

Decision following the hearing of an application for resource consent under the Resource Management Act 1991



Proposed retirement village comprising seven buildings with 344 residential units.

These resource consents are **REFUSED**. The reasons are set out below.

Application numbers:	LUC60303311, WAT60305462
Site address:	55-57 Ripon Crescent
Applicant:	Summerset Villages (St Johns) Limited
Hearing commenced:	Thursday 14, Friday 15, Monday 18 and Friday 29 June 2018, 9.30am
Hearing panel:	Mark Farnsworth Michael Parsonson Richard Knott
Appearances:	<p><u>For the Applicant:</u> Russell Bartlett QC (counsel) Francelle Lupis (counsel) Aaron Smail (Summerset, applicant) Andrew Wilkinson (planning) Nick Milnes (architect) Ian Munro (urban design) Rob Pryor (landscape and visual) Danny Kamo (landscape architect) John Burgess (traffic) Brett Black (geotechnical engineering) Steven James (civil engineering) Jenni Shanks (ecology) Tim Beresford (acoustics) Craig Webb (arborist)</p> <p><u>Orakei Local Board:</u> Kit Parkinson (Chair) Colin Davis (member) David Wong (member)</p> <p><u>For the Submitters:</u> Valerie Fearn Pamela Doyle Mahlon Burch Noel L. McGrevy Mike Webber Rae Nield</p>

	<p>Donnell Burch Gael Richardson</p> <p>Geraldine Ngata represented by: Michael O’Halloran</p> <p>Joyce Allen supported by: Chris Timbs (Legal Counsel) Karl Cook (Planner) Nicholas Albrecht (Son-in-law)</p> <p><u>For Council:</u> Bernie Warmington, Team Leader Nicola Woodhead, Planner Gerard Mostert, Arborist Bronwyn Coomer-Smit, Traffic Engineer Malcolm Todd, Development Engineer Yu-Ning Liu, Urban Designer Nick Hazard, Groundwater Specialist Josh Markham, Ecologist Stephen Brown, Landscape & Visual Specialist Claire Drewery, Acoustic Specialist Sreevidya Radhamani, Auckland Transport Tanisha Hazelwood, Hearings Advisor</p>
Hearing adjourned	Friday, 29 June 2018
Commissioners’ site visit	Wednesday 13 June & Friday 29 June 2018
Hearing Closed:	Monday, 9 July 2018

Introduction

1. This decision is made on behalf of the Auckland Council (“**the Council**”) by Independent Hearing Commissioners Mark Farnsworth, Michael Parsonson and Richard Knott, appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (“**the RMA**”).
2. This decision contains the findings from our deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
3. The applications were publicly notified on 8 December 2017. A total of 41 submissions were received and 4 submissions were received late after the close of submissions. Of the submissions received: 4 were in support; 1 were neutral and 36 were in opposition.

Summary of proposal and activity status

4. Summerset Villages (St Johns) Limited (**applicant**) proposes to undertake a comprehensive development of the site to construct and operate a retirement village.

Section 3 of the applicant's Assessment of Environmental Effects¹ (AEE) provides a detailed description of the proposal and Section 2 of the AEE² provides a site description.

5. In summary the proposed retirement village will consist of seven buildings which will provide a total of 344 units. These units consist of a mixture of 1-3 bedroom apartments, serviced apartments and care beds.

6. The Section 42A Report provides³ a comprehensive analysis of why the proposal requires resource consent, which was subsequently amended by Ms Woodhead. In summary:

- Auckland Unitary Plan (Operative in Part)

District land use

There are various restricted discretionary activity requirements under:

- *Chapter H4 - For the part of the site zoned Mixed Housing Suburban (55 Ripon Crescent)*
- *Chapter H5 - For the part of the site zoned Mixed Housing Urban*
- *Chapter E12 – Land Disturbance – District*
- *Chapter E17 Trees in Roads*
- *Chapter E27 – Transportation*

Regional land use

There is a controlled activity requirement under:

- *Chapter E11 – Land Disturbance – Regional*

There is a discretionary activity requirement under:

- *Chapter E15 - Vegetation management and biodiversity.*

Regional water permit

There are restricted discretionary activities under:

- *Chapter E7 Taking, using, damming and diversion of water and drilling*

¹ Summerset Villages (St Johns) Limited *Assessment of Environmental Effects* November 2017 pp 4 – 8.

² Ibid pp 3 – 4.

³ Section 42A Report 11-14

- NES for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS)

There is a restricted discretionary activity requirement under regulation 10 (2) of the NESCS.

7. The activities for which resource consents are required are inter-related and inter-dependent such that they and have appropriately been 'bundled' to an overall **discretionary** activity status. While only a relatively minor part of the proposal, the vegetation clearance in the SEA, required consideration as a discretionary activity; the applicant did not seek unbundling of the consents. Rather, Mr Bartlett considered there to be some advantage in the application being treated as discretionary, thus allowing a full consideration of positive and adverse effects of the proposal.

Procedural matters

8. Under sections 37 and 37A of the RMA, the time limit for the receipt of submissions is waived to accept the late submissions of:

- John and June Loomb;
- Dennis and Venetia Shine;
- Elisabeth Scofield; and
- Donnell Burch.

9. The reasons for accepting these submissions are:

- The applicant did not oppose the acceptance of the late submissions;
- The submission did not raise any matters additional to those generally addressed in other submissions; and
- The late submissions did not result in any delay in the hearing or making a decision on this application.

Relevant statutory provisions considered

10. In accordance with section 104 of the RMA, we have had regard to the relevant statutory provisions including the relevant sections of Part 2 and section(s) 104, 104B and 108.

Relevant standards, policy statements and plan provisions considered

11. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant policy statements and plan provisions of the following documents:

- The Hauraki Gulf Marine Park Act 2000 (HGMPA).
- The New Zealand Coastal Policy Statement 2010 (NZCPS);

- National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS);
- The Auckland Unitary Plan – Operative in Part (AUP-OP), including Chapter B Regional Policy Statement

12. We also considered the following other matters to be relevant and reasonably necessary to the application in accordance with section 104(1)(c) of the RMA:

- Auckland Plan.

Local Board comments

13. The Ōrākei Local Board (the Board) commented on this application and presented⁴ to the hearing. While the Board does not oppose the use of the site for a retirement village, given the number of, and the significant infringements proposed with this development, the Board does not support the proposed development in its current form. In particular:

- The community has the reason to expect a built environment character of no more than three storeys in the MHU Zone;
- The height impact of the built form proposed on the wider environment is not acceptable;
- The removal of trees from the SEA is opposed;
- The removal of mature natives and exotics from the site is opposed; and
- The considerable increases in traffic movements will adversely impact the surrounding neighbourhoods in Meadowbank.

14. The Board provided the panel with a set of recommendations⁵ if the panel were of the mind to grant the application.

15. The Board also provided further feedback on the applicant's summary of the chronology of the retirement village zone, the zoning of the St Johns site, and examples of retirement villages already consented under the Unitary Plan. The board reiterated that:

- They were supportive of fit-for-purpose and well-designed retirement village developments;
- Their principal opposition to the St Johns proposal is that it infringes significantly the height provisions of the Unitary Plan provisions;
- If the development is permitted to exceed the regulated heights, will set a further precedent to determine what can be accepted in the future; and

⁴ Kit Parkinson (Chairman); Colin Davis (Member) and David Wong (Member)

⁵ Ōrākei Local Board – representation 18 June 2018 page 3

- There is an important principle of not comparing this application with the examples given by counsel because this site is different with its own characteristics and any development should respond to those.

Submissions

16. Attachment 4 to the Section 42A Report provided a tabulation⁶ of all the submissions⁷ received; listing the issues raised and the relief sought. Issues⁸ raised in submissions included:

- Height/dominance of buildings proposed;
- Height in relation to boundary infringements – shadowing, privacy and reduced sunlight concerns;
- Character and Intensity of Development – not in keeping with the character of the area;
- Yard infringements;
- Increase in traffic movements and lack of car parking;
- Stormwater/Impervious area/Overland flow path effects;
- Vegetation/Tree Removal within Significant Ecological Area (SEA);
- Effect on St Johns Bush, biodiversity and local wildlife;
- Construction effects – noise, dust, vibration, construction traffic;
- Increased demand on local facilities (eg doctors, dentists etc);
- Proposal is contrary to the Unitary Plan and contrary to its objectives and policies;
- Earthworks / contamination and disturbance of soil;
- Adverse noise effects during the operation of the retirement village including increased traffic noise;
- Development devaluing house prices;
- Lack of social justice/ Ethical matters;
- Lack of sustainability considerations in the development; and
- Objection to the location of the transformer

⁶ Section 42A Report Attachment 4 pages 305 – 307

⁷ A copy of each submission can be found in Volume 2 of the Section 42A Report pages 551 – 777

⁸ Section 42A Report pages 15 – 17

Relief sought included:

- Refuse Consent;
- Grant the application;
- Grant consent subject to conditions; and
- Neutral.

Written Approvals

17. The following written approvals were received:

- | | | |
|---|------------------------|--|
| - | 188-280 St Johns Road | St Johns College Trust Board |
| - | 59 Ripon Crescent | Summerset Villages (St Johns) Limited |
| - | 63 Ripon Crescent | Summerset Villages (St Johns) Limited |
| - | 156B St Johns Road | Anne Ross Mitchell |
| - | 45A Rutherford Terrace | Ian Evison and Lucy McGrath ⁹ |
| - | 47 Rutherford Terrace | Suzanne and Bryan Roper |
| - | 51 Rutherford Terrace | Karlene and Steven Haddock ¹⁰ |

Summary of evidence heard

18. The Council's Section 42A Report prepared by Nicola Woodhead a consultant Planner, was circulated prior to the hearing and taken as read. Attached to the report were:

- Expert reports (peer reviews & comments) from the Council's specialist advisors¹¹;
- A copy of the all the submissions received;
- The applicant's AEE and comprehensive sets of: profiles; plans; views and shading diagrams; and
- Riley Consultants - *Geotechnical Investigations and Groundwater Modelling*

19. Both the applicant's expert evidence and submitters' expert evidence were pre-circulated¹² to all parties in advance of the hearing.

⁹ Received during the hearing

¹⁰ Received during the hearing

¹¹ Thumb nail accounts of the qualifications and experience of the Council's experts were requested and received by the panel.

¹² A copy of all pre-circulated evidence can be found on Auckland Councils web page

20. The evidence presented at the hearing responded to:
- the issues and concerns identified in Nicola Woodhead’s Section 42A Report;
 - the application itself; and
 - the submissions made on the application.

21. The evidence presented by the applicant at the hearing is summarised below.

For the Applicant

22. The applicant’s legal counsel, Russell Bartlett QC, made opening legal submissions; introducing members of the applicant’s executive team and experts who were to present submission or evidence at the hearing.
23. Mr Bartlett noted that the application represents a serious opportunity to contribute meaningfully to demand in Auckland for additional, and more varied, housing stock. He stressed (a number of times) St Johns is a prime location for such a development. He drew our attention to the large size of the site and its zoning – *Mixed Housing Urban (MHU)* – which is in his words-

‘A reasonably high-intensity residential zone, specifically “enabling a greater intensity of the development than previously provided for”.

*Front and centre of the zone is the expectation of change. Specifically, the zone description indicates that over time, the appearance of neighbourhoods within the zone will change’ with development typically up to three storeys in a variety of sizes and forms, including detached dwellings, terraced housing and low-rise apartments.*¹³

24. Mr Bartlett also pointed out that that the small portion of the site zoned *Mixed House Suburban (MHS)*, the objectives and policies of the MHS zone will also enable intensification.
25. In addressing the recommendation of the Section 42A Report Mr Bartlett advocated that the recommendation to decline is based on relatively confined concerns in respect to the height and design of some of the buildings. He submitted that the applicant acknowledges that the Proposal will result in a number of effects, including positive and in some cases moderate adverse effects, but overall the Proposal will result in acceptable effects on neighbours and the surrounding environment. He submitted that resource consent should be granted, subject to conditions.
26. Mr Bartlett advised that the effects of the application must be assessed against the future characteristics of the site and the surrounding properties that are now enabled by the recently adopted Unitary Plan MHU and MHS zones.
27. Aaron Smail, the applicant’s General Manager for Development, provided an overview of Summerset’s corporate philosophy and approach. He noted, and stressed, the need for a comprehensive care retirement village in Meadowbank, and considered that the

¹³ Russell Bartlett Opening Legal Submission [31-32]

St Johns village when completed will be a valuable community asset. Mr Smail also noted¹⁴:

“In terms of important community benefits.....it is expected to release approximately 300+ house to immediately help alleviate Auckland’s housing supply...”

28. A written statement of planning evidence was provided by Andrew Wilkinson, a consultant planner. Mr Wilkinson spoke to a written summary¹⁵ of his evidence at the hearing. Key points:
- The retirement village as proposed fits within the Unitary Plan definition of “integrated residential development”.
 - The development provides quality on-site residential amenity for residents and adjoining sites and streets.
 - Non-residential activities provide for the community’s social, economic and cultural well-being, while being compatible with the scale and intensity of development anticipated by the zone so as to contribute to the amenity of the neighbourhood.
 - Policy direction acknowledges that integrated residential developments can be appropriately accommodated on larger sites.
 - There will be occasions where the regional outcomes for residential growth cannot be achieved through strict adherence to development standards.
 - The activity status provides a reasonable opportunity for an infringement to be considered.
 - The MHU zone can achieve a predominantly three-storey urban built character while accommodating significantly more substantial development on large sites.
29. Mr Wilkinson emphasised that the effects of the application must be assessed against the future characteristics of the site and the surrounding properties that are now enabled by the recently adopted Unitary Plan MHU and MHS zones
30. In response to questioning, Mr Wilkinson considered that the extent that the proposal is consistent with the Chapter H5 objectives and policies should be confined to the subject site, rather than being averaged across various MHU zones of the Auckland urban area.
31. Nicholas Miles, the Project Design Director for the applicant, provided a written brief of evidence and tabled a written summary of his evidence which he spoke to at the hearing. Mr Miles outlined the key design principles of the project noting that the design concept for the proposal was based on enabling a comprehensive development of a currently underutilised site and that care had been taken with the design of the apartment buildings to ensure that they complement the form and

¹⁴ Aaron Smail EiC at [30h]

¹⁵ Mr Wilkinson presented his summary evidence in two parts at the hearing

materiality of the neighbouring residential properties while establishing their own individual style. The proposal has been specifically designed to reduce the perceived bulk and dominance of the buildings and to mitigate any consequential and/or related adverse effects. In his opinion, the village design is appropriate in respect of scale, character and amenity to the surrounding residential neighbourhood and is considerate of the site's natural features.

32. Urban design evidence was provided by Ian Munro, a consultant urban designer. Mr Munro also spoke to a written summary of his evidence and provided the hearing with supplementary urban evidence as the hearing progressed. Mr Munro agreed that the proposal was not in keeping with the existing characteristics of the environment and that in his analysis the MHU zone will enable significant change and that change must happen. He too emphasised that the assessment must be made against the future environment that is enabled by the MHU and MHS zoning.
33. With the further urban design refinements¹⁶ made by Mr Munro, he confirmed that the proposal will achieve an urban built form character that is appropriate for the environment and which will not be adverse. He emphasised that his opinion on a key issue remained unchanged¹⁷:

“The Plan permits a spatial relationship of a person on a 2-storey building in such proximity to the boundary that would be as, or more visually dominant than a taller but more set back building”

34. Robert Pryor, a registered landscape architect, provided landscape and visual effects evidence. In speaking to his written summary he noted:
- The site's location and large size result in it being entirely suitable for an integrated residential development as proposed.
 - The proposal will have minimal adverse landscape and visual effects and can be readily accommodated in this location.
 - The architectural design of the building has reduced the bulk and scale of the building and the generous building setbacks have reduced the dominance effects on western neighbours and the increased height of buildings D and F have been mitigated by their location away from the western and northern boundaries.
35. Landscape evidence was provided by Daniel Kamo, a consultant landscape architect. Mr Kamo tabled a written summary of evidence and spoke to it. Key points included:
- The village landscape was designed to be of high quality creating a connectedness with the wider landscape.

¹⁶ Additional Statement of Evidence – Ian Munro 18 June 2018

¹⁷ Ian Munro Summary Statement of Evidence 14 June 2018

- Existing planting is retained, where possible, in order to provide amenity for residents and public whilst ensuring the visual impact of the proposed retirement village is reduced where possible.
 - Proposed new plantings will ensure that, as plants mature, the buildings and wider retirement village will sit more comfortably within the surrounding landscape.
 - Planting will occur as soon as possible.
36. John Burgess, a Director of Traffic Planning Consultants, provided evidence on transport and transportation outcomes and provided the hearing with a written summary of his evidence. He recorded:
- The Council's traffic consultant is satisfied with the traffic and transportation outcomes of the proposed retirement village proposal.
 - The village has been designed with two access points. The main St Johns Road access point will be used by most residents and visitors and will be restricted to 'left in' and 'left out'.
 - A formal zebra crossing will be installed on St Johns Road.
 - Carparking meets the requirements of the Unitary Plan.
 - Carparking flexibility needs to be retained for the village to be able to manage its parking to suit particular circumstances which might change from time to time in terms of overall parking demand.
37. Ecological evidence was provided Jennifer Shanks¹⁸ a director of JS Ecology Limited. In speaking to her evidence, Ms Shanks noted:
- A key ecological value of St Johns Bush is its function as a stepping stone habitat for native fauna in the area of the Auckland Isthmus that has limited native vegetation.
 - No threatened species of fauna were found by Bioresarches in their investigations.
 - Effects on terrestrial fauna are expected to be less than minor and there will no change to the stepping stone function of St Johns Bush.
 - Water quality parameters and aquatic habitat values will be maintained or enhanced.
 - Shading from buildings will not negatively impact on St Johns Bush.
38. Brett Black, a Chartered Professional Engineer¹⁹, provided geotechnical evidence. In speaking to his tabled written summary, Mr Black noted that based on his

¹⁸ Ms Shanks also tabled a written summary of her evidence at the hearing

investigations (geotechnical, groundwater, settlement, and contamination), the site is suitable for the proposed retirement village.

39. Evidence on the civil engineering aspects was prepared by Steven James²⁰, a Chartered Professional Engineer. In speaking to his tabled evidence summary, Mr James addressed:

- Earthworks activities and mitigation;
- Stormwater management; and
- Wastewater and water supply.

It was his conclusion that the proposed retirement village can be adequately serviced and will satisfy Council and Watercare standards and guidelines with respect to stormwater management, wastewater and water supply. The proposed earthwork and construction activities will be managed to mitigate effects on the environment in accordance with Council's standards and guidelines. Mr James also noted that the extension of the 300mm diameter public stormwater reticulation from Rutherford Terrace to the site at Ripon Crescent will need to be completed and operational before the sediment retention pond to service the bulk earthworks is commissioned.

40. Tim Beresford, a Senior Associate at Norman Disney & Young, provided evidence on acoustics and vibration. Mr Beresford concluded that adherence to a Council approved *Construction Noise and Vibration Plan* (CNVMP) will ensure that construction activities which occur nearby to the Summerset boundary will be appropriately managed so as to ensure compliance with the noise and vibration limits proposed on the draft consent conditions

41. Arboricultural evidence was provided by Craig Webb, a consultant arborist. Mr Webb reiterated the findings of his arboricultural assessment, concluding that the effects of the removal of trees associated with the proposed development will be appropriately mitigated through the retention of some existing trees and through the planting of trees associated with the landscaping of the site.

The evidence presented by the submitters is summarised as follows.

Submitters Evidence²¹:

In opposition-

42. Valerie Fearn²² read a written statement covering a number of points of concern, being:

- Traffic & parking -not enough parking spaces have been allocated;
- Noise and dust from construction trucks;

¹⁹ Mr Black is a Director of Riley Consultants limited.

²⁰ Mr James is a Director of Riley Consultants limited.

²¹ In order of presentation at the hearing

²² Submitter No 16 Hearing Agenda pp 596-599

- Stormwater effects on St Johns Bush;
- Construction noise and earthworks impacts; and
- Building heights.

43. In reading her written statement Pamela Doyle made the following points:

- All proposed buildings infringe the “height in relation to boundary” standards;
- The development will shade her house on the western boundary;
- Significant loss of amenity and privacy by the removal of some mature and magnificent trees along the western boundary;
- Insufficient parking and consequential effect on adjacent streets;
- Impact of construction traffic on Ipswich Place; and
- The length of the construction period.

44. Mahlon Burch²³ in reading his written statement noted:

- It looks like an industrial complex;
- It is a ‘Berlin Wall’ of high rise apartments and industrial hospital²⁴;
- The development is a threat to St Johns Bush;
- There will traffic management problems including safety issues;
- There will be an increased risk of burglary during the construction phase; and
- The size and scale of the proposal is totally unsuited to the location proposed.

45. Noel McGrevy²⁵ in talking to his submission made the following points:

- The Plan infringements are opposed.
- People are important; large developers with grandiose schemes are a threat;
- The development is a threat to St Johns Bush; and
- The quality of life (the value and integrity of residential refuges) is under assault if the development is approved.

46. In speaking to his submission Mike Webber²⁶ told us:

- There are more suitable zones in Auckland;

²³ Submitter No 34 Hearing Agenda pp 695-694

²⁴ Mr Burch tabled a profile (View 11) to demonstrate this point.

²⁵ Submitter No 20 Hearing Agenda pp 618-625

²⁶ Submitter No 41 Hearing Agenda pp 763

- Supports the submission of Mr Burch;
- Concern over parking on St Johns' Road and potential problems with buses; and
- Other transportation concerns.

47. Donnell Burch²⁷ in speaking to written submission noted:

- Her concerns over the impact that the construction period would have on her daughters;
- The traffic problems (including parking) the proposal would generate;
- The massive scale of the proposed development;
- The plan infringements; and
- Ecological concerns especially for St Johns Bush.

48. Michael O'Halloran²⁸ provided an overview of Geraldine Ngata's²⁹ submission. Ms Ngata submission addressed the following concerns:

- Insufficient information;
- The scale of the proposed development is unreasonable.
- Visual impacts;
- Earthwork effects; especially the truck movements it will generate.

49. Gael Richardson³⁰ spoke to her submission which had included the following concerns:

- Increased traffic;
- Visual intrusion;
- Increased demand on services; and
- Impact of the high buildings.

Joyce Allen

50. Chris Timbs presented opening legal submissions for Mrs Joyce Allen³¹ in which he advocated:

²⁷ Submitter No 34 Hearing Agenda pp 727-732

²⁸ Geraldine Ngata could not attend the hearing the panel allowed Mr O'Halloran to provide an overview of her submission. No questions of clarification were permitted to be asked

²⁹ Submitter No 33 Hearing Agenda pp 709-726

³⁰ Submitter No 11 Hearing Agenda pp 576-579

³¹ Submitter No 17 Hearing Agenda pp 600-609

- The intensity of development and the building infringements across the site do not appear to be a balanced response to site constraints.
 - The applicant is “pushing the boundaries” to the point it exceeds what is appropriate and acceptable in terms of residential amenity and the quality of its neighbours’ lives.
 - No concessions or changes have been made to Mrs Allen’s reasonable requests.
 - The proposed development would have adverse effects in terms of loss of privacy and dominance that exceed what a neighbour should have to accept.
51. In addressing amenity impacts Mr Timbs provided a consideration that addressed; the surrounding environment, the amenity Mrs Allen enjoys and specific amenity effects. Mr Timbs included in his consideration the potential for further mitigation. He advocated that the proposal will have significant impact on visual and amenity values of adjacent properties.
52. In concluding Mr Timbs’ noted that the proposal is contrary to, or at least inconsistent with, the relevant objectives and policies for the MHU zone and that the negative effects of the proposal outweigh the positive effects.
53. Planning evidence for Mrs Allen was provided by Karl Cook, a planning consultant and Director of Barker & Associates Limited. In addressing his evidence at the hearing Mr Cook emphasised:
- Adverse amenity effects that arise from the large scale of buildings in close proximity to site boundaries and the elevated position of the site relative to neighbours.
 - The proposed development will result in inappropriate adverse effects on amenity of neighbouring properties.
 - The Unitary Plan enables a stepwise change of residential intensity (including retirement accommodation) in a manner that is appropriate. The proposal does not fit within that approach to change.
 - The development setbacks and architectural design are not adequate to minimise the adverse amenity effects and are contrary to relevant objectives and policies of the MHU Zone.
54. Notably, while acknowledging that the assessment should reflect future characteristics of the site and the surrounding properties that are now enabled by the MHU and MHS zones, he considered that the existing characteristic of the adjacent properties and neighbourhood are also relevant.
55. Mr Cook provided suggested conditions to minimise the adverse effects should the consent be granted.

56. Nicholas Albrecht tabled and read a written statement which addressed:
- A description of the family property at 158A St Johns Road;
 - The impact of the proposal including: bulk and dominance; loss of privacy; loss of sunlight; tree removal; landscaping; stormwater management; traffic, access and parking; and constriction effects; and
 - Communications with the applicant.
57. Mr Albrecht considered that the adverse effects of the proposal on their family and their home would be significant

Andrew & Jeanette Hayes³²

58. Andrew Hayes spoke to a tabled written statement key points included:
- The Hayes are supportive of the construction of a retirement village on Parson's Field.
 - Summerset has selected to design a perimeter focused development that includes vast uninterrupted buildings.
 - The project will result in a significant loss of amenity at 51 Ripon Crescent (their home).
 - Summerset has purchased written approval from neighbours, which doesn't remedy the physical loss on amenity on those properties.
59. Rachel Dimery of Dimery Consulting Limited provided a brief of planning evidence for Andrew & Jeanette Hayes. Mrs Dimery spoke to a written summary of her evidence which reinforced the following points made in her evidence in chief:
- A lack of relevant information in the application on which to fully assess the potential adverse effects on the Hayes' property.
 - The extent of adverse effects on the privacy and amenity of adjoining properties.
 - The proposal is contrary to the planned built character anticipated by the objectives and policies for the MHU and MHS zones.
60. Andrew and Jeanette Hayes provided the panel with a written submission commenting on the information provided by the applicant in Mr Bartlett's Closing Submissions Part 1 in which they noted that:
- There are no special rules for retirement villages; and

³² Submitter No 28 Hearing Agenda pp 649-690

- Highlighted a point of Mrs Dimery's evidence that 'predominantly' means 'mainly'.

Submitter in Support

61. Rae Nield³³ tabled and spoke to written submission which had been prepared by her and Trevor Brooker. Ms Nield explained:
- The space should be put to good use;
 - There is a need for a retirement village;
 - Other high-rise buildings are planned for Meadowbank; and
 - The long-term impacts of traffic can be ameliorated.
62. Trevor Brooker spoke in support of Ms Nield's submission.
63. At the conclusion of evidence from the submitters, the Council specialists were invited to comment on any matters that they had heard in evidence.

Auckland Council's Reporting Officer's Review

64. Mr Woodhead told us that her Section 42A Report conclusions and recommendations remained unchanged. She stressed:
- An integrated residential development is acceptable in principle;
 - The layout of the buildings, access, carparking, landscaping and infrastructure provision of this proposal are acceptable;
 - There are positive effects associated with the development;
 - The height of the upper levels of Building E and F and the resulting adverse amenity effects are not acceptable; and
 - The relation to building B and C and the resulting visual dominance effects on the occupiers of immediately adjoining properties is not acceptable.
65. Ms Woodhead addressed the draft conditions of consent that had been undergoing an iterative review during the course of the hearing.
66. Ms Woodhead provided a number of clarifications. In terms of Objective H5.2(2) and Policy H5.3(2) she opined that whether the development is "*predominantly three storey*" should be assessed on the basis of this site only and that the development on this site be in keeping with a built character of typically up to three storeys in a variety of sizes and forms while enabling a greater intensity than previously provided for under the legacy plans. She considered that the proposal was inconsistent with Objective H5.2(2) and Policy H5.3(2) and while those provisions did not carry greater

³³ Submitter No 8 Hearing Agenda pp 566

weight than others, they were significant to the assessment and the outcomes of the MHU zone.

67. Ms Woodhead was supported by a number of council experts who provided us with their review comments which did not alter the main conclusions of their initial reviews. They also addressed suggested amendments to the draft conditions.

Applicant's Right of Reply

68. The applicant's right of reply was given by Mr Bartlett in two parts and addressed the following matters:

- In Part 1 of his Reply Submissions for the applicant Mr Bartlett addressed the site zoning and the sequence of events that lead to the Unitary Plan zoning and provided us with examples of retirement villages consented under the Unitary Plan.
- In Part 2 of his Reply Submissions Mr Bartlett responded to: matters raised by submitters and the panel. Mr Bartlett emphasised that for many of the potential adverse effects the only expert evidence available for the panel's consideration was that offered either by the applicant or the Council. He commented on each of the issues in contention, drawing our attention to the measures that the applicant has taken to address them.
- In regard to visual, landscape and amenity effects, Mr Bartlett pointed out that while the submitters had raised specific issues in relation to their own properties no independent expert visual or landscape evidence was called on behalf of the submitters. He reminded us of how the Proposal responds to its unique setting and reiterated that the surrounding MHS zone will be the subjected change as the development potential of the zone is realized.
- Mr Bartlett also outlined the many possible benefits of the proposal noting that none of them had been challenged by the submitters of the Council's reporting team.

69. In addressing our queries, he provided;

- A calculation the portion of the Proposal within the permitted building coverage parameters;
- An updated western elevation;
- Comment on why basement level could not be lower; and
- The location of the transformer.

70. He concluded by commenting on the proposed consent conditions³⁴.
71. Mr Bartlett provided the Panel with a written Part 3 to his closing submission in which he:
- addressed feedback provided by the Hayes and the Ōrākei Local Board on his reply submissions (Part 1);
 - responded to the Hayes' submissions presented on the final day of the hearing, including a further design amendment to remove the height in relation to boundary infringement with the Hayes' property; and
 - addressed the applicant's final version of conditions filed with these submissions.
72. He recorded that the feedback received did not raise anything new that requires a specific further response on behalf of the applicant.

Principal issues in contention

73. After analysis of the application and evidence (including proposed mitigation measures), undertaking a site visit, reviewing the Council planning officer's recommendation report, reviewing the submissions and concluding the hearing process, the proposed activity raises a number of issues for consideration. The principal issues in contention are:
- Whether the proposal is contrary to the Unitary Plan and contrary to its objectives and policies and in particular:
 - o Height/dominance of buildings proposed;
 - o Character and intensity of development;
 - o Height in relation to boundary infringements – shadowing, privacy and reduced sunlight concerns; and
 - o Yard infringements.
 - Operational traffic impacts and car parking;
 - Stormwater and overland flow path effects;
 - Vegetation/tree removal within the site and the Significant Ecological Area (SEA);
 - Effect on St Johns Bush biodiversity and local wildlife;
 - Construction effects:

³⁴ On behalf of Mr Bartlett, Ms Francelle Lupis talked us through the applicant's proposed amendments to conditions.

- Noise, dust, vibration, construction traffic;
- Earthworks/contamination and disturbance of soil; and
- The location of the transformer adjacent to St Johns Road.

Main findings on the principal issues in contention

74. A prehearing meeting had been held on 26 March 2018. No matters were agreed and all the issues raised by the submitters therefore remain outstanding.
75. The Section 42A Report addressed³⁵, with input from Council's experts, the following effects:
- Impact on St Johns Bush;
 - Amenity - On Site;'
 - Amenity - Transformer;
 - Trees;
 - Traffic;
 - Car Parking;
 - SEA impacts;
 - Operational Noise Effects;
 - Construction Traffic Effects;
 - Construction Noise;
 - Effects on Ecology and Biodiversity:
 - Infrastructure and Engineering Effects:
 - Stormwater & Flooding;
 - Overland Flow;
 - Wastewater and Water Supply;
 - Earthworks;
 - Geotechnical Effects;
 - Groundwater; and
 - NES – Soil Contamination.

³⁵ Section 42A Report pp 46 – 59. Hearing Agenda pp 50 - 63

76. Ms Woodhead concluded that the actual and potential effects in relation to:
- Traffic and parking issues, (concerns had been raised over the effects on the nearby intersection, access, a pedestrian crossing and increased traffic generation) any actual and potential effects can be mitigated by conditions.
 - The potential effects associated with engineering issues including: geotechnical issues; groundwater and contamination will be acceptable.
 - In relation to the effects on the Significant Ecological Area (SEA), with the mitigation proposed, any ecological effects are likely to be less than minor.
 - Section 42A report notes³⁶ that a significant modification has been made to the proposed management of stormwater. Stormwater will now be directed to new connection to the existing public stormwater network which services Rutherford Terrace and Ripon Crescent. The council's experts in their assessment concluded³⁷ that no adverse effects are expected from the stormwater disposal proposed with adherence to the recommended conditions of consent.
 - In relation to St Johns Bush, resulting from the height, orientation and location of the proposed buildings, the stream as a result of the discharge of the overland flow path, and an increase in the duration of the shade, will have negligible effects on the native vegetation within St Johns Bush and any effect on native fish and macroinvertebrate communities within the unnamed tributary is likely to be negligible.
 - Concerns in relation to the construction traffic and noise generated and the traffic safety and amenity effects on the residents and road users of Ripon Crescent and the other local roads can be mitigated through detailed management plans recommended by condition if consent is granted, and the actual and potential effects will be acceptable as a result.
77. During the course of the hearing these many of these effects were comprehensively addressed by the applicant's expert witnesses. Council's experts also addressed their original assessment and other than suggesting modification the potential conditions of consent they endorsed their original comments.
78. The potential effects were also addressed by submitters who presented at the hearing. The statements of the submitters reinforced the concerns expressed in their original submissions. We have provided further commentary and assessment below.

Unitary Plan – Planning Framework

79. In our First Direction we asked the planners to address the potential decision implications stemming The Davidson Family Trust High Court decision which found that a Panel only has recourse to Part 2 if it is determined that one of three

³⁶ Section 42A Report page 55 Hearing Agenda page 59

³⁷ Submitter No 6

exceptions apply³⁸: Mr Wilkinson³⁹ concluded that he did not consider that there was a need to specifically address Part 2. This viewpoint was either not challenged by the other planners or endorsed⁴⁰.

80. The relevant AUP:OP planning framework is set out in the Section 42A report and there is general agreement with the identification of the relevant provisions. Two zones apply to the site with the majority of the site (57 Ripon Crescent - Parsons Field) being zoned MHU and 55 Ripon Crescent (owned by the applicant) zoned MHS. The provisions of those zones are the most relevant to the principle issues in contention.
81. The MHU and MHS objectives and policies have much commonality in their wording, with the key difference being the scale of development anticipated in each zone. Our discussion herein focusses on the MHU provisions but acknowledge where necessary the corresponding MHS provisions.
82. To assess the proposal within that planning framework we must determine what constitutes the environment of the neighbourhood and the site. On this point we heard expert opinions from Messrs Wilkinson, Munro, Pryor, Cook and Mrs Dimery. We also received opinions on this point from various witnesses who reflected on the existing neighbourhood characteristics that they appreciate.
83. The consensus of the expert witnesses was that the characteristics of the site and its neighbourhood must be considered as they can be reasonably anticipated to develop under the current MHU and MHS zones.
84. Mr Cook also contended, in response to questions, that the existing characteristics of the adjoining sites and neighbourhood are also relevant to consideration of the proposal, as did Mr Brown in his summary comments. While we accept that the proposal is not in keeping with the existing characteristics of the environment, we prefer the evidence of Mr Wilkinson on this point. Having carefully considered the planning evidence and the surrounding residential development, we find that the correct analysis must be against the built form outcome anticipated by the AUP:OP, acknowledging that that will evolve over time. In that regard, we assess the reasonably anticipated environment within the adjoining sites and neighbourhood to comprise predominantly two storeys in character and subject to the permitted standards of Chapter H4. Likewise, the reasonably anticipated development within the site is predominantly three storeys in character and subject to the permitted standards of Chapter H5.
85. We find that assuming development that might be consented beyond those standards is conjecture and unquantifiable. In this regard we don't fully accept Mr Munro's comment to the hearing that the AUP:OP doesn't provide much certainty as to the ultimate type of development that may occur. While we acknowledge that restricted discretionary activity resource consents can be sought for development on any site

³⁸ R J Davidson Family Trust v Marlborough District Council [20i 7] NZHC 52. Environmental Defence Society Inc v New Zealand King Salmon Co Ltd [2013] NZSC [101]

³⁹ Andrew Wilkinson EIC at [84-87]

⁴⁰ Nicola Woodhead – Council Closing Comments page 3

that does not meet permitted standards, the policies do provide what we believe to be relatively succinct direction as to the urban form anticipated for the zones.

86. Mr Cook contended that the restricted discretionary status of the retirement village in the MHU and MHS zones engages all relevant matters of control which are referenced against the permitted standards and policies. We agree that our consideration of the effects of the proposal, and particularly those of concern to submitters, is informed by the relevant matters of discretion and assessment criteria, as well as the policies.
87. As considered by Mr Cook, for an integrated residential development in the MHU zone, Matters of Discretion H5.8.1(3) and Assessment Criteria H5.8.2(3) are engaged.
88. Matters H5.8.1(3)(a) requires assessment of the suite of effects raised by submitters, being:
- (a) *the effects on the neighbourhood character, residential amenity, safety, and the surrounding residential area from all of the following:*
 - (i) *building intensity, scale, location, form and appearance;*
 - (ii) *traffic;*
 - (iii) *design of parking and access; and*
 - (iv) *noise, lighting and hours of operation.*
89. Matter H5.8.1(4) States:
- (4) for buildings that do not comply with Standard H5.6.5 Height in relation to boundary; Standard H5.6.6 Alternative height in relation to boundary; Standard H5.6.7 Height in relation to boundary adjoining lower intensity zones; Standard H5.6.8 Yards; Standard H5.6.9 Maximum impervious areas; Standard H5.6.10 Building coverage; Standard H5.6.11 Landscaped area; Standard H5.6.12 Outlook space; Standard H5.6.13 Daylight; Standard H5.6.14 Outdoor living space; Standard H5.6.15 Front, side and rear fences and walls; Standard H5.6.16 Minimum dwelling size:*
- (a) *any policy which is relevant to the standard;*
 - (b) *the purpose of the standard;*
 - (c) *the effects of the infringement of the standard;*
 - (d) *the effects on the rural and coastal character of the zone;*
 - (e) *the effects on the amenity of neighbouring sites;*
 - (f) *the effects of any special or unusual characteristic of the site which is relevant to the standard;*

(g) the characteristics of the development;

(h) any other matters specifically listed for the standard; and

(i) where more than one standard will be infringed, the effects of all infringements.

90. Criteria H5.8.2(3) incorporates reference to all the policies, and covers all effects associated with building height, which are addressed in Policies H5.3(2) and (4).
91. While again acknowledging that the full discretionary status of the application allows us a broad consideration of the positive and negative effects of the proposal, the planning framework of Chapter H5 (and correspondingly Chapter H4) confirms that we are entitled and required to consider the consistency of the proposal across all policies and specific potential adverse effects on neighbouring properties, including amenity.
92. Framed by the MHU and MHS provisions, our decision is informed by the characteristics of the site and the specific nature and scale of anticipated effects (positive and negative).

What scale of development is reasonably anticipated for the site?

93. While planning experts at the hearing were reluctant to refer to the applicant's site as a 'spot zone', it is unusual in that it is an isolated enclave of MHU zoning generally surrounded by an MHS zone⁴¹, that is characterised by existing residential development that typically expresses the former Residential 6 zone of the Isthmus Section of the Auckland Council District Plan.
94. In responses to questions, we heard evidence from Mr Wilkinson and submissions from Ms Lupis regarding the applicant's involvement in the promulgation of the MHU zoning of the site⁴². We also accepted an offer from Mr Bartlett to receive a more formal summary of that process, and that was subsequently provided as Part 1 of the Applicant's Reply.
95. Having reviewed that Reply, we accept that as provided for in the MHU provisions, retirement villages were clearly anticipated as an appropriate land use for the site. All planners that presented evidence to us agreed on that point and several submitters supported the use of the site for a retirement village. But we are not convinced, or as a minimum have not received evidence to support a conclusion, that the Independent Hearings Panel (IHP) anticipated such use would comprise buildings up to 7 storeys in height and corresponding bulk. Indeed, the quote provided in paragraph 10 of Mr Bartlett's Part 1 Reply suggests otherwise:

'On the land leased for a proposed retirement village to the west of the campus, the Panel supports Residential – Mixed Housing Urban zoning in accordance with its

⁴¹ Noting that the St Johns Theological College site to the east is subject to a Precinct overlay, and St Johns Bush lies to the north-east.

⁴² Upon obtaining the lease of the site from St Johns College Trust Board the applicant joined the site owner's submission to the Proposed Auckland Unitary Plan as a s274 RMA party, and subsequently participated in mediations and PAUP hearings.

strategic determination that, in general, this zoning is appropriate for existing and proposed retirement village sites. In particular, this zone is apt because of the form and nature of modern retirement complexes. The maximum height in this zone is 11m (with an allowance for a further 1m) which enables efficient use of these large sites.'

96. We are also guided by the H5.1 Zone description which states:

The Residential – Mixed Housing Urban Zone is a reasonably high-intensity zone enabling a greater intensity of development than previously provided for.

Over time, the appearance of neighbourhoods within this zone will change, with development typically up to three storeys in a variety of sizes and forms, including detached dwellings, terrace housing and low-rise apartments. This supports increasing the capacity and choice of housing within neighbourhoods as well as promoting walkable neighbourhoods, fostering a sense of community and increasing the vitality of centres.

Up to two dwellings are permitted as of right subject to compliance with the standards. This is to ensure a quality outcome for adjoining site and the neighbourhood, as well as residents within the development site.

Resource consent is required for three or more dwellings and for other specified buildings in order to:

- *achieve the planned urban built character of the zone;*
- *achieve attractive and safe streets and public open spaces;*
- *manage the effects of development on adjoining neighbouring sites, including visual amenity, privacy and access to daylight and sunlight; and*
- *achieve high quality on-site living environments.*

The resource consent requirements enable the design and layout of the development to be assessed; recognising that the need to achieve quality design is important as the scale of development increases.

97. We conclude that the zone does not limit itself to a maximum of three storey development and accept Mr Bartlett's contention that the restricted discretionary status of developments exceeding height and other performance standards indicates that such exceedance may be acceptable subject to appropriately addressing adverse effects. While this application has an overall discretionary status, the effects of most significance in this instance are those listed in the matters of discretion and assessment criteria of Chapter H5 and are highlighted in the zone description which sets the context within which we have assessed the application; namely:

- *achieves the planned urban built character of the zone;*
- *achieves attractive and safe streets and public open spaces;*

- *manages the effects of development on adjoining neighbouring sites, including visual amenity, privacy and access to daylight and sunlight; and*
- *achieves high quality on-site living environments.*

Weighting of Policies

98. Throughout the hearing we sought comment from planning witnesses regarding the relative weighting to be afforded provisions, particularly those of the MHU zone. Experts generally agreed that no objective or policies should be given specific weight. Rather, they should be considered in concert, with the various matters addressed with emphasis relevant to outcomes or effects addressed by each provision. Mr Cook considered that the directive verb “require” of Policies H5.3(2) and (4) should be given greater weight than the ‘enabling’ Policies H5.3(1) and (9).
99. Mr Wilkinson questioned Ms Woodhead’s assessment noting that he was of the opinion that the Council had placed greater weighting on the objectives and policies that suggest the zone should achieve a predominantly three-storey urban built form, none of the objectives and policies in MHU zone have been couched in absolute terms and other objectives policies come into play.⁴³ Ms Woodhead accepted in her closing comments to the hearing that individual policies should not be given greater weight, but rather considered in the context of the proposal and its effects.
100. Mrs Dimery succinctly addressed the distinction between the various verbs adopted throughout the MHU and MHS policies. In her opinion, rather than being in conflict, a policy such as HH5.3(1) that ‘enables’ integrated residential developments such as retirement villages, is subject to the more directive requirements of policies such as H5.3(2) and (4) that ‘require’ developments to fit within stated characteristics and scales of effects. We favour Mrs Dimery’s interpretation, and the majority’s view on weighting. While we do not apply a specific weighting to particular policies, we do accept that the enabling and providing policies are subject to the requirements imposed through Policies H5.3(2), (4) and (7). That is not to say that a proposal fails if it is inconsistent with any or all of those policies, but simply that they must all be given appropriate emphasis in our overall finding. That emphasis will be contextual.

Mixed Housing Urban Zone Policy Assessment

Policy H5.3(1)

Enable a variety of housing types at higher densities, including low-rise apartments and integrated residential development such as retirement villages.

101. Retirement villages are anticipated for the zone. We find that the proposal is generally consistent with the outcome sought by this policy but, subject to our reasons and findings below, the scale of the proposal is unlikely to be consistent with the form of retirement village anticipated by the policy.

⁴³ Andrew Wilkinson EiC at [46]

Policy H5.3.(2)

Require the height, bulk, form and appearance of development and the provision of sufficient setbacks and landscaped areas to achieve an urban built character of predominantly three storeys, in a variety of forms.

102. This is a key directive policy in the consideration of this proposal and supported Objective H5.2(2) which states:

Development is in keeping with the neighbourhood's planned urban built character of predominantly three-storey buildings, in a variety of forms and surrounded by open space.

103. Mr Wilkinson in his evidence opined that:

“the objective of “predominantly three storey buildings” does not preclude more than three storeys being considered for a proposal... the use of the word “predominantly” deliberately expresses an acknowledgement that the general form of development will gradually transition to an appearance that is more regularly three storeys but with the ability to deviate from that. As more land owners begin to take up the opportunity inherent in the MHU zone, larger buildings will inevitably become more prevalent and expectations will change.”⁴⁴

104. Mr Wilkinson considered that when read together the MHU zone can achieve a predominantly three-storey urban built form character, while accommodating significantly more substantial development on large sites. He was of the view that this proposal can be considered to be consistent with applicable objectives and policies.⁴⁵

105. We accept Mrs Dimery’s adoption of the Oxford Dictionary definition of the meaning of “predominantly” – *mainly; for the most part*⁴⁶. Given that we have agreed with the planning witnesses that the consideration of the proposal must be limited to the site itself, as a MHU enclave within a MHS neighbourhood, we do not accept that the proposed development is predominantly three storeys in urban character.

106. The extent of this development that is within the MHU zone ranges from three to seven storeys, and extends to eight storeys in one section of Building F. Moreover, Buildings A, B and C along the western side of the site are to be constructed on raised platforms and basements such that those buildings are effectively greater than three storeys and up to approximately four storeys in height when perceived from the adjacent boundary, plus additional height infringements caused by the gabled roof design. While the applicant’s Part 1 Reply provides a table⁴⁷ of percentage and areas of the site that will be greater or less than 3 storeys, we have not been provided any basis for those calculations and it does not accord with our analysis of the plans and elevations provided. Accordingly, we have not given weight to that table in our decision.

⁴⁴ Andrew Wilkinson EiC at [32]

⁴⁵ Andrew Wilkinson EiC at [46]

⁴⁶ Rachel Dimery EiC at [7.4]

⁴⁷ Reply Submissions of Counsel for Applicant; 29 June 2018, paragraph 26.

107. Nor do we give weight to the examples provided in the Part 1 Reply of other retirement villages developed on MHU zoned sites. As suggested by Mrs Dimery⁴⁸ and the Orakei Local Board⁴⁹, we do not have any evidence regarding the specific details of those developments or the characteristics of their surrounding sites, although Mrs Dimery⁵⁰ contends that one of the applicant's examples (Summerset Heritage Park) is adjoined by various zones comprising Business – Light Industry, Open Space – Informal Recreation, Terrace Housing and Apartment Building, MHU and MHS. Mr Pryor provides two other examples of MHU zoned retirement villages surrounding by MHU, and MHS and Single House zones⁵¹ but does not provide any other contextual detail.
108. While the examples provided are of retirement village developments on MHU zoned sites, the context of those examples may not have any analogy to the current proposal and do not set precedent or even provide guidance over our consideration of the proposal. All experts have agreed that we must limit our consideration to the appropriateness of the proposed development at the subject site, which includes its context within its surrounding neighbourhood⁵².
109. Mrs Dimery acknowledged that both zones within the subject site (MHU and MHS) seek to enable integrated residential development including retirement villages⁵³, with the objectives and policies of the MHU directed towards a planned built character of predominantly three storeys⁵⁴ and the objectives and policies of the MHS zone directed toward a planned character is predominantly two storeys.
110. Mr Cook recorded that he accepted that Objective H5.2(2) and supporting Policy H5.3(2) seek to provide “predominantly three storeys” but did not preclude higher or lower storey development, subject to adequately managing effects.⁵⁵
111. Ms Woodhead in her Section 42A Report expressed concern over the height of buildings; noting that Building E and F were well in excess of the three storeys of built form envisaged by Objective 2 and she did not consider that the proposal was consistent with that objective⁵⁶.
112. Mrs Dimery drew our attention to the Oxford Dictionary definition of the meaning of “predominantly, being ” – *mainly; for the most part*⁵⁷. This aligns with Mr Cook's proposition where he stated⁵⁸, “While I agree that the word ‘predominantly’ where used in Objective (2) and Policy (2) provides flexibility for greater than three storeys I consider that this would be an exception in the MHU zone”. We accept Mrs Dimery's

⁴⁸ Response to Part 1 Reply Submission of Counsel for Applicant, Application LUC60303311, 3 July 2018; Andrew and Jeanette Hayes

⁴⁹ Further Feedback from the Orakei Local Board on a Resource Consent Application for a Retirement Village at 188-226 St Johns Road and 55-57 Ripon Crescent, St Johns; Orakei Local Board, 3 July 2018

⁵⁰ Response to Part 1 Reply Submission of Counsel for Applicant, Application LUC60303311, 3 July 2018; Andrew and Jeanette Hayes

⁵¹ Robert Pryor, EIC, at [6.18 – 61.9]

⁵² Our finding on what constitutes the characteristics of the neighbourhood are provide later.

⁵³ Rachel Dimery EIC at [7.2]

⁵⁴ Ibid at [7.3]

⁵⁵ Karl Cook EIC at [3.3]

⁵⁶ Nicola Woodhaed Section 42A Report p61

⁵⁷ Rachel Dimery EIC at [7.4]

⁵⁸ Karl Cook EIC at [3.14]

interpretation of 'predominantly' and find that the outcome of the proposed development will not be an urban built character of predominantly three storeys, in a variety of forms. We find that the proposal significantly exceeds that character and its effects are a consequence of its overall height, bulk, form, and the adequacy of setbacks in the context of those matters.

113. While Policy H5.3(2) works in concert with the corresponding Objective H5.2(2), we do not accept Mr Bartlett's conjecture that the words "in keeping with" provided in the objective relaxes the extent that a development is to achieve an urban built character expressed in Policy H5.3(2). Likewise, while Mr Munro considered that "in keeping" provided for something akin to "similar to", we find that the policy tightens the interpretation of the objective and is more directly consistent with the zone description. Again, we accept that developments of greater than three storeys can be appropriate at this site if effects are appropriately addressed through design, but the extent of the exceedance is not limitless and not extended by the objective.

Policy H5.3(3)

Encourage development to achieve attractive and safe streets and public open spaces including by:

- (a) providing for passive surveillance*
- (b) optimising front yard landscaping*
- (c) minimising visual dominance of garage doors.*

114. We are satisfied that the proposal will be consistent with this policy. Greater occupation of the site and surveillance from windows and balconies will increase passive surveillance, ironically being an effect of significant concern to neighbours. We are also satisfied that the proposed front yard landscaping is acceptable⁵⁹. The only garage doors that would face a boundary are those of Building G which would face Ripon Crescent. Having carefully considered the design and typologies of existing dwellings along Ripon Crescent and Rutherford Terrace, we are satisfied that that garage doors of the building would not be visually dominant and are in keeping with the neighbourhood.

Policy H5.3(4)

Require the height, bulk and location of development to maintain a reasonable standard of sunlight access and privacy and to minimise visual dominance effects to adjoining sites.

115. This policy is engaged by a number of the key concerns raised by submitters, and the evidence provided by the expert planning and urban design witnesses. The height, scale and dominance of buildings, and the extent of the resulting infringements was the focus of attention of many of the submitters⁶⁰ in opposition to the proposal. These

⁵⁹ This finding is distinguished from our assessment of overall dominance and amenity effects.

⁶⁰ The height and dominance of the building was referenced in 34 of the submission received and height in relation to boundary infringements was referenced in 23 submissions.

matters are of particular concern to submitters adjoining or adjacent to the western and northern boundaries.

116. We have carefully considered all evidence and submissions, walked the perimeter of the site, visited the properties of Mrs Allan at 158A St Johns Road, and Mr and Mrs Hayes at 51 Ripon Crescent, and viewed the site from adjoining streets and view points.
117. While Policy H5.3(4) seeks to *minimise visual dominance effects to adjoining sites*, Matter of Discretion H5.8.1(3)(a) broadens the assessment to include *(a) the effects on the neighbourhood character, residential amenity, safety, and the surrounding residential area from all of the following:*
- (i) building intensity, scale, location, form and appearance [our emphasis underlined]*
 - (ii) traffic;*
 - (iii) design of parking and access; and*
 - (iv) noise, lighting and hours of operation*
118. This engages effects on the wider the neighbourhood and bring into play consideration of the urban character promoted through Policy H5.3(2). On that basis we consider the direct effects on immediate neighbours, as well as the potential adverse effects that the proposal would have on the neighbourhood character.
119. The consideration of effects on immediate neighbours is finely balanced. At first glance, we accept that the construction of three to four storey buildings along the western and northern boundaries will create a significant change to the existing privacy and amenity of the neighbouring sites. However, given that the Summerset site is elevated above its neighbours, we accept that development in accordance with the relevant standards (MHU three storeys; MHS two storeys) with compliant setbacks would result in similar effects. Likewise, while the shading diagrams suggest minor increases in shading of neighbouring sites when compared to complying development, those differences are minimal when considered at any given point.
120. We accept the point raised in submissions by Mr Bartlett that the requirement village development is like to have a more predictably acceptable noise impact on neighbours compared with multiple separate ownership dwellings along the western and northern boundaries.
121. We acknowledge the shadow studies provided by the applicant, including the updated 7:30a.m. winter solstice diagram that incorporates 158A St Johns Road. Consistent with the conclusions of Mr Pryor⁶¹ and Ms Liu⁶², we accept that the proposal would create similar shading effects to a theoretical compliant development with the greatest

⁶¹ Pryor, EIC, [5.8 – 5.10]

⁶² s42A Agenda Report, page 255

differences within 47A, 49A and 51 Rutherford Terrace. We do note that a compliant development with different articulation or building separation to the proposal may result in different shading.

122. But notwithstanding the above, it is the scale and cumulative adverse effects of the proposal that may result in effects that are unacceptably greater than a compliant proposal. In particular, the bulk, relative height and continuous form of Buildings A, B C and G, and the compounding effect of even larger Buildings D, E and F ‘filling the gaps’ in the background will, in our opinion, create an overbearing effect on the amenity of the adjoining sites. Because, in our assessment, the development is not predominantly three storeys, we find that those effects are not reasonably anticipated. Nor are they adequately mitigated by the proposed design. Consequently, we find that they are not acceptable. As Mrs Dimery noted in response to questions, it is the isolated MHU nature of the site that imposes and requires a more constrained response to its neighbours.
123. Mr Munro acknowledges⁶³ “that the proposal does not represent a built form outcome that is likely to be predominant or typical within the Mixed Housing Urban zone; it is in my view clearly atypical”. We agree and acknowledge that being atypical does not automatically mean it is unacceptable. As Mr Munro suggests, it is not appropriate to assume “sameness as good”⁶⁴ or correspondingly difference is bad. As outlined in his evidence and summary, Mr Munro describes how he considers that the characteristic of the site and the design or the development “will achieve an urban built form character that is appropriate for the environment and which will not be adverse simply because some (typically far) viewpoints buildings greater than 3-storeys will be seen.”⁶⁵
124. In that regard we accept in part Mr Pryor’s assessment that the layout of the development has focussed the largest buildings on the eastern side⁶⁶, and that the development integrates acceptably with St Johns Road and Ripon Crescent. We also accept the design principles expressed by Mr Milnes⁶⁷ regarding the internalised open spaces and activity areas within the site, and the overall landscaping as described by Mr Kamo⁶⁸. But we do not accept that the development, in its current form, will “integrate comfortably with the surrounding residential environment⁶⁹” or that “The visual amenity values of the surrounding area will be retained and positively enhanced”⁷⁰. Nor do we accept that those impacts are limited to distance viewpoints.
125. We agree with Ms Woodhead that height is an important determinant in the character of the zone⁷¹, and that the bulk and relative height of the buildings along the western and northern boundaries, and the height of Buildings D and particularly E and F

⁶³ Munro, Summary of Evidence, 14 June 2018

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Robert Pryor, EIC, [5.4] “in areas with the greatest potential to absorb the additional height”

⁶⁷ Nick Milnes, EIC, [45 – 49]

⁶⁸ Daniel Kamo EIC [24 – 26]

⁶⁹ Robert Pryor, Summary Statement, page 1.

⁷⁰ ibid at [5.6]

⁷¹ Council Closing Comments, 29 June 2018, page 3.

contributes to an overall adverse visual dominance and adverse effect on the character of the neighbourhood that is not adequately minimised or mitigated.

126. Mr Brown also expressed concern regarding the scale of Buildings E and F, both in height and length, and suggested the need for stronger articulation of the more residential profiles of Buildings A, B, C, D and G⁷².
127. Ms Liu also expressed concern over the scale of the buildings with particular regard to the height and continuous built form of Buildings D, E and F⁷³.
128. As noted, the applicant's Final Reply of 6 July 2019 included additional modifications to the design to remove the height in relation to boundary infringement with the Hayes property at 51 Ripon Crescent. While an example of the applicant's willingness to listen and adjust the proposal in response to effects on submitters, we do not consider that that change sufficiently reduces the overall effects of the proposal we have discussed above
129. Having considered the proposal overall, and taking account of the adjoining sites, the neighbourhood as it may evolve under the MHS zone, and cognisant of Policy H5.3(2), we find that the proposal in its current form comprises height, bulk, visual dominance and amenity effects that are not sufficiently minimised or mitigated.
130. Other matters to be considered herein are:

Traffic

131. Submitters raised various concerns regarding construction and operational traffic effects⁷⁴. Key elements raised were construction and operational traffic at the Ipswich Place-St Johns Road intersection, and the balance of construction traffic and operation traffic impacts between the St Johns Road and Ripon Crescent access points to the site.
132. Traffic effects were addressed by Mr Burgess in evidence and summary statement on behalf of the applicant and Ms Coomer-Smit on behalf of Auckland Council. The submitters did not present expert evidence but provide valuable local experience in the traffic behaviour of the local streets.
133. In the final draft set of conditions received in the applicant's final Right of Reply, a number of the matters raised had been addressed. These included:
 - Priority to construction traffic access and egress via St Johns Road;
 - Inclusion of a barrier berm to prohibit right turn in and right turn out at St Johns Road;

⁷² s42A Agenda Report, page 300

⁷³ s42A Agenda Report, page 245

⁷⁴ s42A Agenda Report –for example: Richardson pp 579; Doyle pp 594; Fern pp 598 and Ngata pp 718 – 720

- Improved response period for traffic impacts at Ipswich Place / Truman Street identified through monitoring during construction and establishment of the village; and
 - More directive requirement for design of zebra crossing at St Johns Road and a Stage 3 (Detailed Design) Road Safety Audit;
134. We acknowledge that giving construction access priority via St Johns Road is not the option preferred by Mr and Mrs Burch. However, as an arterial road, we find that that is the appropriate priority compared to the local streets of Ipswich Place, Rutherford Terrace and Ripon Crescent.
135. The dual access proposed for the site will create a significant change to the traffic environment of Ripon Crescent and connecting streets. However, as concluded by the Ms Coomer-Smit and Mr Burgess, that change can be accommodated with the capacity of those streets. We have not received any evidence that suggests that the proposed access via Ripon Crescent will create unacceptably adverse effects.
136. The traffic impact on the Ipswich Place / Truman Street / St Johns Road intersection has been identified as a matter that requires monitoring and potential mitigation. We were informed that Auckland Transport recognise that intersection as a site to monitor.
137. Submitters, such as Mr Burch, considered that the development would not provide sufficient on-site parking, and that spill-over parking by staff and visitors onto local streets would adversely affect residents and visitors to neighbouring properties. Submitters did not provide expert evidence on this matter. However, Ms Coomer-Smit⁷⁵ for Council and Mr Burgess⁷⁶ for the applicant were in agreement that the proposal would exceed the minimum parking standard required for the proposal under the AUP:OP. Within that parking provision, Ms Coomer-Smit and Mr Burgess were not agreed that whether 74 spaces (Mr Burgess) or 79⁷⁷ (Ms Coomer-Smit) should be allocated for staff and visitors. Having viewed issues with staff parking at other retirement villages we prefer the advice of Ms Coomer-Smit and believe that this should be reflected in the conditions. Accordingly, we find that the proposal will provide sufficient on-site parking for visitors and residents.

Noise, lighting and hours of operation

138. Mr Beresford confirmed that operational noise would comply with the AUP:OP standards, and construction noise would comply with AUP:OP standards for the most part, and would otherwise be addressed and mitigated through the Construction Noise and Vibration Management Plan (CNVMP). In any event, construction noise would comply with draft condition 61, which has been accepted by Ms Drewey on behalf of Council. Likewise, vibration during construction would comply with the AUP:OP standards, as required in draft conditions. Accordingly, we find that potential

⁷⁵ Coomer-Smit Transportation Assessment Peer Review pp18 – 20

⁷⁶ John Burgess EIC at [51-59]

⁷⁷ Confirmed by Ms Coomer-Smit at the hearing.

noise and vibration effects during construction and post construction would be adequately minimised.

139. An overall limit of construction activities would be imposed through draft Condition 60, being the hours of 07:30 to 18:00 Monday to Saturday. Hours of operation during construction would be further limited through compliance with the NZS 6803: 1999 standard that imposes a range of noise limits for different time periods throughout each day. Vibration would be similarly constrained. On behalf of Mrs Allan, Mr Cook introduced and addressed an updated set of conditions to address her main concerns, should consent be granted for the proposal. In that he recommended that construction activities be limited to 07:30 to 17:00 Monday to Friday and 08:30 to 12:00 Saturdays. Mr Cook also proposed a condition that would limit the hours of piling activities.
140. Limiting hours of construction must achieve a balance between managing amenity effects on neighbours and avoiding unnecessary extension of the overall construction period. We accept that there may be construction activities that can be undertaken with minimal noise intrusion during Saturday afternoons. We also accept that activities such as piling will be constrained by the NZ6803: 1999 noise standard and AUP:OP vibration limits. Accordingly, we are satisfied that the final noise and vibration conditions offered by the applicant would appropriately mitigate those construction effects.
141. The potential effects of lighting were not contested.

Policy H5.3(5)

Require accommodation to be designed to:

- (a) provide privacy and outlook; and*
- (b) be functional, have access to daylight and sunlight, and provide the amenities necessary to meet the day-to-day needs of residents*

142. This policy addresses internal amenity and is satisfied by the proposal.

Policy H5.3(6)

Encourage accommodation to have useable and accessible outdoor living space

143. Likewise, we have no cause to question the proposal's consistency with this policy.

Policy H5.3(7)

Restrict the maximum impervious area on a site in order to manage the amount of stormwater runoff generated by a development and ensure that adverse effects on water quality, quantity and amenity values are avoided or mitigated

144. The proposal satisfies this policy. Mr Todd has accepted the proposed stormwater management elements and has concluded that the potential adverse effects of

stormwater discharges from the site will be appropriately minimised. We accept his conclusion, and Mr James' evidence in that regard.

145. We are satisfied that the development would not exacerbate stormwater runoff into surrounding properties, including that of Mrs Allan at 158A St Johns Road. Nor, on the basis of Ms Shanks evidence and Mr Markham's and Mr Todd's assessments, will it result in adverse effects on St Johns Bush.
146. We have noted the need for stormwater reticulation at Ripon Crescent to be upgraded prior to the commencement of bulk earthworks and would, if granted consent, include a condition to require that.

Policy H5.3(8)

Provide for non-residential activities that:

- (a) *support the social and economic well-being of the community;*
- (b) *are in keeping with the with the scale and intensity of development anticipated within the zone;*
- (c) *avoid, remedy or mitigate adverse effects on residential amenity; and*
- (d) *will not detract from the vitality of the Business – City Centre Zone, Business – Metro Centre Zone and Business – Town Centre Zone.*

The proposed retirement village is an integrated residential activity. It is defined as a residential activity in the AUP:OP nesting tables and included as such in Table H5.4.1. Therefore, on a strict interpretation, the proposal does not engage this policy. Effects on residential amenity have been discussed above.

Policy H5.3(9)

Enable more efficient use of larger sites by providing for integrated residential development.

147. The proposal is consistent with this objective and we note that a number of submitters are supportive of the use of the site for a retirement village at an appropriate scale. That support includes the Local Board.

Mixed Housing Suburban Zone

148. Our overall findings on the proposal under the MHU zone also apply to the MHS zone extent of the site, and our preceding discussion has been couched to cover the overall development. However, we do acknowledge that Building G is more akin to what we consider to be an anticipated scale and form of development. In particular, we note that the interface of Building G with Ripon Crescent is not dissimilar to other dwelling along adjacent streets. But height and height in relation to boundary infringements on the western side of the building do, in our opinion, extend the visual dominance and amenity effect on 53 Ripon Crescent to an extent that may be unacceptable.

Other Effects

Transformer

Mr Albrecht outlined existing challenges with emerging from the driveway at 158A St.Johns Road and noted that the proposed transformer adjacent to their shared driveway would *'mean that our cars will need to extend out over the footpath before being able to see whether any pedestrians or cyclists are using the footpath'*⁷⁸. He suggested that it be relocated.

149. Mr Burgess included a plan as Attachment 4 to his evidence which clarifies the detailed position of the proposed transformer. He confirms that this *'ensures that the required visibility as set out in recommended condition 36 is achieved'*⁷⁹. We accept Mr Burgess' advice on this matter.

Oak Tree and other established trees and vegetation

150. Mr Albrecht confirmed issues raised by Mrs Allen in relation to the loss of the existing oak tree and other established vegetation within the site close to the boundary with 158A St.Johns Road. He indicated that the trees have aesthetic value and keeping them will *'also help to lessen some of the harm and dominance that will be caused by the proposed development's bulk and its close proximity to our home'*⁸⁰. Mr Cook suggested that should consent be granted a landscaping plan should be required which shows the retention of all mature specimen trees adjacent to the boundary with 158A St.Johns Road⁸¹.
151. In relation to the Oak Tree, Mr Webb confirmed, in answer to a question, that whilst the trunk is outside of the alignment of the proposed building the crown would be 'in' the building. In addition, there are earthworks proposed in this part of the site. He indicated that it would be unrealistic to retain this tree. Mr Webb also confirmed that there was sufficient space between the proposed building and neighbours for moderate to large trees to be established.
152. From our site visit, we recognise the existing and potential future significance of the trees to the amenity of 158A St.Johns Road, but are also cognisant of Mr Webb's advice. Accordingly, whilst we do not support Mr Cook's suggestion that the landscaping plan should show the retention of mature specimen trees in this area but do consider that were consent to be granted further thought should be given to the detailed location of new trees in this area.

Erosion and sediment control

153. Mr James confirmed that runoff from the earthworks phase of the proposal would be treated by a sediment retention pond to be installed at the downslope (northern) end of the site. That pond would discharge to the public stormwater reticulation for flows up to the 10 year ARI event. He indicated that the downstream stormwater system

⁷⁸ Mr Albrecht EIC at [3.36]

⁷⁹ Mr Burgess EIC at [74]

⁸⁰ Mr Albrecht EIC at [3.25(c)]

⁸¹ Mr Cook EIC at [4.7].

within Ripon Crescent will need to be upgraded as part of the proposal, to service the site up to that design event. He confirmed the stormwater upgrade would occur before the sediment retention pond was commissioned. On that basis the requirement to upgrade the stormwater line within Ripon Crescent before the bulk earthworks are undertaken should be explicitly required in conditions. If not, the contractor may well seek to commence those elements of the project concurrently. That could result in an unnecessary and unacceptable frequency of discharges of sediment laden water onto Ripon Crescent.

Conditions

154. Throughout the hearing we carefully tested the draft conditions provided by Auckland Council, the applicant and submitters, and sought feedback and amendments to address various potential adverse effects and proposed mitigation. In that regard, we acknowledge the constructive approach that the applicant exhibited during the hearing, by receiving feedback and willingly adopting or proposing changes to conditions and design elements to address, to the extent the applicant considered appropriate, issues raised by submitters and Auckland Council.
155. The applicant in its final Right of Reply offered a revised set of draft conditions, however these did not address adverse effects sufficiently to enable us to grant the application. We are not satisfied that the conditions as proposed give sufficient certainty that effects that are caused, at least in part, by the construction and / or operation of the retirement village would be adequately addressed.

Overall Conclusion

156. There was generally agreement that the site would be suitable for a retirement village. We also acknowledge that there are tangible positive effects that would eventuate from approving the proposal. We have carefully factored into our considerations the positive effects, not the least of which is the potential number of housing units that could become available as a result of residents moving into the development.
157. We accept that both the MHU and MHS zones will, potentially, exhibit an evolution of built form and intensification, with resulting impacts on the present character of the zones. Change is coming.
158. But in our final analysis we were not convinced that the adverse effects on amenity (especially on adjacent properties), and the height, bulk, form and appearance of the proposal are appropriate for this site. Accordingly, we find that the potential adverse effects of the proposal do not do sufficiently balance the accepted benefits. We find that the proposal is inconsistent with Policies H5.3(2) and H5.3(4) and in particular, deviates too far from the reasonably anticipated urban character of the site and its environs.
159. In our discussion, we have indicated modifications that may result in a scale of development that could be considered acceptable. We have also expressed general satisfaction with the draft conditions proposed, subject to the scale of development being modified.

Decision

160. In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104 and 104B and Part 2 of the RMA, we determine that the resource consents for Summerset (St Johns) Limited are refused for the reasons explained throughout this report and as summarised below.

Reasons for the decision

161. Under section 104(1)(a) of the RMA, the proposed development will result in actual and potential adverse effects that have not be adequately avoided, remedied or mitigated and are unacceptable, when considered in the context of the local environment. The height, bulk, form and appearance of the proposal are not appropriate for the site and the potential adverse effects of the proposal do not do sufficiently balance its benefits.
162. While the proposal would have recognised benefits in the provision of retirement village accommodation and the flow-on release of existing dwellings for new occupants, the need for the scale of the proposal has not been established or justified.
163. Under 104(1)(b) of the RMA, the proposed development would be inconsistent with the more directive objectives and policies of Chapters H4 and H5 of the AUP:OP to an extent that is not balanced by consistency with other provisions. In particular, the proposed development deviates too far from the reasonably anticipated urban character of the site and its environs, as expressed in those provisions.
164. The interface of the zoning of the site with the zoning of surrounding properties imposes development constraints and anticipated outcomes that will not be achieved to an acceptable extent.
165. For completeness we undertook a Part 2 consideration and the proposal in its current form does not promote the sustainable management of natural and physical resources under Part 2 of the RMA.



Mark C Farnsworth MNZM

Chairperson of the Panel

For- Michael Parsonson & Richard Knott

25 July 2018