

**BEFORE THE WHANGĀREI DISTRICT COUNCIL HEARING PANEL**

**UNDER** The Resource Management Act 1991

**IN THE MATTER OF** Urban & Services Plan Change  
Package to the Whangārei District  
Plan

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**STATEMENT OF PRIMARY PLANNING EVIDENCE OF DAVID ERIC BADHAM**

**ON BEHALF OF THE UNIVERSITY OF AUCKLAND**

**7 November 2019**

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## 1. INTRODUCTION

### ***Qualifications & Experience***

- 1.1 My full name is David Eric Badham.
- 1.2 I am an Associate and Whangārei Office Manager at Barker & Associates Limited, an independent planning consultancy based in Auckland, although I operate out of the Whangārei office. I hold a Bachelor of Planning with Honours (1st Class) from the University of Auckland. I have been a Full Member of the New Zealand Planning Institute since April 2015.
- 1.3 I have over eight years' experience as an environmental planner. During this time, I have been employed in various resource management positions in local government and private companies including experience with:
- a. Statutory resource consent planning in the Northland and Auckland regions.
  - b. Consideration of submissions and formulation of policy and policy advice for council's, including Whangārei District Council (**WDC**).
  - c. Providing planning advice, preparing Cultural Impact Assessments and engaging in consultation on behalf of iwi organisations.
  - d. Monitoring and compliance of consent conditions in operational mining environments in Queensland Australia.

### ***Expert Witness Code of Conduct***

- 1.4 I confirm that the evidence on planning matters that I present is within my areas of expertise and I am not aware of any material facts which might alter or detract from the opinions I express. I have read and agree to comply with the Code of Conduct for expert witnesses as set out in the Environment Court Consolidated Practice Note 2014. The opinions expressed in this evidence are based on my qualifications and experience, and are within my area of expertise. If I rely on the evidence or opinions of another, my evidence will acknowledge that position.
- 1.5 For transparency, there is one declaration that I wish to make. Barker & Associates is currently engaged by WDC to assist with the development of a number of other plan changes under the Whangārei District Plan (**WDP**) rolling review including topics such as, PC82 – Signs and Lighting, PC129 – Notable & Public Trees, PC143 – Airport Zone, PC144 – Port Zone and PC145 – Whangārei Hospital,

which I have overseen.<sup>1</sup> None of the University of Auckland's (**The University**) submissions relate to these topics.

1.6 I have no conflicts of interest to declare.

### ***Engagement***

1.7 I have been engaged by The University to prepare and present a statement of evidence addressing the matters raised in their submission and further submission on the Urban and Services Plan Change Package (**U&S Plan Changes**). Along with other staff from Barker & Associates, I was engaged in May 2019 by the University to assist with the preparation of their submission and further submission on the U&S Plan Changes.

### ***Purpose and Scope of Evidence***

1.8 The purpose of my evidence is to provide my professional assessment of the submissions and further submissions from the University on the U&S Plan Changes. Due to the number of chapters addressed as part of the U&S Plan Changes, my evidence responds to recommendations made within multiple Section 42A Hearing Reports (**s42A**) prepared by a number of WDC reporting planners.

1.9 The s42a of relevance to this evidence and respective authors is detailed below:

- 'Part 1 – Urban and Services Plan Changes: Overview, General Topics and Definitions' co-authored by Melissa McGrath and Sam Pickering;
- 'Part 2 – Strategic Direction and Subdivision' prepared by Evan Cook;
- 'Part 3 – Commercial' co-authored by WDC reporting planners Sarah Brownie and Taya Baxter;
- 'Part 8 - Zoning Submissions Proposed Plan Changes 88A, 88B, 88C, 88D, 88E, 88F, 88G, 88H, 88I and 115 co-authored by Sarah Brownie, Evan Cook, Melissa McGrath, Robert Burgoyne and Sarah Horton (Consultant Planner); and

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<sup>1</sup> I am reporting planner / author for Part 7 – Airport and Hospital and co-author for Part 10 - Lighting, which form part of the U&S Plan Changes.

- 'Part 9 – Services' prepared by Robert Burgoyne.

1.10 For the purposes of simplicity, I have referred to 'Council's' recommendations as opposed to the individual author within the body of evidence as some matters have been addressed in multiple topics and chapters by different authors. Additionally, to reduce unnecessary repetition, where I agree with Council, I have simply stated so in my evidence.

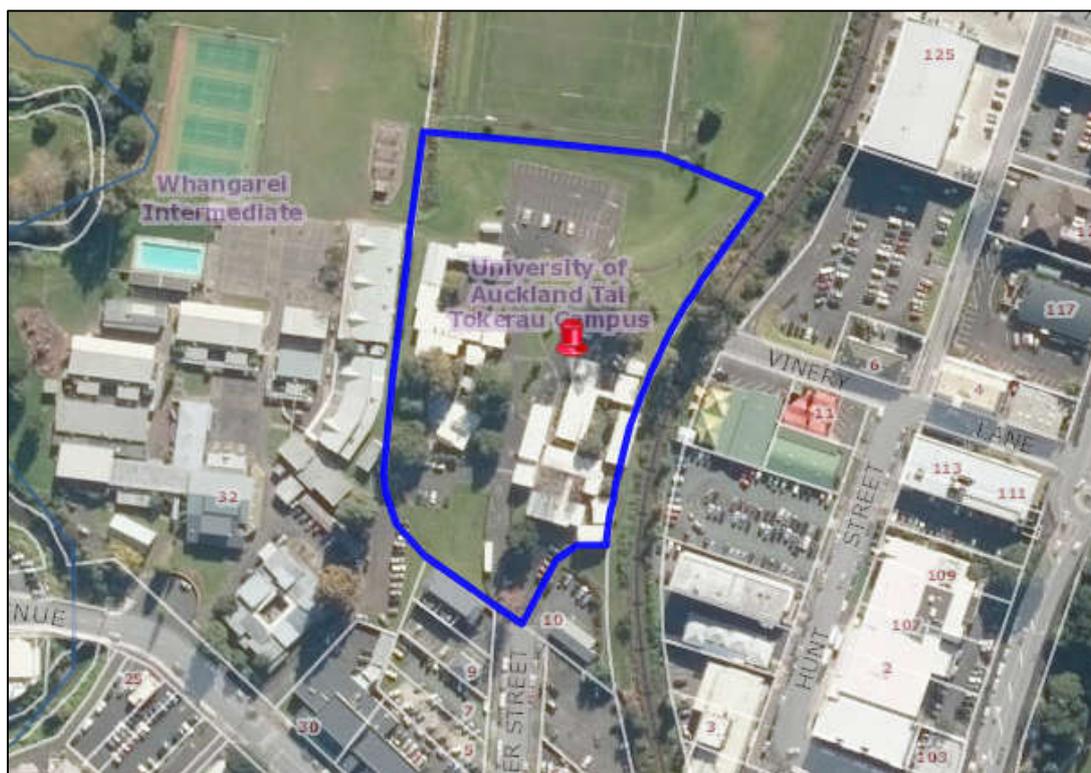
1.11 My evidence will specifically address the following matters:

- (a) Background – of the University's submission and Te Tai Tokerau Campus;
- (b) Areas where I support the recommendations of reporting planners;
- (c) Areas where I disagree with the recommendations of the reporting planner being;
  - i. The way in which 'research facilities' have been addressed in the Mixed Use Zone;
  - ii. Food and beverage activities in the Mixed Use Zone;
  - iii. The use of 'avoidance' objectives and policies in the Mixed Use Zone; and
- (d) Conclusion.

## 2. BACKGROUND

2.1 The University made a submission (248) on WDC's U&S Plan Changes before the submission deadline on 3 July 2019. The University also lodges a further submission (X337) on 27 August 2019.

2.2 In both instances the submissions primarily related to its Te Tai Tokerau Campus (**the Campus**) which is located at 13 Alexander Street, Whangarei, being Lot 1 DP 167621 (see **Figure 1**). The site is currently zoned Business 3 Environment under the Operative WDP and is proposed to be rezoned Mixed Use Zone as notified in the proposed U&S Plan Changes. The Campus is also identified as regionally significant infrastructure within the Regional Policy Statement for Northland.



**Figure 1** – Aerial map showing the location of the Tai Tokerau Campus, located at 13 Alexander Street, Whangarei.

2.3 The Campus provides a range of tertiary programmes in education and teaching for those living in Northland. From 2019 onwards, development plans will see the current Faculty of Education and Social Work continue to expand the range of programmes offered in Northland. On-site campus facilities currently comprise lecture and tutorial spaces, student common rooms, an Information and Communication Technology (ICT) suite, and a branch of the faculty's Sylvia Ashton-Warner Library – one of the most extensive teacher education libraries in New Zealand.

### 3. AREAS WHERE I SUPPORT THE RECOMMENDATIONS IN THE S42A REPORTS

3.1 The University supports a number of the recommendations of the s42A reports. These are summarised in **Attachment 1**.

#### 4. AREAS WHERE I DISAGREE WITH THE RECOMMENDATIONS OF IN THE S42A REPORTS

##### Research Facilities

4.1 The University made a number of submission points regarding how 'research facilities' are addressed within the Mixed Use Zone as it relates to the Campus. These submission points are summarised below:

- (a) 248.2 – remove research facilities from the definition of 'industrial activities' and create a new definition for 'research facilities' and amend the MU provisions to include a permitted activity status for research facilities.
- (b) 248.6 – if submission point 248.2 is not accepted, differentiate between 'industrial activities' and 'research facilities' within Policy MU-P3.
- (c) 248.14 – if submission point 248.2 is not accepted, exclude 'research facilities' from Rule MU-R31.

4.2 These submission points are addressed in the Part 1 and 2 s42A's as follows:

- (a) 248.2 – Council recommends that the University's submission be accepted in part, and that the definition for 'industrial activities' (amongst others) be amended to comply with the National Planning Standards (Part 1 s42A, paragraph 191). Paragraph 189 of the discussion advises that the National Planning Standards definition for 'industrial activities' removes reference to 'research laboratories', paragraph 190 indicates that this amendment will also '*address the relief sought by other submitters.*' No further comment is provided in this report in regards to the additional relief sought in submission 248.2. However, it is noted that 'research facilities' are now provided for within the 'general industry' activity grouping, thus retaining a non-complying activity status for establishment of this activity within the Mixed Use Zone.
- (b) 248.6 – is addressed in Part 3 s42A report. The recommendation is to 'accept in part' (paragraph 201) to reflect the definition amendment discussed above. However, I note that no change has been made to MUZ-P3 to exclude 'research facilities' so it would appear that the recommendation is actually to reject the University's submission.
- (c) 248.14 – is discussed in paragraph 251 of the Part 3 s42A report. The recommendation (paragraph 259) is listed to 'accept in part' the

submission. However, the discussion in paragraph 251 does not support making 'research facilities' a permitted activity and rather supports the non-complying activity status. Accordingly, it would appear that the recommendation is actually to reject the University's submission.

4.3 While I support the amended definition of 'industrial activities', this has not addressed the primary concern outlined in the University's submission. The collective recommendations from Council results in the retention of a non-complying status for 'research facilities' in MU-R31. I do not support these recommendations for the following reasons:

- (a) Research facilities are an important component of the University's current and potential future operations on the Campus and it is important that they are not unduly restricted within the provisions. Research facilities are commonly associated with universities, and in my opinion are externally indiscernible from other aspects of a typical university campus.
- (b) A non-complying consenting pathway for research facilities is unnecessarily onerous, particularly where associated with an education facility / university where such activities can be reasonably anticipated and should be provided for.
- (c) Paragraph 251 of the s42A refers to 'research facilities' having "*potential adverse effects that should be considered by way of a consenting regime when new facilities are established.*" No detail is given as to what these potential adverse effects are, and in my view, there are none that I can think of that would justify a non-complying activity status within the Mixed Use Zone.

4.4 Giving consideration to the above, I consider that the most simple and appropriate relief is that MU-R31 be amended to exclude 'research facilities' as follows:

"MU-R31 General Industry (excluding Research Facilities ancillary to Education Facilities)"

4.5 This would default the establishment of a research facility associated with education facilities to a permitted activity pursuant to MU-R1, subject of course to compliance with all other District Wide Rules and provisions within the Mixed Use Zone Chapter. In my view, this approach recognises the regional significance of the Campus, while ensuring that industrial activities in general, are still required to be assessed on their merits via the consenting regime as recommended by

Council. It is noted that a similar approach has been taken for the for the Hospital Zone in the HOSZ-R24 where 'medical research facilities' are specifically excluded from the prohibited activity status for 'industrial activities' within that zone.

- 4.6 If there was concern from the Commissioners regarding applying this change across the entirety of the Mixed Use Zone, then an alternative relief would be to create a 'University Campus Precinct' overtop of the Campus site. This could specifically provide a more permissive policy framework and activity status for 'research facilities'. In my view the outcome of such a relief would be the same or similar to that I have outlined above. I have prepared draft provisions for a precinct as **Attachment 2** to give indication as to how a precinct could be applied to the Campus.
- 4.7 I have evaluated these draft provisions in accordance with Section 32AA of the RMA. This evaluation is included within **Attachment 3** to my evidence.

#### **Food and Beverage in the Mixed Use Zone**

- 4.8 As notified MU-R25 provides for 'Food and Beverage Activity' as a discretionary activity within the Mixed Use Zone. Submission point 248.13 sought to make this a permitted activity. It is common for university campuses to include small scale food and beverage activities for the benefit of its students.
- 4.9 In paragraphs 256 and 259 of Part 3 s42 report Council has rejected this request on the basis of preserving the viability of the central business area, specifically the City Centre zone. I acknowledge and agree with the importance placed on not undermining the City Centre. However, I consider there a need to differentiate between stand-alone larger scale food and beverage outlets that have the potential to become 'destinations', and the smaller scale outlets that support and are associated with an education facility in the Mixed Use Zone like the Campus. Such activities serve the need of existing users, who given the nature of the use of these facilities, would unlikely have the time to venture into the city centre to fulfil their food and beverage needs.
- 4.10 Giving consideration to the above, I consider that the most simple and appropriate relief is that MU-R25 be amended to exclude 'food and beverage activities' as follows:

"MUZ-R31 Food and Beverage Activity (excluding Food and Beverage Activities ancillary to Education Facilities)"

- 4.11 This approach would instead see this activity on the Campus default to a permitted activity pursuant to MU-R1. In my opinion, providing for this activity specifically in relation to the Campus would not undermine Councils intent to preserve the vibrancy of the City Centre zone or result in commercial sprawl as the amendment specifically refers to food and beverage activities ancillary to education facilities.
- 4.12 If there was concern from the Commissioners regarding applying this change across the entirety of the Mixed Use Zone, then similar to my comments in paragraph 4.6 above, an alternative relief would be to create a 'University Campus Precinct' overtop of the Campus site. This could specifically provide a more permissive policy framework and activity status for 'food and beverage activities' and potentially a GFA limit to any such activities to a smaller scale supporting activity associated with the operation of the University. In this regard, I have suggested a combined GFA limit of 250m<sup>2</sup> across the Campus site. In my view the outcome of such a relief would be the same or similar to that I have outlined above. As indicated above, these draft precinct provisions are included in **Attachment 2** to my evidence.
- 4.13 I have evaluated these draft provisions in accordance with Section 32AA of the RMA. This evaluation is included within **Attachment 3** to my evidence.

#### **Use Of 'Avoidance' Objectives and Policies in the Mixed Use Zone**

- 4.14 In further submission X337.7 the University supported submission point 227.5 made on behalf of Clarks Ltd, seeking a 'management approach' for amenity effects in the Mixed Use Zone instead of 'avoidance policies' given the recent King Salmon decision. In the Part 3 s42a, Council has recommended that this submission point be rejected (paragraph 154) advising that an avoidance approach is appropriate and necessary to achieve the outcomes set out for the MU Zone.
- 4.15 Similarly, in further submission X337.19 the University supported submission point 268.117 made on behalf of Housing New Zealand seeking amendments to MU-P8.2 to remove 'avoid' and replace with 'discourage' subdivision of rear sites. Again, Council has recommended reject (paragraph 201) this indicating that moving away from avoiding the creation of rear sites would '*compromise the intent of MU-P4 and MO-O4, and potentially undermine MU-P1 and MU-P2*'.
- 4.16 I acknowledge that increased residential use is a key objective within the Mixed Use Zone. However, in my opinion the use of strong avoidance objectives and

policies within a Mixed Use Zone is contradictory to the very nature of the zone which seeks to provide for a range of activities. In my view, the relief sought by Clarks Limited and Housing New Zealand, provides a more balanced approach regarding the consideration of activities that could detract from residential amenity.

## **5. CONCLUSION**

- 5.1 The University are generally supportive of the Urban and Services Plan Changes and the majority of the recommendations within the various s42A Reports as is outlined in my evidence.
- 5.2 There are two key matters remaining that the University still seeks relief on regarding what the University considers to be onerous consenting requirements for activities that are commonly associated with a university campus. These matters specifically relate to the establishment of research facilities and small-scale food and beverage activities on their Te Tai Tokerau Campus. I have outlined two potential solutions to address these aspects.
- 5.3 The University continues to support the relief sought in original submissions from Clarks Limited and Housing New Zealand regarding the use of avoidance policies within the Mixed Use Zone. In my view, the relief sought by these submitters provides a more balanced approach regarding the consideration of activities that could detract from residential amenity.
- 5.4 Overall, it is my opinion that the recommendations of Council supported by the University, and the further changes outlined in this evidence are the most appropriate methods for achieving the purpose of the Resource Management Act 1991 and the higher order objectives of the WDP and the U&S Plan Changes.



**David Badham**

**7 November 2019**

## **ATTACHMENT 1: AREAS WHERE I SUPPORT THE RECOMMENDATIONS OF THE REPORTING PLANNERS**

5.1 In summary, the University supports the following recommendations of the reporting planners (using submission points as reference):

### **Part 1 s42A:**

- a. 248.1 – retention of the definition of ‘Education Facilities’ as notified (paragraph 176); and
- b. 248.3 – retention of the definition of Regionally Significant Infrastructure as notified (paragraph 175).

### **Part 2 s42A:**

- c. 248.18 – amend SD-O22 and 23, noting that amendments have been recommended in response to other submissions but that overall the intent of the objectives remain largely unchanged (paragraph 180 & 194);
- d. 248.19 – amend SD-P3, noting that amendments made are in response to other submissions but that overall the intent of the objectives remain largely unchanged (paragraph 234); and
- e. 248.20 – retention of policies SD-P15 and 17 as notified, noting that amendments have been recommended in response to other submissions but that overall the intent of the objectives remain largely unchanged (paragraph 306).

### **Part 3 s42A report:**

- f. 248.5 – amend MU-P1, P2 and P9 noting that minor amendments have been made in response to other submissions (paragraph 201);
- g. 248.7 – amendments to MU-P3 as requested (paragraph 201);
- h. 248.8 – amend MU-R2 and delete MU-R3 noting that the rules have been consolidated into one (paragraph 233);
- i. 248.9 – amend MU-R6 to clarify it only applies to sites with frontage (paragraph 233);

- j. 248.10 – retention of the overall intent of MU-R10 noting that minor amendments have been in response to other submissions (paragraph 259);
- k. 248.11 - amendments to MU-R13 that have addressed the relief requested (paragraph 259); and
- l. X337.4 – supported submission 165(12&13) made on behalf of Fire & Emergency New Zealand which sought to introduce a new policy and objective to specifically provide for residential activities in the MU zone. This submission was rejected by Council. While the relief sought has not been accepted, I consider that there is sufficient support contained within MU-O1 to ensure University activities are able to be undertaken on the Campus site without the additional objectives and policies.

**Part 8 s42A report:**

- m. 248.4 – retention of the Mixed Use (**MU**) zoning for the Campus as notified (paragraph 37).

**Part 9 s42A report:**

- n. 248.15 – retention of Appendix 1A of the Transport Chapter insofar as it relates to car parking requirements for 'Educational Facilities – Tertiary Facilities' (paragraph 301);
- o. 248.16 – retention of Appendix 1B and 1F of the Transport Chapter as notified (paragraph 301 & 313);
- p. 248.17 – retention of Appendix 1E of the Transport Chapter noting that amendments have been made in response to other submissions that do not affect the notified reduced parking requirements that would apply to the University (paragraph 326); and
- q. 337.16 – opposed submissions 240(30-32) and 265 (22-24) made on behalf of Kiwi Rail and New Zealand Transport Agency which sought the imposition of a Road and Rail Noise Buffer covering all land within 100m of rail network of State Highway boundary. Council recommended that this submission be rejected (paragraph 361). I support Council's recommendation and reasoning.

**ATTACHMENT 2: DRAFT UNIVERSITY OF AUCKLAND CAMPUS PRECINCT**

# Mixed Use Zone (MUZ)

## MUZ – PREC2 – University of Auckland Campus Precinct (UoACP)

### Issues

The University of Auckland Campus Precinct (UoACP) delineates the University of Auckland’s Te Tai Tokerau Campus (the Campus) located at 13 Alexander Street and legally described as Lot 1 DP 167621. The UoACP enables small scale food and beverage activities and research facilities within this defined portion of the Mixed Use Zone where they are ancillary to the primary function of the Campus being that of an education facility. The UoACP recognises the regional significance of this infrastructure and provides for the University’s future growth without undermining the vitality and viability of the City Centre.

### Objectives

MUZ-PREC-O1  
Protected Zones

Provide for the establishment of small-scale food and beverage activities located within the UoACP to support the day to day activities of staff and students while protecting the vitality and viability of the City Centre and Commercial zones.

MUZ-PREC-O2  
Recognised  
Activities

Enable the establishment and operation of research facilities where they are ancillary to the ongoing operation of education facilities at the Campus.

### Policies

MUZ-PREC-P1–  
Enabled Activities

To enable the development of the UoACP for the purpose of an education facility and protect the vitality and viability of the City Centre zone by:

- a. providing for small-scale food and beverage activities only.
- b. providing for research facilities where they are ancillary to the education facilities of the Campus.

### Rules

MUZ-PREC-  
R1

Food and Beverage Activity

Activity Status: Permitted

Where:

1. The activity:
  - a. Is ancillary to the Campus education facilities.
  - b. Does not result in a combined GFA of greater than 250m<sup>2</sup> of food

Activity Status when compliance not achieved: Discretionary

# Mixed Use Zone (MUZ)

and beverage activity provided across the Campus site.

MUZ-PREC-R2

General Industry

Activity Status: Permitted

Where:

1. The activity is
  - a. A research facility ancillary to education facilities on the Campus.

Activity Status when compliance not achieved: Non-complying

## ATTACHMENT 3: SECTION 32AA ASSESSMENT

<u>Recommended Amendment</u>	<u>Options Evaluated</u>	<u>S32AA Assessment</u>
<p><b>Mixed Use Zone:</b></p> <ul style="list-style-type: none"> <li>Provision for research facilities and food and beverage activities ancillary to education facilities (e.g. University Campus) in the Mixed Use Zone.</li> </ul>	<ul style="list-style-type: none"> <li><b>Option 1:</b> Status quo – Business 3 Environment provisions.</li> <li><b>Option 2:</b> Notified Provisions – Mixed Use Zone provisions: <ul style="list-style-type: none"> <li>Discretionary activity status for food and beverage activities pursuant to MUZ-25.</li> <li>Non-complying activity status for research facilities under ‘general industry’ (MUZ-R31).</li> </ul> </li> <li><b>Option 3:</b> Recommended revised provisions: <ul style="list-style-type: none"> <li>MUZ-R31 Food and Beverage Activity <u>(excluding Food and Beverage Activities ancillary to Education Facilities)</u></li> <li>MUZ-R31 General Industry <u>(excluding Research Facilities)</u></li> </ul> </li> </ul>	<p><b>Costs and benefits</b></p> <p><u>Economic</u></p> <p>Option 1 is no longer viable as the National Planning Standards require the provision of standardised zones. Option 2 has the highest economic costs. The application of the existing Mixed Use Zone provisions will require unnecessary resource consents to be applied for research facilities and food and beverage activities ancillary to education facilities (e.g. the University Campus). Increased compliance costs could lead to these activities not being undertaken within the Campus which could impact the ability of the University to provide education services to students. This also inadequately recognises the University’s status as regionally significant infrastructure in the Northland Regional Policy Statement. Options 3 and 4 will enable these activities to proceed without unnecessary compliance costs.</p> <p><u>Environmental, Social and Cultural</u></p> <p>Option 3 and 4 have the highest environmental, social and environmental benefits. These options apply appropriate provisions or precinct framework that provides for the establishment of these activities while ensuring that they are ancillary to education facilities / the Campus. This will enable the appropriate operation of the Campus while also ensuring that the integrity of the Mixed Use Zone provisions is maintained as they relate to other activities.</p> <p><b>Efficiency &amp; Effectiveness</b></p> <p>Option 1 is no longer efficient nor effective as the National Planning Standards require the provision of standardised zones. Option 2 is not effective as it does not adequately provide for the establishment of these activities where they are</p>

	<p><u>ancillary to Education Facilities)</u></p> <ul style="list-style-type: none"><li>• <b>Option 4:</b> Alternative Revision – University of Auckland Campus Precinct (<b>Attachment 2</b>)</li></ul>	<p>ancillary to education facilities (e.g. the Campus). Options 3 and 4 are essentially different methods that achieve the same outcome. They are equally the most efficient and effective options as they recognise and provide for these activities which are an important component of the University's current and potential future operations on the Campus. It is important that they are not unduly restricted within the provisions. The decision as to what method is selected is ultimately a structural decision as to whether it is more logical for the provisions to be in the Mixed Use Chapter (Option 3) or a separate precinct (Option 4).</p> <p><b>Risks</b></p> <p>There is no known risk due to insufficient information.</p>
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