

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



Proposal

The applicant is seeking land use and associated consents for an integrated residential development (IRD).

This application for resource consents is **REFUSED**. The reasons are set out below.

Application number(s):	BUN60324132, LUC60323963, WAT60324133 and DIS60324134
Site address:	30 and 40 Sandspit Road, Shelly Park and 2 and 4 Reydon Place, Cockle Bay
Applicant:	Box Property Ltd
Hearing:	Monday 1 July 2019, 9.30am Tuesday 2 July 2019, 9.30am
Hearing panel:	Rebecca Macky Vaughan Smith Richard Knott
Appearances:	<p><u>For the Applicant:</u> David Jans, Box Property Ltd Alan Webb, Counsel Brian Putt, Planning Simon Elvidge, Architect Leo Hills, Transport Mark Lockhart, Landscape Architect Nick Rae, Urban Design and Landscape Architect Rebecca Skidmore, Urban Design and Landscape Architect Mr Lander, Geotechnical – on call Mr Govindasamy – Engineering – on call Mr Rowse – Contamination – on call</p> <p><u>Submitters:</u> John Kenneth and Jocelyn Woodhall, 1 Reydon Place, Cockle Bay Bruce Lotter, 6A Reydon Place, Cockle Bay Gail Alice Klassen represented by Bruce Lotter, 1/6 Reydon Place, Cockle Bay Odelle Cornes, PO Box 38901, Howick</p>

	<p>Adam Muncey, 20 Reydon Place, Cockle Bay Sarah Langstone-Ross, 13 Reydon Place, Cockle Bay Kerry Watt and Brent Watt, 12 Reydon Place, Cockle Bay Stewart Selwyn Pratt, 5 Reydon Place, Cockle Bay Tatia Anne Bray, 7 Reydon Place, Cockle Bay Fiona and Stephen Moran, 18 Reydon Place, Cockle Bay Nicole and Michael Bridge, 18 Reydon Place, Cockle Bay Brian and Sandra Stuart represented by Laurie Slee, 43 Sandspit Road, Cockle Bay Mike and Deidre Frankle represented by Laurie Slee, 17 Reydon Place, Cockle Bay Mary Bird represented by Laurie Slee, 10 Reydon Place, Cockle Bay</p> <p>Howick Local Board (comments only)</p> <p><u>For Council:</u> Quentin Budd, Team Leader Brooke Dales, Planner Chris Butler, Urban Designer Peter Kensington, Landscape Architect Baladevan Thambiah, Traffic Engineering Specialist John Newsome, Regulatory/Development Engineer Richard Simmons, Coastal and Water Allocation, Groundwater Specialist - on call Bin Qiu, Specialist Contamination - on call Tanisha Hazelwood, Hearings Advisor</p>
Hearing adjourned	2 July 2019
Commissioners' site visit	30 June 2019
Hearing Closed:	2 August 2019

Introduction

1. This decision is made on behalf of the Auckland Council ("**the Council**") by Independent Hearing Commissioners Rebecca Macky, Vaughan Smith 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 application was subject to limited notification on 1 February 2019, following a determination on notification by an Independent Commissioner. Notification was given to the following addresses:
 - 3, 3A & 5 Trelawn Place, Cockle Bay;
 - 1, 5, 6, 6A, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 Reydon Place, Cockle Bay; and
 - 37, 39, 41, 43, and 45 Sandspit Road, Shelley Park.
4. A total of 16 submissions to the application were received, all in opposition to the proposal.
5. Feedback was also provided by the Howick Local Board and this is referred to below.
6. Issues raised in submissions included traffic, stormwater, shading and loss of sunlight, concerns with the classification of the proposed development as an “integrated residential development (IRD), character and dominance, amenity and landscape effects, wastewater, privacy and overlooking, construction and contamination effects.

Summary of proposal

7. The applicant is seeking resource consent for an integrated residential development (IRD), involving a 71 unit residential development, located at 30 and 40 Sandspit Road and 2 and 4 Reydon Place. The site occupies the corners of Sandspit Road with Trelawn Place and Reydon Place. It is opposite Howick College (on Sandspit Road) and Cockle Bay School (on the opposite corner of Trelawn Place and Sandspit Road).
8. The site is currently occupied by a vacant two storey commercial building which originally was a service station (until 2011) and a motor repair workshop below (until 2016) at 30 Sandspit Road, a two-storey detached house at 40 Sandspit Road and a pair of single-storey dwellings, attached by their garages, at 2 and 4 Reydon Place. The commercial building and repair workshop site is generally neglected and is ripe for redevelopment. The houses appear in good condition and well maintained.
9. The site area comprises 5417m² and is zoned Residential – Single House in the Auckland Unitary Plan - Operative in part (AUP). The only overlay affecting the site is a Stormwater Management Area Control – Flow 2.
10. The proposed development consists of three apartment buildings with frontage to Sandspit Road which have two basement levels of parking and three levels of accommodation (44 units), and four buildings behind, along the site’s northeast boundary. Although Sandspit Road provides pedestrian access to the apartment

buildings, all vehicular access to 113 car parks is from either Trelawn Place or Reydon Place.

11. The four two storey buildings adjoining the residences in Trelawn Place and Reydon Place (called 'the garden apartments') each have four apartments.
12. The development also includes a swimming pool, a BBQ and outdoor living area, a common room with facilities for a manager and cleaner and a café open to the public. It is these facilities that the applicant says "*define the IRD format*".¹
13. Following notification, the applicant made some changes to the development, moving the garden apartments back from the boundary with 3 Trelawn Place, making some internal changes, providing greater privacy in terms of the Reydon Place elevation and other landscaping and urban design details.

Procedural matters

14. There were two procedural matters, one which was addressed at the commencement of the hearing and one which arose during the hearing.

Omitted submission:

15. On 18 June, the Hearings Advisor was contacted by a submitter who had not been notified of the hearing, and their submission was not in the Agenda. The team leader on this application was contacted and advised that apparently, the submitter sent through their submission from a different email address and it was assumed they were not in the limited notified area.
16. There was no objection to accepting this submission from Brian and Alexandra Stuart, 43 Sandspit Road, and at the commencement the Chair directed that the submission be tabled. The submitters attended the hearing and spoke to their submission.

Query regarding qualifications and experience:

17. One other procedural matter was raised during the hearing and that related to Mr Butler's and Mr Kensington's areas of expertise. Mr Webb for the applicant stated that they were both "*addressing matters outside their areas of expertise*"² and Ms Skidmore noted that she was

"... quite baffled by the approach taken, given the role of the author [Mr Butler] as consent reviewer. The Urban Design Review report is very long and detailed and goes well beyond the scope of an urban design review that would be expected for providing specialist input to the processing of a resource consent application. In many places the report strays well outside the urban design area of expertise. In particular, it provides considerable opinion on planning matters,

¹ AEE paragraph 2.7

² Opening submissions, paragraph 35

including incorrect interpretation (e.g. the concerns raised about adverse precedent effect).”³

18. However, both Mr Butler and Mr Kensington confirmed to the hearing details of their qualifications and experience. This drew an apology of sorts from Ms Skidmore and we have accepted and proceeded on the basis of the details provided:
- Mr Butler as Team Leader Urban Design in the Design Review Unit of the Auckland Council Design Office, with dual qualifications in Planning Practice and Urban Design and with over 14 years’ experience as an urban designer;⁴ and
 - Mr Kensington as an independent consultant providing professional planning and landscape architectural services, also with dual qualifications, in Planning and Landscape Architecture and with 21 years’ experience as a landscape architect and a planner.⁵
19. We consider both Mr Butler and Mr Kensington to be highly and relevantly qualified and with many years of relevant experience between them and that both were appropriately qualified and experienced to make the points that they raised in their reports.

Activity status

20. The proposal requires resource consent for the following reasons:⁶

Land use consents (s9) – LUC60323963

21. The proposal requires consent for a restricted discretionary activity under the National Environmental Standard for Assessing and Managing Contaminants In Soil To Protect Human Health 2011 (NES:CS) because soil contamination levels exceeds the applicable standards.
22. Under the Auckland Unitary Plan (Operative in part) (AUP:OP), if the proposed development is an IRD, consent is required as follows: ⁷

Rule H3.4.1 (Activity A9)	discretionary activity	Integrated Housing Development
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³ Ms Skidmore’s evidence, paragraph 3.3

⁴ Confirmed in an email at the request of the Commissioners

⁵ Refer Mr Kensington’s Landscape and visual effects – supplementary technical review dated 29 March 2019, Attachment 3

⁶ Refer section 42A report, section 4 (the reference to Rule H3.4.1 (Activity A9) ‘Integrated Housing Development’ should actually be ‘Integrated Residential Development’

⁷ As noted in the section 42A report, the Single House zone activity table Rule H3.4.1 (Activity A9) Integrated Residential Developments (IRD) lists no standards to be complied with. Thus, while the proposal exceeds the standards for Building Height, Front Yard and Building Coverage, no consent is required in this regard.

Rule H3.4.1 (Activity A17)	discretionary activity	cafe up to 100m ² gross floor area per site
Rule E10.4.1 [Stormwater management area – Flow 1 and Flow 2] (Activity A3)	restricted discretionary activity	development of new or redevelopment of existing impervious areas greater than 50m ² within a Stormwater management area – Flow 2 area
Rule E12.4.1 [Land Disturbance – District] (Activity A6)	restricted discretionary activity	general earthworks over an area greater than 2500m ²
Rule E12.4.1 [Land Disturbance – District] – Activity (A10)	restricted discretionary activity	general earthworks greater than 2500m ³
Rule E27.4.1 (Activity A2)	restricted discretionary activity	parking, loading and access which is an accessory activity but does not comply with the standards for parking loading and access

Discharge permit (s15) – DIS60324134 (Contaminated discharge to land)

23. Rule E30.4.1 (Activity A6) requires consent as a controlled activity for the discharge of contaminants into air, or into water, or onto or into land not meeting permitted activity standards.

Water permit (ss14 & 15) – WAT60324133 (Ground-water diversion)

24. The following consents are required:

Rule E7.4.1 (Activity A20)	restricted discretionary activity	dewatering or groundwater level control associated with a groundwater diversion not meeting permitted activity standards
Rule E7.4.1 (Activity A28)	restricted discretionary activity	diversion of groundwater caused by any excavation, (including trench) or tunnel that does not meet the permitted activity standards

25. Overall, on the basis that the proposal was an IRD, it was to be considered as a discretionary activity.⁸ If, however, the proposed development is not an IRD, it must be assessed as “more than one dwelling per site” which is a non-complying activity. We have concluded that the proposal is not an IRD and is thus a non-complying activity (see below).

Relevant statutory provisions considered

26. In accordance with section 104B, consent for a discretionary or a non-complying activity may be granted or refused, and may be subject to conditions under section 108 of the RMA and section 104D provides for particular restrictions for non-complying activities.
27. Under 104 of the RMA, we have had regard to the relevant statutory provisions including Part 2 and section 104D and we considered the following other matters to be relevant and reasonably necessary to determine the application in accordance with section 104(1)(c) of the RMA:
- The financial viability of the proposal
 - Whether the site is unique
 - Precedent

Relevant standards, policy statements and plan provisions considered

28. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to relevant policy statements and plan provisions. Under the AUP:OP, we have considered the provisions of Chapter H3 Residential – Single House Zone, the planning assessment has referred to the provisions relevant to an IRD in the Mixed Housing Suburban Zone, the provisions relating to stormwater management, land disturbance and earthworks, transportation, groundwater and dewatering, and contaminated land.
29. The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 are also relevant to this application.

Local Board comments

30. Adele White, a member of the Howick Local Board provided feedback on the proposed development as follows:

.. we collectively believe that this development is unsuited to this location, and could bring with it significant problems to the immediate and wider neighbourhood.

⁸ See below for the Commissioners' consideration of an IRD and whether we find that this is an application for a discretionary activity.

31. Concerns were raised regarding additional traffic; the presence of four schools within a 1km radius of the site, meaning a high volume of pedestrian traffic, vehicles and school buses using Sandspit Road; stress on the stormwater and sewerage infrastructure; the relevance of the single house zone and the overall character of the area.

Summary of evidence heard

32. The Council planning officer's recommendation report was circulated prior to the hearing and taken as read.
33. The evidence presented at the hearing responded to the issues and concerns identified in the Council planning officer's recommendation report, the application itself and the submissions made on the application. As the expert evidence had been pre-circulated prior to the hearing, the expert witnesses spoke to their briefs and answered questions.
34. The evidence presented by the applicant is summarised below:
35. Counsel for the applicant, Mr Webb, presented submissions on behalf of the applicant, noting the definition of an IRD and commenting on its history, including submissions on the proposed AUP by retirement village interests to include retirement villages in residential zones. Mr Webb helpfully referred us to the relevant Independent Hearings Panel (IHP) report and advised that if a plan provision was clear on the face of it, then we would be limited to the plan provision, but otherwise, if that was unclear, then we were entitled to refer to background documents because (unusually) we had a report which said exactly what the IHP meant.
36. Mr Webb confirmed in response to a question from a Commissioner that the zone rules are the starting point because the District Plan provisions give effect to the Regional Policy Statement. Mr Webb advised that

*The starting point from a planning perspective then, is that if a proposal meets the definition of an IRD, and there is no dispute in this case that this does, then locating such a structure in the SHZ cannot possibly be contrary to the provisions of that zone. As a matter of policy, the discretionary activity status means that such developments are expected in the zone.*⁹
37. Mr Webb also criticised the approach taken by Mr Butler and Mr Kensington as being based on the RMA as a 'no effects' statute which, he submitted undermined their assessment.¹⁰
38. Simon Elvidge, Architect introduced the development and took the hearing through the plans and subsequent changes, for example, pulling the garden apartments 900mm back from the north-east boundary with the four Trelawn

⁹ Mr Webb's opening submissions, paragraph 28. We note that Mr Butler, Council's urban designer, was not convinced that the proposal was an IRD, so the statement that 'there is no dispute' is not correct.

¹⁰ Opening submissions, paragraphs 46-47

Place residences at 3 and 3A. He stressed the need for the proposal to be commercially viable, which dictated the level of density and the carparking requirement.

39. He confirmed that the architectural approach had been

*"... conceived out of a driving design principle to respectfully integrate the development in to the existing character and scale of activity in the surrounding neighbourhood ..."*¹¹

40. Leo Hills, Transportation and Traffic – Mr Hills spoke to his brief of evidence and confirmed that the number of parking spaces required by the development totalled 73 and that 113 were proposed. The evidence related to the existing traffic environment, the assessment of effects and parking, access and loading.

41. With regard to traffic congestion, the Commissioners noted that Mr Hills accepted the criticism from some submitters that the traffic surveys had been undertaken during school holidays (October 2017) and the second during NCEA exams (October 2018).¹² Thus a third survey was undertaken in April 2019. Mr Hills concluded that:

- Traffic effects on the Reydon Place and Trelawn Place intersections with Sandspit Road in the morning peaks would be minimal and commuters would likely depart before the school morning peak.
- As the school afternoon peak is before the evening commuter peak, these effects would also be minimal.¹³

42. Some relatively minor traffic related works recommended by Mr Thambiah for the Council were accepted.¹⁴

43. Nick Rae, Urban Design and Landscape Architect confirmed that he considered the standards for permitted activities in the Single House Zone as a guide as well as the standards and RD assessment criteria in the Mixed House Suburban Zone.¹⁵

44. Mr Rae responded to both Mr Butler's and Mr Kensington's reviews, and referred to the photomontages and sun/shading studies as well as in some detail to the impacts on Trelawn Place and Reydon Place properties. He concluded that the site provided an excellent opportunity for more intensive development and that the proposal responds well to its context.¹⁶

¹¹ Evidence, paragraph 8

¹² Mr Hill's evidence, paragraph 12.4

¹³ Mr Hill's evidence, paragraphs 12.6-12.9

¹⁴ See Mr Hill's evidence, paragraphs 13.3-13.5

¹⁵ Paragraphs 11 and 12

¹⁶ Refer paragraphs 175-182

45. Rebecca Skidmore, Urban Design and Landscape Architect peer reviewed the urban design assessment, and noted that the site, the schools and the neighbourhood centre further to the north formed part of a mixed-use node within a suburban residential environment. She found that the proposal responded well to the site and its surrounds at the periphery of this environment.¹⁷
46. Ms Skidmore does not agree with Mr Kensington's assessment that there will be high adverse visual dominance and landscape character effects. After quite detailed analysis, Ms Skidmore concludes that with the changes made, the proposal:
- "... represents an efficient use of a large site and responds well to an analysis of the key characteristics of the Site and its surrounding context. The proposal will introduce a different housing typology at the periphery of a suburban residential environment. This will result in some change of character... it will make a positive contribution to the suburban environment creating a residential transition that complements the mixed-use node along Sandspit Road while respecting the established residential character to the east and south."*¹⁸
47. Mark Lockhart, Landscape Architect spoke to his evidence and the landscape plans which he had prepared for the site. He explained the key aspects of the landscaping, commented on specific areas within the site, addressed screening of private properties and amenity, and addressed the photomontages.
48. Brian Putt, Consultant Planner provided a brief of evidence (14 June 2019) and a supplementary brief (25 June 2019) which addressed noise and attached an acoustic report; and bus routes, noting the revised routes introduced by Auckland Transport. The acoustic report confirmed that noise arising from vehicles and activities on the site would conform to noise levels expected and provided for in the Single House Zone.¹⁹
49. In his primary brief, Mr Putt noted the primary planning issue, being the IRD which had its history in submissions on the AUP relating to retirement villages. He canvassed the Single House zone in Howick and the scarcity of large sites which would qualify for an IRD. He noted that
- "With this apparent objective and policy conflict within the Single House zone, [resulting in an IRD changing from an RD to a D activity in the Single House zone] it was important for the Council planners to take a broad and comprehensive approach to understanding that the IRD provisions in the Single House Zone was a game-changer that had a specific regional policy purpose."*²⁰

¹⁷ Paragraphs 2.3 and 2.5

¹⁸ Paragraph 4.4

¹⁹ Refer supplementary brief, paragraph 3 and the attached report from Styles Group dated 24 June 2019

²⁰ Primary evidence, paragraph 4.3

50. Failure to do so has led, in Mr Putt's opinion, to Mr Butler and Mr Kensington failing to engage with the underlying purpose at a regional level of the AUP and
- "... their approach is on the wrong side of the RPS direction for regional urban form and growth in Auckland."*²¹
51. David Jans, Box Property Ltd provided evidence and confirmed that to make the site 'work' (i.e. be financially viable), he needed the Reydon Place properties.
52. The evidence presented by the submitters is summarised as follows:
53. John Kenneth and Jocelyn Woodhall, 1 Reydon Place, Cockle Bay, who purchased this property in 1966, described the increased traffic and parking problems, the difficulty in turning out of their driveway and the street, the concerns about the new access into the proposed development and wastewater and stormwater matters.
54. Bruce Lotter, 6A Reydon Place, Cockle Bay presented detailed evidence setting out his reasons for believing the application to be defective, including an analysis of the IRD definition, comparing the shared facilities offered with those at a modern retirement village.²²
55. Mr Lotter also covered the effects of the development on residential character and amenity; dominance, height, shading and other effects; a description of the neighbourhood; a comparison of the urban design reports and their conclusions; the photomontages and photographs; vehicle access via Reydon Place; traffic issues and effects on infrastructure.
56. Gail Alice Klassen provided a joint statement with, and was represented by Bruce Lotter, 1/6 Reydon Place, Cockle Bay.
57. Odelle Cornes, PO Box 38901, Howick represented by Clive Jordan
58. Adam Muncey, 20 Reydon Place, Cockle Bay provided the hearing with detailed evidence expressing his concerns about the application and technical matters related to wastewater and other infrastructure issues, the proposed retention tanks, maintenance of those tanks, the Auckland Regional Policy Statement and the Single House Zone policies, and earthworks. Mr Muncie showed a video showing traffic in the area at 8.45am.
59. Sarah Langstone-Ross, 13 Reydon Place, Cockle Bay provided an affectionate description of her neighbourhood, consistent with other residents, and expressed concerns about the impact the development would have on the character, safety and quietness of her street. Traffic and safety issues were of particular concern.

²¹ See paragraphs 4.4 and 4.6

²² This comparison between Bruce McLaren Retirement Village and the proposed IRD, in table form, was particularly helpful.

60. Kerry and Brent Watt, 12 Reydon Place, Cockle Bay – Mrs Watt has lived in and appreciated the amenity of Reydon Place for 15 years and in her evidence stated that the proposed development is not in keeping with the existing area and would be a change beyond what the zoning anticipated and planned for. She doubted whether the “minimal” recreational or leisure activities would be enough to meet the definition of an IRD.
61. Her concerns included the busyness of Reydon Place and surrounding streets from additional traffic generation, increased congestion and parking, raising safety issues for children, loss of safety for children in Reydon Place, noise, loss of privacy and sunlight and increased pressure on infrastructure as well as construction effects.
62. Stewart Selwyn Pratt, 5 Reydon Place, Cockle Bay, resident for 23 years. Mr Pratt detailed the issues relating to stormwater and flooding, citing his own experience at his property and raising concerns with the applicant’s proposed means of mitigating the stormwater volumes. Wastewater, transport issues, traffic impacts on Reydon Place, shading and amenity loss were also addressed.
63. Tatia Anne Bray, 7 Reydon Place, Cockle Bay provided evidence as a resident of 13 years standing, detailing (and confirming other submitters’ evidence about) the use of the street by children playing and riding bikes, and the street events such as BBQs. Concerns about the proposed driveway access from Reydon Place, the loss of on-street parking, turning, passing, and children walking to school were all considered as were issues about creek flooding, stormwater management and the sewerage infrastructure.
64. Fiona and Stephen Moran, 18 Reydon Place, Cockle Bay – Mrs Moran presented detailed evidence which attested to her deep attachment to the amenity and character provided by her neighbourhood. She referred to the schools being of suburban design, commented on the application and the supporting evidence, the ‘uniqueness’ of the site, her concerns about traffic and children’s safety, parking and traffic, and the chaotic situation at the end of the school day, with school buses, public buses and other vehicle movements all competing for road space.
65. Mrs Moran’s comments on the nature of an IRD in the context of her long experience working in rest homes and supported residential care were noted (and are addressed below) and her local knowledge was applied to stream, stormwater and groundwater issues.
66. Nicole and Michael Bridge, 8 Reydon Place, Cockle Bay. Mrs Bridge gave evidence of her family’s enjoyment living in Reydon Place, where they purchased nearly 7 years ago. She described the potential loss of amenity value, shading, and traffic issue, with photographs to demonstrate her points. She also provided a resident’s view of the infrastructure problems, sewerage, Cockle Bay’s character and whether the proposed development was ‘non-compliant’.

67. Brian and Sandra Stuart represented by Laurie Slee, 43 Sandspit Road, Cockle Bay purchased because of the established residential area. They noted that Sandspit Road was already very busy and that the area had a very high ratio of car owners. They also raised waste water and sewerage problems and site contamination concerns.
68. In a separate submission, Dr Stuart raised health and safety issues relating to the contaminated site, traffic issues particularly around the schools and the difficulty in exiting Reydon Place.
69. Mike and Deirdre Frankle represented by Laurie Slee, 17 Reydon Place, Cockle Bay advised the hearing that they moved to Reydon Place 13 years ago and raised traffic and parking issues, with more Howick College students parking in the street and the surrounding streets coming to a standstill at around school drop-off and pick-up times.
70. Mary Bird, 10 Reydon Place, Cockle Bay represented by Laurie Slee, considered the definition of an IRD and that matter is referred to below. She also spoke about amenity values which she has enjoyed for over 40 years, neighbourhood character, stormwater, the sewerage system and parking.
71. Following the submitters, for the Council, Mr Butler provided a supplementary urban design memo in which he addressed matters raised by the applicant and confirmed that although the changes to the proposal were an improvement, *“they do not address the fundamental urban design issues.”*²³ His position remained that he could not support this application.
72. Mr Kensington also confirmed that his position opposing the application remained unchanged and Mr Dales advised that he was *“happy to recommend approval”* and that to decline this application *“would be a missed opportunity”*.
73. At the request of Counsel, the applicant’s right of reply was adjourned until 26 July 2019 and was given in writing. Mr Webb addressed the following:
- The definition of an IRD and how the proposal meets that definition;
 - Other IRDs granted consent;
 - The objectives and policies of the Single House Zone;
 - The key effects of the proposal; and
- concluded that the proposal meets the definition of an IRD, that the effects are acceptable and that IRDs are part of the planned character for residential zones.
74. Mr Putt’s 2nd supplementary statement answered issues arising relating to the planning framework and concept testing; whether the subject site was unique;

²³ Mr Butler’s Supplementary Urban Design Memo paragraph 4

effects on neighbouring properties; and conditions of consent.

75. Mr Rae's supplementary statement covered the planned outcome for the site; sunlight access to neighbouring properties and scale / visual dominance, concluding that in his opinion, there were no urban design reasons not to grant the application.
76. In a technical memo, Mr Hills reported on further work carried out in relation to vehicle tracking into and out of Reydon Place, the number of car parks accessed from Reydon Place and traffic volumes at night.

Integrated Residential Development

77. Before we could move to our substantive consideration of the application, it was necessary for us to determine whether this was in fact an application for an *'integrated residential development'* (IRD).
78. This determination is important because it establishes the status of the proposal as a discretionary in the Single House Zone, or whether the proposal is a non-complying activity.^{24, 25}
79. An IRD is defined in the AUP as:

A residential development on sites greater than 2,000m² which includes supporting communal facilities such as recreation and leisure facilities, supported residential care, welfare and medical facilities (inclusive of hospital care), and other non-residential activities accessory to the primary residential use. For the avoidance of doubt this would include a retirement village.

80. This proposal consists of 71 residential units with 113 parking spaces (73 required), and supporting communal facilities and other accessory activities identified by the applicant as:
- A 'communal street'
 - A 10m x 4m swimming pool
 - A BBQ area
 - A raised lawn area
 - A 'common room'
 - Provision for a café in one of the residential unit spaces.

²⁴ Table H3.4.1 AUP(OP)

²⁵ And it is acknowledged that a discretionary activity in the Single House Zone, in Activity Table Rule H3.4.1(A9), an IRD does not have to comply with any zone standards, including building height, front yard and building coverage etc – see Section 42A report, section 4, page 15 of the Agenda, and Webb opening submissions, paragraphs 19-21

81. We have, for the purposes of this proposal discounted the communal street, which we find is no more than an accessway, necessary to provide pedestrian access to the garden apartments and cannot be claimed as a supporting communal facility. Occupants of the apartment buildings will have no reason to use the communal street, to which there is only limited direct access from the lower vehicle basement, other than to gain access to the pool and BBQ area. It does not seem to us to be an area in which people would linger for social interaction. We note that it is not included in the communal facilities referred to by Mr Webb in his submissions in reply.²⁶

82. We had also excluded the café as a communal facility or accessory activity, as there was no apparent commitment by the applicant to provide it or to continue with it:

*... with a café on the Sandspit Road/Trelawn Place corner. The cafe occupies an apartment footprint therefore being able to be reconfigured into an apartment if the cafe is not required.*²⁷

83. However, in his closing submissions, Mr Webb advised that the IRD would be marketed as having a café and that

“Even if it were not a café, the space would be used for some other commercial activity for common use – whether it be a clinic of some sort or something else.

*The location of that space would provide for a poor apartment or a good commercial space. It is not the applicant’s intention to compromise the development by using it for a poor apartment.”*²⁸

84. Mr Webb concluded that the café therefore met the purpose and intent of that part of the definition referring to “*other non-residential activities accessory to the primary residential use*”. We are not so sure that this answers the question. If the applicant is to comply with the standard condition proposed in this case that the development be carried out “*in accordance with the plans and all information submitted*”, then the space designated “café” must be used as a “café” and not for “a clinic” or “some other commercial activity”. In any event, unless the activity is truly for communal use or is an accessory activity and thus part of the IRD, the opportunity for commerce in the single house zone is very limited (relevantly, to a café or a dairy).

85. We therefore find that the area shown on the plans as a “café” must be developed as a café, so as to comply with the standard condition, and cannot be converted to some other commercial activity and, that being the case, then we must include it, along with the swimming pool, BBQ area, raised lawn area and the common room as the communal or non-residential facilities supporting or accessory to the residential units.

²⁶ Submissions in reply for the applicant, paragraph 9

²⁷ Section 42A report, pages 15-16 of the Agenda

²⁸ Submissions in reply for the applicant, paragraphs 10-11

86. Nevertheless, we have determined that these facilities or activities are insufficient to distinguish this proposal from any other apartment development and could pave the way for any proposal with similar – or even fewer – facilities to claim IRD status, thus potentially undermining the provisions of the AUP.

87. Our reasons are as follows:

Submissions and evidence

88. In opening submissions, Mr Webb for the applicant suggested that

*In this case, every expert [changed from ‘everyone’] agrees that the development meets the threshold to qualify as an IRD. And with good reason.*²⁹

89. It is clear that not every expert accepts that the development is an IRD. Mr Butler, the Council’s Team Leader Design Review noted his initial reading of the IRD definition

*“...raised some doubts as to the validity and authenticity of the ‘communal’ component of the apartment proposal which includes a pool, media room and public café; and how these facilities distinguish the development from any other conventional apartment proposal which may be developed in the THAB or Mixed Use zone for example.”*³⁰

90. However, the two consultant planners involved, Mr Putt for the applicant and Mr Dales for the Council are both agreed that the application *meets the definition*. Mr Putt stated that

*“The application purpose meets the definition for an IRD ... The integrated development is both a design outcome – including the internal street and the provision of community facilities, in this case the swimming pool, the common area and the community lounge. A further element of integration is represented by the presence of the proposed café on the corner which takes up one of the unit spaces ...”*³¹

91. The reporting planner Mr Dales refers to extensive discussions with the Applicant team and the Council’s experts and concludes that

*“Having assessed the proposal and relevant provisions of the AUPO:OP, I am satisfied that the applicant meets the definition of an IRD and by virtue of the size of the site anticipates an integrated residential development that would be of a form different to the one and two storeys typical of the single house zone.”*³²

²⁹ Paragraph 17

³⁰ Mr Butler’s urban design specialist report, at paragraph 29

³¹ Mr Putt’s evidence, paragraph 5.1(a). The Commissioners have determined that the café is not a guaranteed community facility and therefore it cannot be included in the assessment as such (see above).

³² Section 42A report, page 16 of the Agenda

92. In closing, Mr Webb states that *'While communal facilities are required, there is no requirement that they be of a certain size or type.'*³³
93. Mr Jans provided further clarity around the potential use of the provided communal facilities. He indicated that the intention was to create an environment which allows residents to socialise, mix and integrate together. He confirmed that it was the intention that the café would be built, that he expected residents to take the initiative to use the communal room and he anticipates that there to be sufficient people within the development to have the 'community spirit' to organise the use of the communal room. The swimming pool is sized and aimed at recreation, not peak performance swimming. There will not be an on-site manager.³⁴
94. We note that the definition itself contains no specific reference to the size or quality of the facilities and accessory activities, but we note also that in response to questions at the hearing as to how to distinguish between an IRD and a multi-unit development, Mr Putt stated that in his opinion, the tipping point is having a community facility. He said that most developments do not, they usually have only the body corporate and an insurance policy. Here, the IRD is appropriately identified because the facilities are available to everybody and the design means there will be a lot of interaction – the stairs, the street, and he felt that the café should be added into that because it is not optional, it is committed to in the plans. To be an IRD is a matter of scale.... An IRD must have 'good quality' facilities and it comes down to "quantum" [of communal facilities].³⁵
95. We are inclined to agree with most of Mr Putt's comments above, but reach a different conclusion: many (if not most) apartment developments have communal facilities of one sort or another, and it is our opinion that the provision of communal facilities must be relative to the residential development proposed. It is a question of quality and quantum³⁶ and in our view, this proposal fails on both. There is also the question of management, which we address below.
96. One of the submitters, Mary Bird, neatly encapsulated the Commissioners' concerns about this proposal being treated as an IRD:

To try to better understand the issue, as a lay person, I have looked at the dictionary. Two dictionary definitions of "integrated" from the Cambridge dictionary are "mix and join a society or group", or "combine things". The Merriam-Webster dictionary says integrated is "marked by unified control". Rest homes and retirement homes match these definition[s]. They are owned and operated by organisations that offer a right to occupy and a wide range of services to residents. This is real integration – shared use of multiple facilities under a single ownership structure. The proposed development is for individual

³³ Paragraph 7

³⁴ Evidence and comments from Mr Jans at the hearing.

³⁵ Summarised from Commissioner notes taken at the hearing. This record has been agreed after the three Commissioners had checked their records. They are satisfied that whilst not an exact transcript, the words reflect what the witness said in answer to questions.

³⁶ (a statement Mr Putt repeated towards the end of Day 2 of the hearing)

apartments to be sold to individuals. Having a swimming pool and BBQ is not integration in the above senses of the word. It is simply a cheap attempt to by-pass the rules. One of my neighbours is presenting a comparison of features for retirement homes with those offered for this proposed development. The only integration offered by the proposed development is inclusion of a swimming pool; a BBQ, a little grass area and a café “that can be converted to an apartment”. These might be a marketing advantage. But more likely they are an attempt to by-pass the Council rules.³⁷

97. We agree with another Reydon Place submitter, Jocelyn and John Woodhall who did not believe that the proposal meets the IRD definition:

“The amenities proposed by the developer, merely to circumvent the zoning and enhance saleability, fall far short of these standards [in the definition].”

98. And to quote a third Reydon Place submitter, Nicole Bridge:

“This development is not an IRD ... By adding a pool, a BBQ and a mangers/common area in the basement it’s meant to pass as an IRD? What a Joke! ... Clearly the objective of the IRD design is to facilitate the development of retirement and rest homes,³⁸ not apartments in general.”

Interpreting the AUP - definitions

99. In reaching our conclusion, we have also looked at other provisions of the AUP, as AUP J1.1(1) provides that

The meaning of the provisions in the Plan must be ascertained from all relevant text in the Plan and in the light of the purpose of the Resource Management Act 1991³⁹ and any relevant objectives and policies in the Plan.

100. Starting with the definition itself, whilst this is a residential development on a site greater than 2,000m², the disagreement arises as to whether the “*supporting communal facilities (such as recreation and leisure facilities ... and other non-residential activities accessory to the primary residential use...)*” are sufficient to remove this multi-unit proposal from a “run-off-the-mill” apartment development and place it in a different category of activity.

101. We have considered the two specific activities referenced in the IRD definition: retirement villages and supported residential care. We have done this as we consider that these activities provide specific guidance on what might be expected of an IRD in terms of those communal facilities.

102. A retirement village is defined in the AUP as follows:

³⁷ Submission from Mary Bird, 3rd paragraph

³⁸ The Commissioners note that the definition of an IRD is not limited to retirement villages and rest homes: these are just two examples of an IRD. Others, for example would be the co-housing development in Surrey Crescent, Grey Lynn, which clearly meets the definition.

³⁹ The purpose of the RMA is well understood and is of little direct assistance here.

Retirement village

A managed comprehensive residential development used to provide accommodation for aged people,

Includes:

- *the use or development of any site(s) containing two or more units that provides accommodation, together with any services or facilities, predominantly for persons in their retirement, which may also include their spouses or partners; and*
- *recreation, leisure, supported residential care, welfare and medical facilities (inclusive of hospital care) and other non-residential activities accessory to the retirement village.*

103. We note the reference to managed and comprehensive residential development and refer to the evidence of a submitter, Mr Lotter, who helpfully provided a comparison between the facilities offered at the Bruce McLaren Retirement Village (795 Chapel Road, Howick) and this application, and between the facilities offered at a Newhaven development on Te Irirangi Drive and this application.⁴⁰

104. Both examples provide significant facilities and both provide on-site management, which we consider necessary to claim IRD status, given the need for supporting facilities and accessory activities to integrate with the residents who occupy the units.

105. Supported residential care is defined as follows:

Supported residential care

Facilities used to provide accommodation and fulltime care for aged, or disabled people (including mental health, addiction, illness or intellectual disabilities). The facility must be certified under the Health and Disability Services (Safety) Act 2001 and comply with the Health and Disability Sector Standards 2001.

Includes:

- *a rest home defined in section 58(4) of the Health and Disability Services (Safety) Act 2001; and*
- *accessory nursing and medical care.*

Excludes:

- *hospitals.*

⁴⁰ Refer statement of evidence from Bruce Lotter, attached tables

106. One of the submitters, Fiona Moran spoke of her personal experience working in a number of rest homes, and referred to a number of small unit developments on large sites with communal facilities and facilities that supported residents in remaining independent:

I see this as more in keeping with the design of the IRD, to keep communities whole, to allow our elderly or those who require community engagement but are unable to achieve it on their own (ie stroke rehab villages, IHC villages and mental health rehab villages) to still feel part of the community, to live in communities that still reflect the style of living that they had their whole life, low rise homes but with facilities to support them. With the changing MOH guidelines I see these facilities being needed more than ever and support the IRD definition in integrating them into our communities...⁴¹

107. Other examples cited by Mrs Moran at the hearing included AIB (stroke rehabilitation), Laura Ferguson (rehabilitation), Mannaaki House (a residential mental health community) and Odyssey House (offering residential addiction rehabilitation programmes). All of these examples offer ‘integrated’ care and support facilities with a management structure, and all would be considered, in our view, as supported residential care, and thus as an IRD.
108. In terms of scale, whilst there is no mention of numbers for a retirement village, Supported residential care for up to 10 people is provided for in the Single House zone as a Permitted (P) activity and for more than 10 as a Discretionary D activity; and we note the same provision for Boarding houses and Visitor Accommodation.⁴²
109. Thus, we conclude from these provisions that there is the intentional inclusion of activities in the zone which are not traditional single housing, but may be compatible with it: such as retirement villages, community residential facilities, boarding houses and visitor accommodation, the latter three activities having a low threshold of numbers for a permitted activity, providing an appropriate sense of scale for proposed developments in the zone.
110. We also conclude that an integrated residential development must have a degree of on-site management – from the explicit *managed comprehensive residential development* of a retirement village, to the implied management of *accommodation and full-time care* of supported residential care facilities – we see the need to actively manage communal facilities so that they are indeed ‘integrated’ and ‘supporting’ as being a fundamentally necessary component of an IRD.
111. The applicant agreed with this in principle – in answer to questions about management, Mr Jans said that it is the same as a residential apartment, there would have to be a body corporate and someone to arrange management, controls, hours etc. He noted the commitment here in the provision of a

⁴¹ Under the heading “Retirement villages and resthomes”

⁴² Activity Table H3.4.1

manager's office; that the plans set aside an office for an independent person, who would not be fulltime, but suggested that it does go a bit further than the usual.

Interpreting the AUP - zone provisions

112. The Single House Zone is described in H3.1:

The purpose of the Residential – Single House Zone is to maintain and enhance the amenity values of established residential neighbourhoods in number of locations. The particular amenity values of a neighbourhood may be based on special character informed by the past, spacious sites with some large trees, a coastal setting or other factors such as established neighbourhood character. To provide choice for future residents, Residential – Single House Zone zoning may also be applied in greenfield developments.

To support the purpose of the zone, multi-unit development is not anticipated, with additional housing limited to the conversion of an existing dwelling into two dwellings and minor dwelling units. The zone is generally characterised by one to two storey high buildings consistent with a suburban built character.

113. The purpose of the zone is quite explicit: amenity values of established residential neighbourhoods must not only be maintained, they must be enhanced, and, in support of this, multi-unit development is not anticipated. The Plan could not be clearer and suggests that although IRDs are a discretionary activity in the zone, they are not expected to be in the form of a large-scale multi-unit development, rather, the provisions guide a development in a form compatible with the expected outcomes of the Single House zone, perhaps most explicitly stated in Policy H3.3(1):

Require an intensity of development that is compatible with either the existing suburban built character where this is to be maintained or the planned suburban built character of predominantly one to two storey dwellings.

114. The Single House zone description also provides some pointers, with reference to amenity values, established residential neighbourhoods, established character, and one or two storey houses (see below).

Interpreting the AUP - relevant zone objectives and policies

115. The relevant objectives and policies of the Single House zone are:

H3.2. Objectives

(1) Development maintains and is in keeping with the amenity values of established

residential neighbourhoods including those based on special character informed by ... factors such as established neighbourhood character.

(2) Development is in keeping with the neighbourhood's existing or planned suburban

built character of predominantly one to two storeys buildings.

(3) Development provides quality on-site residential amenity for residents and for adjoining sites and the street....

H3.3. Policies

(1) Require an intensity of development that is compatible with either the existing suburban built character where this is to be maintained or the planned suburban built character of predominantly one to two storey dwellings.

(2) Require development to:

(a) be of a height, bulk and form that maintains and is in keeping with the character and amenity values of the established residential neighbourhood; or

(b) be of a height and bulk and have sufficient setbacks and landscaped areas to maintain an existing suburban built character or achieve the planned suburban built character of predominantly one to two storey dwellings within a generally spacious setting.

(3) Encourage development to achieve attractive and safe streets and public open

spaces ...

(4) Require the height, bulk and location of development to maintain a reasonable

level of sunlight access and privacy and to minimise visual dominance effects to the adjoining sites.

(5) Encourage accommodation to have useable and accessible outdoor living space....

(8) To provide for integrated residential development on larger sites.

116. We are satisfied that the objectives and policies of the zone provide sufficient guidance as to what the Single House zone is seeking to achieve, and in that context, enable a clear vision of what type of IRD proposal might be accommodated. As Policy (8) provides *in ipso* no clues and so should be read in the light of the other policies – development compatible with the existing built character and in keeping with the amenity values of the established residential neighbourhood, and so on.

117. The strength and quality of the submissions, particularly those from Reydon Place residents, left us in no doubt that this is one of those established residential neighbourhoods.
118. We address objectives and policies in more detail below.

Interpreting the AUP - Independent Hearings Panel (IHP) report to Auckland Council

119. In a High Court decision, Justice Muir referred to the IHP's interpretation of a provision when considering its meaning as '*direct evidence of the drafter's intention*'.⁴³ Thus, it is appropriate to look at the IHP's decision on this matter.
120. In the IHP's Report to Auckland Council Hearing topics 059 - 063 Residential zones, the Commissioners have noted as particularly relevant, the following excerpts:

... the Panel does not support a definition of retirement villages being limited to that in the Retirement Villages Act 2003. It is the Panel's view that a retirement village is essentially a residential activity. While a range of other complementary activities (such as recreation, social, community, cultural and health) may be offered in an integrated manner, it is still essentially part of a residential activity. In the Panel's view any residential activity that offers a range of other complementary activities (other than for retirement purposes) should be treated in the same way as a retirement village and vice versa.

Accordingly, a class of activity termed 'integrated residential development' has been defined and could apply to a range of activities such [as] retirement villages, campus-style student accommodation, community and cultural style residential developments....

Mr Brown, expert planner for the Caughey Preston Trust, was concerned that the Caughey Preston Trust development might be defined as a hospital as opposed to a residential activity (and therefore be treated as a non-complying activity in residential zones). The Panel's position is that would not be the case as the Caughey Preston facility does not provide for any medical or surgical treatment of residents other than day-to-day care. The Panel finds that this development and similar forms of development would meet the definition of an integrated residential development.⁴⁴ (underlining added)

121. The Commissioners note the specific references to the range of activities which the IHP contemplated could be identified as an IRD – in addition to retirement villages and supported residential care – campus-style student accommodation,

⁴³ Gock and ors v Auckland Council [2019] NZHC 276, paragraph [77](a)

⁴⁴ IHP's Report to Auckland Council Hearing topics 059 - 063 Residential zones, see 1.2. Summary of the Panel's recommended changes to the proposed Auckland Unitary Plan, 3. The purpose of the Residential - Single House Zone, and 7. Integrated residential development (including retirement villages). These excerpts are from 7.2. Panel recommendation and reasons

and community and cultural residential developments.

122. We are of the opinion that these examples imply a degree of management and control (like a retirement village) which is lacking in this application.

Other examples of an IRD

123. In submissions in reply, Mr Webb gave the example of a residential development comprising a 35 unit apartment complex with basement car parking in Orewa, with 3-4 levels of apartments located on a site of 3,851m² zoned Residential Single House and Residential Mixed Housing Suburban.
124. The Commissioners hearing that application found that the development met the IRD definition.⁴⁵ The decision provides no assistance when assessing the proposal before us as there is no analysis of whether or how the application falls within the definition. In fact, there is no legal or evidential basis for the Commissioners' finding.
125. The other application identified at the hearing and referred to in Mr Webb's closing is for a co-housing development in Surrey Crescent, Grey Lynn, where independent commissioners for Auckland Council accepted that the proposal was an IRD and there was no dissent from this position.⁴⁶ We refer to the description of the proposal taken from the AEE (with underlining added):⁴⁷

*This report has been prepared in support of a resource consent application on behalf of Cohaus Group for the establishment of a 19-unit cohousing development at 11 Surrey Crescent, Grey Lynn. Cohousing is an innovative model of housing originating in Scandinavia that encourages community interaction and sharing of resources. It essentially involves several households coming together to invest, design and develop a property together. This allows for affordable dwellings to be established in a high-quality living environment which meets the needs of the residents. As described in the Architectural Design Package, attached as **Appendix 2**:*

"The cohousing development model differs from traditional development models by placing an emphasis on the needs of the group who will live there and fostering interaction within the group. This is done by assembling the group who will ultimately live in the development before the design process starts. The group then works together to define the location, size and type of spaces it needs and the opportunities and constraints for development. Where practical, resources are shared. In our model, we will have shared gardens, laundry facilities, cars and car parking, bike parking, storage, guest room, garden house and common room. These will be managed by the members of cohaus. These

⁴⁵ BUN20427979, SUB60036541, LUC60009332 & WAT60051233, paragraphs 14 and 64(c)

⁴⁶ Refer Resource Consent Application BUN60317193 – Decision dated 4 December 2018, paragraphs 6 and 106.

⁴⁷ Combined Land Use and Subdivision, 11 Surrey Crescent, Grey Lynn. Assessment of Environmental Effects and Statutory Analysis dated 21 March 2018, paragraph 2.1

shared facilities will allow relatively small individual units to offer far greater amenity to the occupants than they would be offered in a traditional development.”

The viability of such a housing model is dependent on finding a suitable site that can accommodate the required number of units, and is close to amenities, the city centre, areas of employment, frequent public transport and major cycleways to support sustainable living principles. The subject site meets these criteria and additionally has unique characteristics that lends itself to development of this style and scale, such as its large size and shape, and location at the juncture of a range of activities within an area which is increasingly intensifying.

126. Like the application before us, this proposal is located in the Single Dwelling Zone, and there are 19 dwellings and shared facilities proposed on a site of 2,406m². The shared facilities were described as being developed by the households who wish to invest in the proposal and who design and develop the property, on the basis that the individual dwellings will be complemented by these facilities (in this case, gardens, laundry, cars, carparking, bike parking, storage, a guest room, a garden house and a common room), all to be managed by members of the community.
127. Mr Webb questioned how this proposal was different to the one under consideration and that it was “... *even more difficult [than the Orewa example] to discern why this proposal qualified as an IRD*”, suggesting that there were “*less communal facilities*” than on offer here, and that it is “... *unclear from the decision exactly why the commissioners considered that proposal met the definition of an IRD.*”⁴⁸
128. The Commissioners find Mr Webb’s comments somewhat disingenuous, given the clear statements quoted above that community interaction and shared resources are at the heart of the co-housing philosophy, with group needs and interaction predicating the design of the proposal and the inclusion of facilities managed by co-house members.

Distinguishing features of an IRD

129. In concluding that this proposal is a multi-unit development and not an IRD, we have noted above the provision of minimal supporting communal facilities – a pool, a BBQ, a grassed or lawn area and a common room, and a café. These are not, in our view, sufficient to distinguish this as an IRD. A resident could live in one of the units and never feel ‘integrated’ with or venture near any of these facilities, particularly without active management of any of the facilities. Indeed, we were interested to note that the proposed swimming pool, raised lawn area and communal BBQ area appear little different in size to the pool and lawn area at the single residential dwelling at 42 Sandspit Road, opposite the application site.⁴⁹ It therefore appears to us that these facilities are of a ‘single residential’

⁴⁸ Refer paragraphs 25, 26 and 27.

⁴⁹ See aerial photo with overlaid site layout on application plan A1.01

scale and not that which could be expected as communal facilities at a 71 unit development. The proposal fails Mr Putt's 'quantum' test.

130. Secondly, there is the question of the quality of facilities, which must be sufficient to ensure their relevance, proportionality and their integration into the development. We are not satisfied the provision of the pool and other facilities or their location will ensure their integration with the residents who might use them.
131. The café – if provided – should enable a degree of integration both for the residents and for non-residents alike. However, a whiff of uncertainty about its provision remains.
132. Thirdly, the supporting communal facilities must be actively managed. We find that the passive provision of facilities is not enough to ensure IRD status. This is clear from the starting point of retirement villages and supported residential care facilities in the definition. The standard body corporate structure is not enough; and neither is the part time provision of a caretaker, whose role would normally be limited to repair and maintenance duties and not to the promotion of facilities to assist in the integrated operation of the development.

Any “estoppel” on making a determination on the definition?

133. Whether a decision on whether a proposal meets the definition of an IRD can be made at stage is questioned by Mr Webb, who advised that

“Had an issue been raised about this at an earlier stage, then decisions could have been made by the developer then whether to proceed or not.”⁵⁰

134. Mr Webb suggested that there would be

“severe undue prejudice on the developer if a decision is now made that this proposal does not meet the definition of an IRD against the clear weight of evidence”

135. However, it is clear that Mr Butler questioned whether this was in fact an IRD as his initial reading of the definition

“... raised some doubts as to the validity and authenticity of the ‘communal’ component of the apartment proposal which includes a pool, media room, and public café; and how these facilities distinguish this development from any other conventional apartment proposal which may be developed in the THAB or Mixed Use zone for example.”⁵¹

136. Although Mr Butler accepted Mr Dales' interpretation that this was an IRD, the applicant was on notice that this was an issue, and, in any event, the Commissioners are bound to make a determination on the matter and cannot be 'estopped' either by the cost to the applicant of this application; the determination

⁵⁰ Closing submissions, paragraph 41 (and the next quote)

⁵¹ Urban Design Specialist Report from Chris Butler to Brooke Dales dated 29 March 2019, paragraph 29

by Council staff that it was an IRD; or any ‘severe undue prejudice’ to the developer.

137. The issue having been raised, as Mr Webb is well aware, the Commissioners are bound to consider all of the submissions and evidence presented, and to make a determination.

Processing the Application through Council

138. Mr Webb pointed out in his submissions in reply that this application was processed by the Premium Service team at the Council.
139. We do not consider the fact that this application was processed by the Premium Service team at the Council to be relevant. Acceptance of an application as a “premium” project does not imply it has greater merit or is more likely to succeed than any other application.

Assessment under section 104D

140. Having concluded that the proposal is not an IRD, it falls to be considered as a non-complying activity. We must therefore now assess the applicant under the S104D ‘gateway’ tests, and may only grant a resource consent for it if we are satisfied that either (in summary):
- (a) The adverse effects of the activity on the environment will be minor;
 - or
 - (b) The application is for an activity that will not be contrary to the objectives and policies of the AUP(OP).

Effects of the activity on the environment

141. One of the alternative requirements of section 104D is that we must be satisfied that the adverse effects on the environment as proposed to be remedied and/or mitigated will be minor. ‘Minor’ is not defined and whether an effect will be more than minor is a matter of fact and degree – there is no absolute yardstick for what might or might not constitute a minor effect.
142. Whilst Mr Dales’ Section 42A report recommended that consent be granted, we received very clear comment from submitters regarding what they saw as the adverse effects of the proposed development. We also received expert evidence from the Council’s Urban Design and Landscape/Visual experts, Mr Butler and Mr Kensington, who both highlighted areas where they disagreed with the Applicant’s experts and the conclusions of Mr Dales.
143. Our first concern is whether or not the proposed development would be consistent with the existing or planned suburban built character of the area. We are of the view that this existing or planned suburban built character of the Single House Zone must be different to the suburban built character referred to in the

Mixed Housing Suburban Zone (and also different to the planned urban built character of the Mixed Housing Urban Zone), with the key difference between the character of the zones, as we see it, being that multi-unit development is not generally anticipated in the Single House Zone.⁵² Our site visit provided us with the opportunity to consider this matter first hand.

144. In relation to the different existing and expected future character of different zones, we do not agree with the supposition of Mr Webb that there is little relevance in distinguishing between 'urban' form and 'suburban form, and that the use of the word 'urban' in the AUP(OP) is simple to distinguish that area of land that is not rural⁵³. It is our view that the Regional Policy Statement uses "urban" to distinguish "rural" but in the zoning provisions the words have been chosen deliberately, to highlight the different character expected in each zone.

145. Based on our visit we accept Mr Butler's description that the area is

'...fully consistent with the SH zone description which is generally characterised by 'one to two storey high buildings consistent with a suburban built character'. This suburban built character is also reflected in Cockle Bay by mature trees and gardens; a range of exterior cladding materials - but prevalence for traditional brick and weatherboard finishes; and consistent and generous landscaped front yards with buildings setback from the road boundary'⁵⁴

and that in relation to Howick College

'...the school sits lightly within the existing neighbourhood context as a recognisably different activity, but that this does not present a dominant or overbearing imprint on neighbourhood character'.⁵⁵

146. It is clear from the submitted plans that, viewed from Sandspit Road and Reydon Place, the proposed three buildings along the site frontage will be read as a full three storeys in height, for the full site frontage, albeit with two relatively narrow gaps between the buildings (which will not be clearly visible in many views).

147. The proposed excavation of the already sloping site allows the creation of additional usable floorspace on lower levels of the building, including the apartments in the upper basement and the common room in the lower basement, facing the 'internal street'. Overall this *results in* five levels of usable/habitable space.

148. This level of development is a far step from the existing or planned suburban character of the area, and will have adverse effects on the amenity of the local area as a whole, and the proposed development will have a negative impact on

⁵² H3.1 Zone Description AUP(OP)

⁵³ Applicants submissions in reply, Paragraph 55.

⁵⁴ Memo Chris Butler 29th March 2019 paragraph 23

⁵⁵ Memo Chris Butler 29th March 2019 paragraph 26

the qualities and characteristics of the area that contribute to an appreciation of its pleasantness and aesthetic coherence.

149. Mr Kensington noted particular concerns with how the way the building fronts Reydon Place is at odds with the existing landscape character of this area and with that which is anticipated for the site under the Residential – Single House zone of the AUP(OP)⁵⁶ and that

“... the proposal will not maintain the landscape and visual amenity values of the established residential neighbourhood, particularly within Reydon Place, and will not be in keeping with the existing or planned suburban built character. In addition, in my opinion the proposal will result in adverse effects on the landscape and visual amenity of residents within adjoining properties and within Reydon Place and at the western end of Trelawn Place, including in relation to adverse visual dominance effects.”⁵⁷

150. We accept this view, but also have concerns in general and also with how the building fronts Sandspit Road and Trelawn Place.

151. In coming to this view, we accept Mr Butler’s view that we should not rely upon proposed street tree planting to provide mitigation for these effects, given that the applicant will not be in a position to ensure the future retention of these trees.⁵⁸ Even were we able to rely upon the retention of the proposed additional street trees, we consider that the scale and form of the proposed development is such that it would still have a very significant adverse effect on the amenity of the area.

152. From the evidence of Mr Butler and Mr Kensington, we *are also* convinced that the overall bulk and mass of the building will bring a number of further adverse effects, including on sunlight access, privacy and visual dominance to a number of residential properties on Reydon Place and Trelawn Place.

153. In respect of shading of existing dwellings, we accept Mr Butler’s view that

“... shading from the development is likely to have at least minor effects ... For properties at 3 and 3A Trelawn Place and 6 and 6A Reydon Place (and most probably the properties at 8, 10 and 12 Reydon Place and 5, 7 and 11 Trelawn Place) the extent of shading particularly in late afternoon/early evening in summer and to a lesser degree spring, represents a significant loss of amenity during a period where the outdoor living areas are most likely to be occupied and in use. Considering that sunset on the 21st December 2019 in Auckland is at 8.39pm this represents a not inconsiderable loss of sunlight (3-4 hours). I consider this to be substantial negative effect.”⁵⁹

⁵⁶ Memo Peter Kensington 29th March 2019 Paragraph 9

⁵⁷ Memo Peter Kensington 29th March 2019, paragraph 11

⁵⁸ Chris Butler 29th March 2019, paragraph 60

⁵⁹ Memo Chris Butler 29th March 2019, paragraph 87

154. In response to the changes made to the proposal prior to the hearing, Mr Butler acknowledged those changes, noting that while they

“ ...will result in positive improvements to the design, they do not address the fundamental urban design issues outlined in my Urban Design Memo. This includes the effects from proposed development on neighbourhood character visual dominance, overlooking and shading.”⁶⁰

155. We accept that, given its zoning as residential land, the 30 Sandspit Road site will inevitably be redeveloped. The same may also be true of 40 Sandspit Road and 2 and 4 Reydon Place. However, we accept Mr Butler’s view that whilst such future development will inevitably cast some shade over neighbouring properties, the bulk, length and scale of the buildings currently proposed (which we have concluded above do not reflect the existing or planned suburban built character of the area) will result in a longer period of shading over a considerably wider area with less gaps/relief than would be expected from a development which more closely followed the objectives and policies for the zone.⁶¹

156. Although all expert evidence before us indicated that there were no traffic issues with the proposed access from Reydon Place, we have significant sympathy with the submitters regarding the impact of the increased use of the cul-de-sac and the corresponding impact on their amenity. Whilst we recognise that in his reply Mr Webb indicated⁶² that residents (of the new development) would not need to use the cul-de-sac end for any purpose, we consider that there will at times be occasions where residents of the new development need to use it. We heard that the cul-de-sac is currently already used for school parking and drop off. The proposed development will bring further traffic to the cul-de-sac outside of these hours including during the evening and weekends. The submitters provided us with descriptions of their current community, and how the cul-de-sac head operates as an extension to their gardens and that their children play within the cul-de-sac head. Additional traffic in the evening and weekends, however infrequent, will undoubtedly impact upon this use as parents will have concerns regarding safety with traffic no longer being limited to the small number of houses in the street and their visitors. This will undoubtedly negatively impact upon the amenity of the existing residents.

157. In view of the above, we consider that taken as a whole the adverse effects of the proposal will be more than minor and the proposal fails to meet the first gateway test of S104D.

Objectives and policies of the AUP

158. The second or alternative section 104D gateway test is whether the proposed activity is contrary to the objectives and policies of the relevant planning instruments, here, the AUP(OP). We have proceeded on the basis that the word

⁶⁰ Supplementary Urban Design Memo, paragraph 4

⁶¹ Memo Chris Butler 29th March 2019, paragraph 88

⁶² Submissions in Reply, Paragraph 68

'contrary' contemplates being opposed in nature, different, or opposite to, so an absence of support is not sufficient to meet the test of 'contrary'.

159. We have also considered the relevant objectives and policies of the AUP "as a whole", however, we note that a decision may be based upon a single objective; and where there is a conflict between objectives and policies, the specific should be preferred over the general.
160. We accept the approach to the interpretation of planning documents referred to by Mr Webb in his closing submissions, and we also accept that not all policy provisions relating to a particular proposal are contained in one chapter.⁶³
161. Starting with the zone objectives and policies quoted above, in our view, the anchor for the Single House Zone is the emphasis on established residential amenity values and established neighbourhood character and the reference to one or two storey buildings provides a key means of achieving outcomes appropriate in this zone.
162. However, we think that Mr Webb may have misunderstood the reference in the objectives and policies to "existing and planned" built character. Mr Webb considers the provisions make it clear that the zone is not "static" and is not "confined" to one or two storey buildings, and that the inclusion of a discretionary activity means it must form part of the "planned" built character. We do not agree. We draw the following guidance from the description of the Single House Zone (H3.1):
- The Zone may also be applied to future areas in greenfield developments. We consider this is the reference to "planned" built character;
 - Multi-unit development is not anticipated, with very limited additional housing capacity identified in the zone and the maintenance of a general character of one-two storey buildings;
 - While an IRD is a discretionary activity, the policy guidance is directed towards one and two storey buildings and not to multi-unit development.
163. The intensity of development is expected to be "compatible" with the existing suburban built character and we note here, the proposal of 71 units on 5417m² results in a development of 1 unit / 76.3m² compared with the zone requirement of 600m² per lot.
164. Whilst an objective of the Regional Policy Statement is to create a quality compact urban form, promote urban growth and intensification, these goals are achieved through the zoning of land within the wider urban area. Intensification is not expected in every locality within the urban area. That is why section B2.4.2 addressing Residential Intensification references in Policy (1) the provision of "*a range of residential zones that enable different housing types and*

⁶³ Submissions in reply, paragraphs 43 and 44

intensity that are appropriate to the residential character of the area"; and Policy (4) notes the provision of lower residential intensity in areas (d) "*where there is a suburban area with an existing neighbourhood character*".

165. Further clarity is provided by B11 Monitoring and Environmental Results Anticipated. Table B11.1 confirms that to monitor objective B2.4.1(1) the Council will consider '*The number of dwellings per hectare in areas zoned for residential intensification (Residential – Mixed Housing Urban and Residential – Terrace House and Apartment Building Zone) increases over time.*' It is important to note that the Single House Zone is not included here as an area 'zoned for residential intensification'.
166. We conclude that the proposal is contrary to the relevant objectives and policies of the AUP, for the following reasons:
- (a) The RPS objectives and policies are very clear about the goal of intensification, subject to specific references to the appropriate location for higher and lower residential intensification. The Single House Zone is clearly not identified as a zone where intensification is generally expected.
 - (b) The Zone objectives and policies are also clear in the character and amenity found and expected to be maintained within its areas, generally enabled by single houses of one-two storeys.
 - (c) Development is to be "in keeping with" the amenity values of established residential neighbourhoods within the zone and of a form that maintains the existing suburban built character.
 - (d) A proposed development must ensure that a reasonable level of sunlight access and privacy is provided for, and that visual dominance effects to adjoining sites is minimised.
 - (e) Whilst we conclude that the proposed development is not an IRD, even if it were, the provision for IRDs is an exception to this general expectation and their form is still subject to the zone's expectations that specifically do not include multi-unit development.

Conclusion Assessment under S104D

167. The proposal will result in significant adverse effects on the amenity of the area in general and on neighbouring residents, as set out above.
168. The proposal is contrary to the relevant objectives and policies taken together, as set out above.
169. In light of the above, consent cannot be granted as the proposal has failed to satisfy the requirements of either 'gateway' test set out in S104D(1) of the RMA

Section 104 Consideration of applications

170. Having failed both gateway tests under section 104D, strictly speaking we do not then need to consider section 104 matters, but for the sake of completeness, we comment as follows.
171. Under section 104(1)(b), we have accepted the identification and comments in the section 42A report and raise no issues in relation to:
- (a) National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES CS) – the site contamination can be appropriately managed to ensure consistency with this Standard.
 - (b) National Policy Statement for Freshwater Management 2014 (NPSFM) – the management of silt and sediment discharges can be managed to minimise adverse effects on streams, consistent with the NPS’s anticipated outcomes.
 - (c) National Policy Statement for Urban Development Capacity 2016 (NPSUDC) – the proposal is generally consistent with the NPS’s higher level objectives and policies that seek effective and efficient urban environments; housing opportunities to meet demand; and responding to the changing needs of people and communities.
172. Any other matter under section 104(1)(c)
173. Financial considerations: One of the section 104(1)(c) matters which we were urged to take into account was the financial viability of the project, described by Mr Jans in his evidence.⁶⁴
174. Whilst we accept Mr Jan’s view that the design and size of the development is directly linked to the need to ensure the project is economically viable,⁶⁵ in our view, this cannot outweigh the significant deficiencies of the application (even had it not failed to satisfy both section 104D gateway tests).
175. Whether the site is unique: In his evidence, Mr Putt claimed that the site was unique, in that it is not replicated in any other location north of the Sandspit ridge across the swathe of Single House Zone which terminates at Howick Village and the coastal edge and that the value of single houses was such that it would be impossible to aggregate a site of greater than 2000m².⁶⁶ Mr Putt⁶⁷ also put forward the argument that the condition of the site and existing uses also made it unique, in that it was a more viable site to assemble and develop than others identified by Mr Butler would be.

⁶⁴ Paragraphs 7-10

⁶⁵ Evidence of Mr Jans, Paragraph 10

⁶⁶ Evidence of Mr Putt, paragraph 2.7

⁶⁷ 2nd Supplementary Evidence of Mr Putt, Paragraph 9

176. However, the evidence of Mrs Moran suggests otherwise, with reference to a possible development opportunity

Just down the road at Avoca Road ... It also exists across two streets allowing the same road frontage, is on the same transport route, is just down from the neighbourhood centre and if these 5 sites were purchased this would also comprise almost 5000sqm. It is on the same ridgeline with the same style of views. I have done calculations based on the existing valuations and these properties could be purchased for approx \$2million less than what the developers paid for their existing sites. Without the cost of removing the asbestos and other commercial debris. It would definitely open up the possibility that sites like these could also become IRDs....⁶⁸

177. We have some sympathy with Mrs Moran's example, although we do recognise that she is not an expert in any relevant field related to property development, but she is a local resident and she has lived in Cockle Bay for 5 years so can be assumed to know the area well.

178. The matter of uniqueness is also addressed in Mr Putt's second supplementary statement of evidence⁶⁹ in which he casts doubt on the practicality and economic viability of undertaking large-scale development on aggregated sites in the Howick Single House Zone.

179. In any event, even if the site is in some way unique this cannot outweigh the significant deficiencies of the application (even had it not failed to satisfy both section 104D gateway tests).

180. Precedent: Another legitimate section 104(1)(c) matter is precedent, sufficient to undermine public confidence in the administration of the AUP. For a precedent to be set, it must be a possibility that granting the application will result in a proliferation of materially indistinguishable applications. This in turn hinges on whether this site and proposal are unique. As noted above, we are not convinced that this site is unique and we have real concerns that if this consent is granted, it will be difficult, if not impossible, to distinguish other like applications.

181. There is a strong possibility that the outcome could be to undermine the Single House zone and its objectives of maintaining the amenity of established residential communities like the Cockle Bay neighbourhood and its established character, and of providing quality residential amenity not only for the residents of the proposal, but also for adjoining sites and streets.

182. As Mr Butler comments:

⁶⁸ Mrs Moran's evidence under the heading "Unique site?"

⁶⁹ Paragraphs 8 and 9

“... this development (if approved) given the absence of any unique circumstances to warrant the granting of consent, has the potential to set a precedent for unsympathetic apartment development in the SH zone.”⁷⁰

183. And we agree that at worst, approving this development would allow

... carte blanche development of multi-storey apartments in the SH zone under the guise of an IRD”⁷¹

184. Mrs Bird encapsulates the Commissioner’s concerns:

If this development does go ahead then it means nobody can fully trust in Auckland Council and the Auckland Unitary Plan. The safeguards of residential zoning it promised are not worth the paper it is written on if apartment blocks with only minimal shared facilities can be considered to be IRDs. The whole of Auckland is subject to intensification under the guise of an IRD.⁷²

Part 2

185. For completeness, we have considered Part 2. There are no relevant matters of national importance as set out in section 6. Section 7 requires, of relevance, that particular regard is had to (b) the efficient use and development of natural and physical resources; (c) the maintenance and enhancement of amenity values and (f) the maintenance and enhancement of the quality of the environment. There are no relevant Treaty matters under section 8.

186. The overarching purpose of the RMA as set out in section 5 is to promote the sustainable management of natural and physical resources and under (2), the meaning of the term “sustainable management” is set out.

187. Although the proposed development could be argued an efficient use of the site, we conclude that the proposal would create such adverse effects that it cannot be considered an efficient use of the land and does not achieve the purpose of the Act, in that it would not enable the people in the Cockle Bay community, and particularly in the immediate area of Sandspit Road, Trelawn Place and most of all in Reydon Place to provide for their social and cultural well-being; and because the adverse effects of the proposal on the environment cannot be avoided, remedied or mitigated.

Notification under section 104(3)(d)

188. Under section 104(3)(d), we cannot grant a resource consent if the application should have been notified and was not. As we are not granting consent, this subsection is not relevant.

⁷⁰ Paragraph 107, last bullet point

⁷¹ Paragraph 46

⁷² Submission, paragraph 6

Type of activity applied for – section 104(5)

189. We also note that we may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be. It is important to note, in this case, that the Act contemplates that we may assess and determine the application as one class of activity (ie non-complying) even though applied for as another (discretionary).

Principal issues in contention

190. After our analysis of the application and evidence, 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 application is for an IRD or for some other activity;
- Whether the effects of the proposal on the environment will be more than minor;
- Whether the proposal is contrary to the objectives and policies of the AUP;
- Whether there is the potential for an undesirable precedent to be set if this consent was granted; and
- Whether the proposal is consistent with the purpose of the RMA.

Main findings on the principal issues in contention

191. Our findings on the principal issues in contention are set out in the text of our decision, but in summary we find:

- That the application is not for an IRD but for a multi-unit residential development;
- Consent cannot be granted as the proposal has failed to satisfy the requirements of either of the 'gateway' tests set out in S104D(1) of the RMA;
- The effects of the proposal will be more than minor, particularly effects relating to the amenity of the area in general and on neighbouring residents;
- The proposal is contrary to the relevant objectives and policies of the AUP;
- There is a high potential for an undesirable precedent to be set if this consent was granted; and
- The proposal is not consistent with the purpose of the RMA.

Decision

192. In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104 and 104D and Part 2 of the RMA, we determine that resource consent for a 71 unit integrated residential development at 30 and 40 Sandspit Road, Shelly Park and 2 and 4 Reydon Place, Cockle Bay is refused for the reasons set out in this decision.



Rebecca Macky

Chairperson

12 August 2019