540ha Wetland
		1885m <sup>2</sup> Staircase/ramp
		1741m <sup>2</sup> Plaza stairs and lift
		9811m <sup>2</sup> of Maunga slopes ownership to be transferred to Trust <sup>24</sup>
		1087m <sup>2</sup> + 309m <sup>2</sup> Other

[180] We conclude from these figures that:

<sup>24</sup> Tupuna Taonga o Tamaki Makaurau being the land owning trust of the Tamaki Collective.

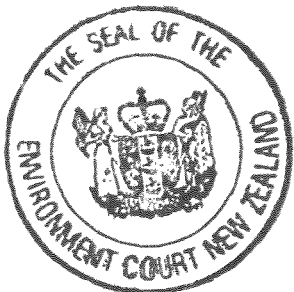


- There is a total of 5.4ha of what we shall describe as formal open space and nearly 1ha associated with the conservation of the maunga. This provides a total of just under 6.4ha being about 4000m<sup>2</sup> over the existing supply;
- There is another 1.3ha dedicated to wetland which is green infrastructure;
- Some 3626m<sup>2</sup> is hard landscape, stairs ramps and lifts. (There are also the other two small areas which we are uncertain of in terms of category and could be in some kind of private ownership so we do not include them);
- The total open space provided for in PC372 is about 8.1ha;
- Overall, this results in an addition to the existing supply of 2.09ha. This equates to a shortfall of about 1.5ha applying the District Plan rule to the expected dwelling unit yield.

[181] Alternatively, applying the greenfields requirement (2ha per 400 units), up to 6ha of additional open space would be required and the shortfall would be nearly 4ha.

[182] We can understand the Appellants' concern that the open space balance suggested in PC372 falls short of community expectations as expressed in the various documents we have considered. However, as the Council's guideline document makes clear, we accept that green infrastructure has a contribution to make towards open space and we also accept that public walkways and the plaza may contribute to open space facilities.

[183] We have noted that Diagram F08-85(d) – Stormwater Management Concept is predicated on the flood storage capability of the proposed playing fields and that all the open space zoned areas have some part in delivering the stormwater regime for the Site. This is integrated design but





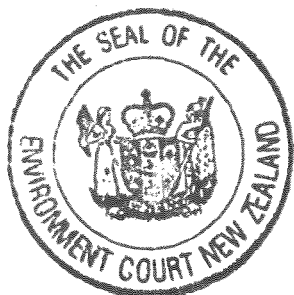
clearly some areas will provide more useful open space than others. The developed form of the wetlands areas will influence the character of these spaces in terms of their contribution to amenity and recreation. For example, we suspect that the northern area of wetlands will provide more amenity than the narrower drainage areas around the eastern edge of the Riu Precinct.

[184] We conclude that the quantum of additional open space proposed in PC372 may not meet the requirements set out in the statutory documents nor Council's aspirations in the guidance document. However, we also consider that there is a balance to be considered between the actual quantum of open space provided and the quality of that open space. While a less functional space might meet the quantum requirement it may not achieve the best outcome in terms of function and usefulness.

Quality of the open space

[185] We accept the evidence that co-location of the new sports fields and their position proximate to the existing Three Kings Reserve sports field is an enhancement of open space provisions of high quality in terms of community use, although we have reservations regarding their use as both a flood storage area and formal sports fields. We note that under Fletchers' initial proposals, at RL59 the sports fields could be inundated with up to 2m of water in an extreme event, which clearly impacts on their utility and quality as sports fields. We are uncertain as to how the minimum contour levels we have required will impact on flooding but we assume that the RL63 now proposed by Fletchers for the sports fields is still intended to provide surface storage capacity in a significant rainfall event. We consider that regular flooding of the sports fields at excessive depths is something which should be avoided and we require more information on this issue.

[186] We accept that vesting the north western quarry slope in the Tamaki Collective benefits the wider community by enhancing the context and



appreciation of the maunga and the existing Open Space 1 land adjoining the Site. We consider that this land should be zoned Open Space 1(Conservation) to better reflect its purpose and setting and that this is consistent with the Objective and Policies of that zone<sup>25</sup>.

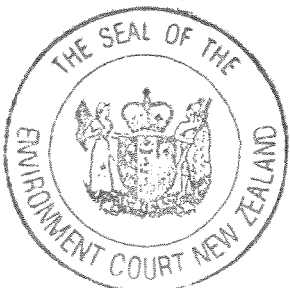
[187] We have reservations as to the contribution that the wetlands reserve might make to the quality of open space as for the most part it has a storm water function rather than an open space function, although the latter function may be enhanced by design. We noted the very functional cross sections attached to Mr CM Richard's (Fletchers' engineering witness) street typologies and the softer description conceived by Mr De Keijzer. We accept that, if carried through attractively, these areas could provide a pleasant green network connection and the area to the north where more space is available has considerable amenity potential for residents.

[188] We have concerns as to the proposals for walkways, lifts, stairs and the plaza at the southern end of the Site. Although there were only limited details available to us, the plaza in particular seemed to be integral to a residential apartment development rather than provision of public open space. If this was a resource consent application, conditions could be imposed to ensure its provision and accessibility for public use but this is more difficult to achieve within the context of a plan change. Connectivity is a key requirement for the open space network to work and provide the quality of use anticipated. Stairs and lifts as a feature of connections are obviously less attractive than at grade connections. This is a matter which requires further attention and detail in light of the findings which we have made as to appropriate contour levels in this vicinity.

[189] Overall, we conclude that the provision of the new dual sports fields potentially constitutes a significant improvement in the quality of open

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<sup>25</sup> Chapter 9 - Open Space and Recreation Activity Objectives and Policies 9.6.1.1



space in the Three Kings area, subject to advice as to the likely extent of flooding at the elevated contour levels we require. Contributions to quality which might be made by the wetlands reserves and plaza will depend largely on design of those areas.

*Determination of open space quantum*

[190] There is a significant shortfall in the open space provisions proposed under PC372 based on a true contribution of open space land relative to the current resource and various policy and District Plan measures we have identified. There will undoubtedly be increased demand on open space brought about by the new residential development enabled by the plan change.

[191] We conclude that the proposals for open space would be improved if the entire Western Park is retained as open space. We refer to our earlier discussions in that regard with respect to Superlot G. The Open Space 2 zoning extended to the current area of open space here will provide a practical arrangement for informal recreational use which is not replicated by the new open space around the maunga or the wetland/ stormwater green space.

[192] In a broader context, full retention of Western Park would also assist in enhancing the character of the neighbourhood by providing a clear view and foreground setting to the Barrister Ave bluff feature. It will also contribute to the value of the proposed new sports fields by providing support space for practice and junior sports to maximise the future use of the new sports fields for organised sports. We conclude that this enables a more balanced approach to the provision of open space consistent with the objectives of the Open Space 2 zone and the expected Zone Strategy,<sup>26</sup> as well as balancing the community expectations which we have identified. We calculate that, with this land retained and appropriately zoned as open

<sup>26</sup> Chapter 9 – Open Space and Recreation Activity Section 9.6.2 Open Space 2 (Informal Recreation).



space, the quantum of open space provided increases by about 1.05ha from what was proposed at the commencement of our hearing.

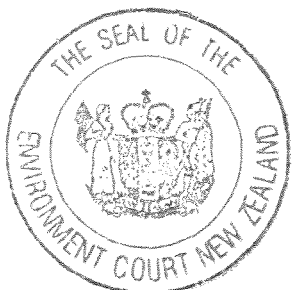
[193] We have concluded that there is a need to lift the fill level of the proposed central Open Space 3 zoned area (the sports fields) so that more practicable integration can take place between it and the surrounding area to the south and this has been recognised by Fletchers, at least in part. The lift in contour also goes to the quality of open space to be provided, which is an important consideration in determining how the proposed open space will meet new demand which will be created by PC372. In pursuit of greater integration, the placement of buildings and alignment of open space at the interface of the Site with Grahame Breed Drive/the Town Centre need to be specified in the PC372 documents.

[194] We anticipate that when the contribution rules through the existing District Plan provisions are applied to the development enabled by PC372 there will be recognition of the additional land provided as a result of the plan change which will form part of the accounting considered under Chapter 4B of the District Plan. This may result in some smaller pockets of additional open space.

[195] While communal open space is not part of the assessment for public open space, its provision clearly removes some of the pressure on public open space. Given the nature of residential development proposed we accept Ms McCredie's view that there needs to be a requirement in PC372 for communal open space because assessment criteria cannot be relied upon to deliver this. If this change is made we are confident the density objectives and quality of development envisaged in PC372 will be achieved.

#### *Whare Manaaki*

[196] Establishment of the Whare Manaaki is supported by all parties although its precise form and position has not been fixed and it requires a



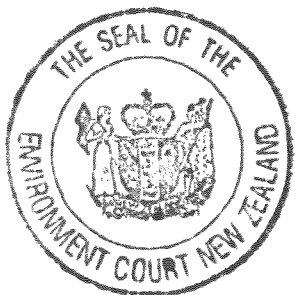
change to the existing Open Space 2 provisions of the District Plan to insert it as a restricted discretionary activity (without notification). As initially drafted, this provision relied on an existing activity description in the District Plan related to educational and cultural activities which is more permissive than the intended activity. These activities are not provided for in any of the Open Space Zones although we note that buildings used for recreation or community purposes are provided for as discretionary activities in the Open Space 3 Zone and marae are discretionary activities in the Open Space 4 (Community) Zone.

[197] The relevant provision was revised during the hearing to describe and define the term Whare Manaaki. This change is accepted by the Court as it provides certainty.

[198] The size of the Whare Manaaki was reduced from the 1000m<sup>2</sup> initially proposed to 450m<sup>2</sup> during the hearing and the Court understands that this better reflects the intended floor area of the building. Given that there will be a need for access and parking associated with the Whare there needs to be clarity as to the area required to accommodate all aspects of the activity as its location could be in public open space.

[199] We are not convinced that the Whare Manaaki is consistent with the objectives and policies of the Open Space 2 Zone upon which it relies. The Zone Strategy indicates that generally buildings are not encouraged in this Zone and where they might be considered acceptable their size and use is tightly managed.

[200] It is the Court's current preference that the Whare Manaaki be located within the land to be vested in the Tamaki Collective Trust which we have concluded ought to be in the Open Space 1 Zone. Wherever the Whare Manaaki is situated, there needs to be some fine tuning of District



Plan provisions to provide for it and clearly set out the parameters of the activity and the area which it and its related activities occupy.

### *Conclusion Open Space*

[201] Provided the matters we have identified above are resolved, we conclude that PC372 will adequately address the structural provision of open space for the Site and the wider area.

[202] With these changes we are confident the density objectives, integration with surrounding land uses and an improvement to the quality of the public areas and open spaces will be achieved consistent with the policy framework of PC372 itself, the RPS and the District Plan. In particular these changes will ensure that Policies 1.7, 1.9, 1.10, 1.11 of PC372 are achieved.

[203] Further, provided the method is amended to provide for the Whare Manaaki so that it is consistent with the existing district plan objectives and policies upon which it relies, we consider that provision of the Whare Manaaki will assist in achieving the broader objectives of PC372, especially Objective 2 and Policies 2.4 and 2.5.

### ***Earthworks and site preparation***

[204] PC372 introduces a new activity and definition for *Land contouring and site preparation*. The definition for this activity before us by completion of hearing was:

For the purposes of this Concept Plan “Land contouring and site preparation” means the process to prepare the land for future alternate land uses and includes:

- Operations, works and extraction to modify rock faces and to re-contour land to ensure is suitable for future open space uses as shown on the concept plan.
- The extraction, processing and removal of rock, earth or other material as part of the process of finalising ground levels and rock faces and contours to give effect to the concept plan.



- Fill operations including earthworks, compaction and storage of material.
- Necessary temporary and permanent drainage, stormwater and roading services to enable rehabilitation.
- Protection of future soakage areas from sedimentation during earthworks.
- Establishment of such roading and services suitable for future open space uses.

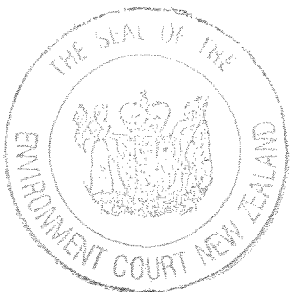
[205] This new activity is to be provided for in the Residential 8b and Open Space 2 and 3 Zones within the Site as restricted discretionary activities, without notification.

[206] There are essentially three aspects to the Site preparation:

- The existing resource consent ([2011] NZEnvC 214) currently relied upon by Fetchers for the filling works it is currently undertaking on its land. We note that the need to fill the quarry arises as a remedial consequence of the quarrying operations;
- Further filling required in the southern part of the Site beyond Fetchers' land towards Grahame Breed Drive;
- Rock removal including blasting/use of explosives and processing of the rock on site (crushing) or its removal to clean up quarry walls and to facilitate building platforms.

[207] The activities to be introduced under the category of *Land contouring and site preparation* go beyond any definition contained in the District Plan concerning earthworks or [2011] NZEnvC 214. This new activity would fit the definition of quarrying contained in the District Plan.

[208] We were told in evidence that Fetchers may well choose to remove the rock from the site rather than reuse it. This process will likely involve crushing and together these endeavours are clearly a quarrying activity. The concern for the Court and the Appellants is the environmental effects of this much broader defined activity. For example there is the potential for



the use of explosives together with the noise and dust associated with rock removal and crushing and the additional truck movements which might require management.

[209] The new definition would provide for the replacement of [2011] NZEnvC 214 so that Fetchers could abandon their existing resource consent. With that we might expect a new set of parameters and conditions which would not be able to be considered by those potentially adversely affected. The certainty and arrangements contained in the existing resource consent have been arrived at as result of collaboration between the Council, proponents and the affected local community.

[210] At the conclusion of the hearing Fetchers provided its best draft of these provisions, which included rules pertaining to noise (generally) and for construction activities. These specifically rely on existing rules in the District Plan. However, in respect of vibration and noise arising from blasting, rock removal and (we assume) crushing, Business 7 rules are relied upon. The noise control for blasting is reliant on measurement at all residential zone boundaries outside the Concept Plan area.

[211] We had no evidence around these provisions and hold concerns that:

- There is potential for adversely affected parties to be disenfranchised and unable to ascertain that their interests have been appropriately addressed;
- The Court is uncertain as to whether the Business 7 zone provisions are appropriate, especially given the staging and progressive nature of development of the Site;
- Blasting, in particular, is a matter of concern for the Court, as it has potential adverse effects which cannot readily be identified and are peculiar to the circumstances of the Site. We consider





this particular activity is one which would need notification to allow for potential adverse effects to be properly addressed;

- The Court was told that quarrying was completed some years ago. Therefore any renewal of that activity will need rigorous assessment, especially given the changes evident in the environment into which this activity will now be placed (such as the new residential area developed in the SHA).

[212] PC372 needs much more certainty and clarity and justification around these issues.

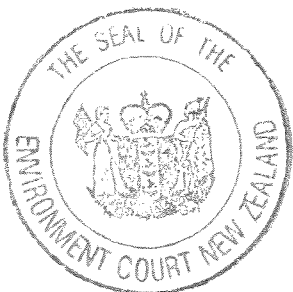
### **Minimum dwelling unit sizes**

[213] The final aspect of PC372, which we address only briefly, relates to the proposal to allow a minimum dwelling unit size (net internal floor area) of 30m<sup>2</sup>, subject to various criteria contained in the version of the plan change advanced by Fletchers in its closing submissions. We were given no evidence enabling us to assess how providing for apartments down to this size met Fletchers expectations of achieving a *high quality* development; and the controls which were proposed in the final version of PC372 have not been subject to scrutiny or comment from other parties.

[214] We note that Three Kings is not a High Density Centre identified in the RPS (where it is intended that the most intensive forms of development might take place). We are not presently satisfied from the evidence which we have heard that providing for dwelling units down to this size is appropriate in this area or consistent with the RPS.

### **Outcome**

[215] We have concluded that the objectives of PC372 are the most appropriate way to achieve the purpose of RMA insofar as development of the Site for residential and open space purposes is concerned. We also conclude that the provisions of PC372 are potentially the most appropriate

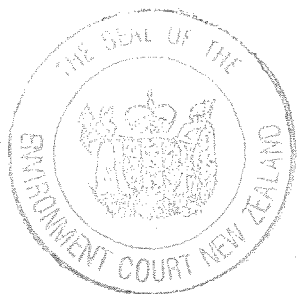


way to achieve the objectives, provided those provisions are altered to address the issues and achieve the outcomes which we have identified in the preceding sections of this decision.

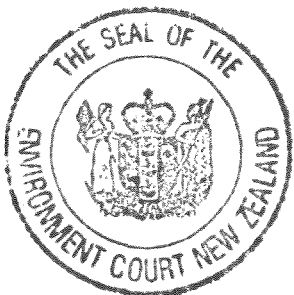
[216] We have previously commented as to the somewhat iterative nature of these proceedings, where various changes to PC372 were proposed as the hearing proceeded. The conclusion of that process was in Fletchers' closing submissions, where a significantly different version of PC372 was advanced than was under consideration at the commencement of the hearing. In particular, the closing proposal conceded the need to elevate fill contours; which we have described as the question which underlies all others in these proceedings. A suite of amendments to PC372 addressing this, and other matters which had come under scrutiny during the hearing, was advanced as part of the submission.

[217] One of the consequences of this process is that Fletchers' advisors have been amending their proposal *on the hoof* as issues emerged under pressure of the hearing, with only limited time for reflection and quality assurance to ensure that the proposed changes are adequately coordinated with PC372 and the District Plan, and achieve the outcomes which they seek. A further consequence is that other parties have not had the opportunity to assess and comment on the final proposal. We consider it is important that all parties have the opportunity to do so. For those reasons, as we indicated at the hearing, we issue this decision as an interim decision to enable the parties to discuss and refine PC372. The Court's Commissioners will be available to assist in that process if required.

[218] To assist the parties in that process we advise that, in order for us to approve the final form of PC372, it will be necessary to adequately address the following issues or achieve the following ends, having regard to the comments we have made in the identified preceding paragraphs of this decision:



- Amend Objective 2 - paragraph [55];
- Address the integration/connectivity issue - paragraphs [91] - [92] and [188];
- Provide for the recognition or protection of volcanic features which we have indicated is appropriate - paragraphs [117], [119], [122] and [124];
- Address the view shaft issue - paragraph [131];
- Address the building form issue - paragraphs [140] – [146];
- Delete Superlot G – paragraph[152];
- Include appropriate rules to ensure delivery of the new sports fields - paragraph [166];
- Provide further information as to use of the sports fields for stormwater storage - paragraph [185];
- Address the placement of buildings and alignment of open space at the interface of the Site and Grahame Breed Drive/the Town Centre - paragraph [193];
- Address communal open space provisions - paragraph [195];
- Provide appropriate zoning provisions for the Whare Manaaki - paragraph [200];
- Address the issues which we have identified regarding minimum dwelling unit sizes - paragraph [214]
- Ensure key roads are zoned separately, or as Structural elements – paragraph [83] and [144];
- Address and provide more certainty around site preparation provisions – paragraphs [204] – [212].



[219] For the sake of completeness we advise that, except where we specifically state to the contrary (e.g paragraphs [91] - [92] and [153]), we have not made any final determination as to the adequacy of provisions advanced by Fletchers in its closing submissions. For the reasons which we have identified in paragraph [217] (above), we do not consider that it is appropriate to do so until all parties to these proceedings have had the opportunity to comment on those amendments.

[220] We will allow a period of 20 working days from the issue of this decision to enable the parties (other than Fletchers) to consider its findings and to file and serve memoranda commenting on the matters set out above. At the conclusion of that process we will convene a judicial conference with a view to making directions for resolution of the outstanding issues, whether by way of mediation, expert witness conferencing or otherwise.


[221] Any party may seek further directions/clarification by notice in writing at any time.

### **Costs**

[222] Costs are formally reserved at this time to be dealt with (if appropriate) at the conclusion of these proceedings.

DATED at Auckland this 29th day of July 2016.

*For the Court*

  
\_\_\_\_\_  
J A Smith  
Environment Judge





These plans outline the vision of Fletcher Residential Ltd and are not endorsed by Auckland Council  
Road Types: Indicate typical road sections are shown on HG Drawings. Refer to Drawings 122314-S4LS-RT-101 to RT-105 for Sections A-J; Drawing 122314-255 for Sections K-L and Sections 1-4; and Drawing 122314-256 for Section M