

**WELLINGTON CITY COUNCIL**

**Hearing of Submissions and Further Submissions**

**on**

**Proposed District Plan**

**Report and Recommendations of Independent Commissioners**

**Hearing Stream 3**

**Report 3B**

**Viewshafts**

**Commissioners**

**Trevor Robinson (Chair)**

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## EXECUTIVE SUMMARY

1. This report addresses submissions on the Viewshaft provisions of the Plan.
2. The chapter and the accompanying Schedule (#5) that describes the identified viewshafts are deceptively short, and attracted a relatively small number of submissions. We found the issues they raised to be exceedingly complex and in key areas, we identified deficiencies that remain unresolved. As a result, we recommend that Council conduct an urgent review as to what further changes are required by way of Plan Change.
3. We identified at the outset a lack of clarity in the notified Chapter/Schedule as to what activities are regulated, and where.
4. We have found, not without difficulty, that the Viewshaft provisions represent a material shift from the Operative District Plan (**ODP**) and regulate activities outside the Central City area i.e. including in the residential and other zones they pass over and through. Against a background of conflicting indications within the notified plan and associated Section 32 evaluation as to where exactly the viewshafts 'bite', we have predominantly relied on the notified Plan maps as the clearest and most reliable guide to the Plan's intent.
5. We have recommended significant amendments to the chapter introduction and to the rules in an endeavour to provide greater clarity. We have relied on the Council's own submissions to provide scope for some of these changes. However, we have had to recommend a number of changes to the chapter introduction on an out-of-scope basis.
6. The Reporting Officer invited us to make more comprehensive out-of-scope changes, including in particular, as regards the spatial coverage of viewshafts (extending their mapped extent to terminate at the identified focal and contextual elements).
7. We have largely rejected those recommendations, mainly due to a concern about the extent to which such changes would impact on relatively large numbers of property owners who could not have anticipated that outcome from the submissions lodged.
8. We have, however, accepted the Reporting Officer's recommendation to delete Viewshaft 18 (the panoramic view from the Cable Car Lookout) on an out-of-scope basis given her advice that it was included in the Plan in error, and by reason of the extent to which it potentially constrains development in both residential and commercial areas, again without the required statutory evaluation.

9. As regards the issue of greatest contention in the submissions, we have accepted the Reporting Officer's recommendation not to reinsert the viewshaft in the ODP from the Carillon looking north, mainly on the basis that its integrity has been compromised by developments on Tory Street. The Reporting Officer mooted the potential for a replacement from alternative locations, but we have not recommended that either, partly because of a lack of scope, but also because we were not satisfied as to its merits on the evidence before us.

## **1. INTRODUCTION**

### **1.1 Topics of Hearing**

10. Hearing Stream 3 covered Historic Heritage, Sites and Areas of Significance to Māori, Notable Trees, and Viewshafts. This Report addresses the Viewshaft Chapter and related Schedule 5. This topic was the subject of a single Section 42A Report authored by Ms Anna Stevens and supported by expert evidence from Ms Deyana Popova and Dr Farzad Zamani.
11. Our Report follows the general structure of Ms Stevens' Section 42A Report and needs to be read in conjunction with Report 3A, which provided the general background to the Stream 3 hearing and addresses the balance of Stream 3 hearing topics, to Report 1B which addresses Strategic Objectives, and to Report 1A which addresses:
  - (a) Appointment of commissioners;
  - (b) Notification and submissions;
  - (c) Procedural directions;
  - (d) Conflict management;
  - (e) Statutory requirements;
  - (f) General approach taken in reports; and
  - (g) Abbreviations used.

### **1.2 Format of report**

12. The balance of this report is organised as follows:
  - (a) Part 2: overview of the notified viewshaft provisions;

- (b) Part 3: general issues;
- (c) Part 4: provisions in the viewshaft (VIEW) chapter;
- (d) Part 5: definitions
- (e) Part 6: Schedule 5; and
- (f) Part 7: mapped extent of viewshafts.

## **2. OVERVIEW OF VIEWSHAFT PROVISIONS**

### **2.1 Context**

- 13. We take some time here to provide a factual overview of the viewshaft provisions in the proposed plan. Our aim in doing so is to establish important contextual matters which our discussion in the subsequent evaluation sections draws upon.
- 14. Our summary here is organised to describe in turn: the VIEW chapter; Schedule 5; and the viewshaft overlay notations on the planning maps.

### **2.2 Provisions in the VIEW chapter**

- 15. The VIEW chapter is found under the 'Historical and Cultural Values' section of the District-Wide matters in Part 2 of the PDP. The chapter contains sub-sections comprising (sequentially): an introduction; objectives; policies; rules; and standards.
- 16. The introduction opens with a description of the purpose of the viewshafts overlay – being to identify and maintain significant views within Wellington City that contribute to its sense of place and identity. It further notes that all of the 18 views subject to the overlay have at least local significance with others of regional, national, or even international recognition.
- 17. Of relevance to our more in-depth discussion in section 3 below, the introduction notes that the identified views traverse the *City Centre and Waterfront Zones*<sup>1</sup> and are experienced from a range of positions.
- 18. The introduction expresses two additional sub-categorisations of the identified views as follows:

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<sup>1</sup> Emphasis added

- (a) three 'types' of views, being: those from the City Centre of the harbour, hills, landmarks and wider setting; wide-angled elevated views from the Cable Car station; and those of landmark buildings and places within the City Centre; and
  - (b) two 'spatially characterised' classifications, being: 'contained' and 'vista' views.
- 19. We interpolate here to observe also that Schedule 5 further classifies viewshafts as either of 'local' or 'iconic and landmark' significance. These classifications are echoed at various junctures within the proposed objectives, policies and rules, which we describe now.
- 20. The VIEW chapter contains two objectives, being:
  - (a) VIEW-O1 (Purpose) – views that contribute to the City's identity and sense of place, and that support an understanding of the City's topography and urban form, are recognised and maintained; and
  - (b) VIEW-O2 (Iconic and landmark views) – views from public places to key City landmarks are recognised and maintained due to their regional, national and/or international significance.
- 21. Those objectives are implemented by three policies, comprising the following direction:
  - (a) VIEW-P1 (Identification of important views) – identify and maintain important views to the harbour, hills and iconic and landmark features from public places within and around the City Centre;
  - (b) VIEW-P2 (Maintaining identified views) – maintain views that reinforce the City's identity and sense of place by restricting development that could affect these views, having regard to five criteria; and
  - (c) VIEW-P3 (Avoiding intrusions into iconic and landmark views) – avoid intrusions into identified iconic and landmark views, except in limited circumstances.
- 22. Two rules implement the policies. The first of those rules, VIEW-R1, permits verandahs within all viewshafts apart from views 1 or 4, provided that the relevant City Centre Zone standard for verandahs is met. Any verandah within a viewshaft that does not meet those permitted activity requirements is a restricted discretionary activity.
- 23. Rule VIEW-R2 relates to the construction of new buildings and structures and the alteration or addition to existing buildings within a viewshaft. We spend some time on

the drafting of this rule in subsequent evaluative parts of the report, but record here our understanding that the *intent* of the rule is to assess any buildings or structures that intrude into a viewshaft:

- (a) as a restricted discretionary activity where the viewshaft is ascribed 'local' significance; and
- (b) as a fully discretionary activity where the viewshaft has 'iconic and landmark' significance.

24. The former is premised on non-compliance with the lone standard in the VIEW chapter, VIEW-S1. That requires that no building or structure intrudes on any viewshaft identified in Schedule 5 as having local significance. Exclusions are expressed under this standard including 'complying' verandahs, buildings and structures in the coastal marine area, land within the Commercial Port area of the Port Zone (all part of the former Central Area), and various structures used for cargo or passenger handling. As we discuss further in Section 4.4 below, the rules do not explicitly address the situation where VIEW-S1 is met.

### **2.3 Schedule 5**

25. For each of the 18 identified viewshafts, Schedule 5 includes:

- (a) a description of the viewshaft;
- (b) clarification of whether the viewshaft type is 'contained' or 'vista';
- (c) clarification of whether the viewshaft is of 'local' or 'iconic and landmark' significance;
- (d) an inventory of 'focal elements' and 'context elements' within the view;
- (e) a description of the viewpoint location, including spatial and elevation information;
- (f) descriptions defining the base, left and right margin of the viewshaft; and
- (g) a photographic representation of the viewshaft, an example of which is shown in **Figure 1** below.





FIGURE 1 – example of photographic representation of viewshaft (VS14).

#### 2.4 Viewshaft overlay notation on planning maps

26. The information and photographs in Schedule 5 work in conjunction with a viewshaft overlay mapping layer on the planning maps. As shown in **Figure 2**, the mapping layer illustrates the two-dimensional (“2D”) spatial extent of each viewshaft in ‘plan view’.

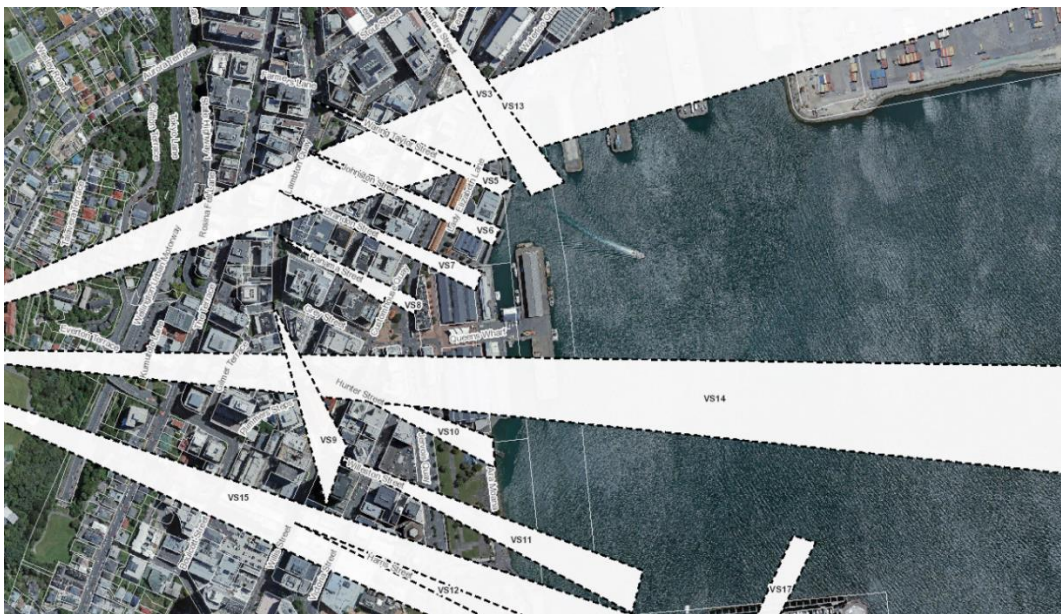


FIGURE 2 – examples of viewshaft overlay notation on planning maps.

27. With one exception<sup>2</sup>, each viewshaft is projected as a wedge shape extending from the viewpoint location to its termination point.

<sup>2</sup> Viewshaft 18 is not represented in the mapping layer.

### 3. GENERAL ISSUES

28. In her Section 42A Report, Ms Stevens drew attention to the Council's submission<sup>3</sup> seeking that the introduction to the viewshaft chapter be amended to insert the following statement:

*"The associated rules apply to sites within the City Centre Zone, Waterfront Zone and the Viewshaft Control Area identified on the District Plan maps, and only to development that impinges on the specific parameters of each view set out in SCHED5."*

29. Neither the chapter provisions, Schedule 5, nor the Plan maps, describe or identify a 'Viewshaft Control Area'. To understand that suggested reference requires reference to a second Council submission<sup>4</sup>, which sought as relief:

*"Add a new specific control mapping layer 'Viewshaft Control Area' that dissects through TEDZ, MRZ and HRZ properties under Viewshafts 13-15"*

30. The reasons for that second submission were stated as follows:

*"The mapping of the viewshafts needs to be amended to provide clarity and certainty around the rule framework. This is to avoid impacts on the development potential of residentially zoned properties in the focal element of VS13-15 (i.e. their ability to achieve MDRS)."*

31. These submissions assumed that these viewshafts already regulated activities within the Tertiary Education Zone (TEDZ), Medium Density Residential Zone (MRZ) and High Density Residential Zone (HRZ), and sought to reduce the extent of that regulation. It was not apparent to the Hearing Panel that that assumption was well founded, or that if it was, that readers of the Plan would have appreciated that fact. We sought to explore it further, initially with Ms Stevens, and then with Mr Ballinger who addressed us on viewshaft matters as counsel for the Eldin Family Trust. It is fair to say that we remained troubled by the issue, and so we sought independent legal advice from Mr James Winchester on that, and a range of other legal points that had emerged during the hearing. As discussed in Report 3A, Mr Winchester provided us with a detailed opinion which we circulated to the parties, which prompted further commentary on the issues from Mr Ballinger, Ms Stevens, counsel for the Council (Mr Whittington) and counsel for Kāinga Ora (Ms Caldwell).

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<sup>3</sup> Submission #266.89

<sup>4</sup> Submission #266.37

32. The essential problem was that the Viewshafts Chapter does not clearly state what it intends to regulate, and where. Mr Winchester also drew our attention to a number of material inconsistencies and discrepancies between the notified viewshaft provisions in the PDP, when considered on their face, and what is set out in the Council's submission, Council reports (including the Section 32 Report), advice and legal submissions.
33. We noted that the interpretation of the Viewshaft Chapter put to us by Ms Stevens (supporting the thinking evidently underpinning the Council submission that the viewshafts applied to the MRZ, HRZ, TEDZ, in addition to the City Centre Zone (**CCZ**) and Waterfront Zone (**WFZ**)) represented a material shift from the ODP. In the ODP, the viewshaft provisions are located within the Central Area Chapters and accordingly, although the maps showed them as extending across other zones, only activities within the central city area were regulated by specific viewshaft provisions contained within those chapters. We were concerned that readers of the Plan might not have appreciated that there had been a material shift in approach and effect.
34. As Mr Whittington observed in his further legal submissions, it was of course open to the Council on a complete Plan review to adopt a different approach to management of viewshafts from that in the ODP. If that had been the Council's intention, however, we would have expected the Section 32 Evaluation Report to discuss the differences between the ODP and the PDP approaches, evaluating the costs and benefits of those differences.
35. While the Section 32 Report purported to analyse the degree of shift from the status quo, we observe that the discussion of the degree of shift from the status quo is only generally expressed. Mr Whittington highlighted the fact that the Section 32 evaluation stated that the proposal represents "*a moderate departure from the ODP*", but the relevant section went on to say that the most noticeable change was the introduction of a specific Viewshafts Chapter to align with the National Planning Standards, along with the inclusion of targeted provisions. It does not say what the target is.
36. A subsequent section of the Section 32 Report stated that the "*the geographical scale of effects is primarily limited to the proposed City Centre, Waterfront, Port and Stadium zones*". The word 'primarily' implies that other zones are affected, but we agree with Mr Winchester's conclusion that the Section 32 Report does not clearly identify that the viewshafts extend outside the CCZ and Waterfront Zones, and more particularly, where they extend to. While that means the Section 32 evaluation is flawed (assuming the

Council's interpretation is correct), that is not fatal to the chapter. Section 32A of the Act directs us that challenges to objectives, policies, rules or other methods on the grounds that the Section 32 Report is flawed may only be made in a submission, and we did not identify any such challenge.

37. Another problem with the Section 32 Report is its approach to Qualifying Matters. It took the position that the viewshafts are existing provisions within Sections 77K (as regards Residential Zones), and 77Q (as regards non-Residential Zones). Aside from the fact that, as above, the ODP Viewshaft provisions do not regulate activities in Residential Zones as they are contained only within the Central Area chapter, and thus the viewshafts cannot be said, in our view, to be 'existing' for the purposes of Section 77K to that extent, the stated basis for viewshafts is to preserve amenity values<sup>5</sup>.
38. Amenity values are not one of the listed Qualifying Matters in Section 77I (for Residential Zones) or Section 77O (Non-Residential Zones). If they are correctly categorised as Qualifying Matters, it must be on the basis that they are within the "*any other matter*" category that the alternative processes in Section 77K and 77Q do not apply to. Moreover, because they are not one of the listed Qualifying Matters, they also need to be evaluated on a site-specific basis as required by Sections 77L (Residential Zones) and 77R (non-Residential Zones). Again, in our view, the failure to undertake this evaluation as part of the Section 32 Report is not fatal, as long as we have a sufficient evaluation before us at the point we make our recommendations. We have discussed these issues in much greater detail in Report 2B, and we refer to our reasoning at Section 2 of that Report.
39. Recognising the gap, Ms Stevens sought to fill it in her initial Reply. As regards Residential Zones, she relied on the fact that she had recommended (in line with the Council's submission referenced above) that viewshafts only limit buildings extending above the MRZ or HRZ height limit (as applicable). The Council's compliance with the relevant statutory provisions was not challenged by any party, and we generally accept it as adequate. There are, however, some issues related to suggested controls in the HRZ that we address in greater detail below.
40. We note that there is an argument that some of the Viewshafts can be justified as protecting heritage values - those whose focal elements are heritage buildings. Viewshafts 1 and 4 are in this category as they focus on the Beehive and Parliament Buildings, which are listed heritage buildings. Heritage is a listed Qualifying Matter,

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<sup>5</sup> Refer the Section 32 Report at page 20

and the reasoning of the Section 32 Report might have been sound for those viewshafts if the case had been made. Other Viewshafts focus on heritage buildings among other focal elements, and so the argument would be weaker. However, even including the latter, viewshafts focussed on heritage buildings are very much the minority of the identified viewshafts and the Council did not seek to justify the position on this basis. Accordingly, we only note that as a possible line of argument the Council did not pursue.

41. Returning to the question of what exactly the viewshafts cover, Mr Winchester observed that the contextual factors usually relied upon to resolve RMA planning uncertainties do not pull in a consistent direction, and therefore offer little assistance in determining the correct interpretation of the provisions as notified. Ultimately, however, he concluded that from the context and scheme of the PDP, the viewshafts were not intended to regulate activities in an identified zone or zones, but rather to span across and affect multiple zones depending on their spatial extent and the triggers for consent in the rules.
42. He considered that a key factor in this regard was that the viewshaft provisions now sit in a District-Wide Chapter and are not therefore limited or confined to specific zones. This was also a point that Mr Ballinger put to us on behalf of Eldin Family Trust.
43. Viewed in that light, the observation in the Introduction that the viewshafts traverse the City Centre and Waterfront Zones is literally correct. They do traverse those zones, but they also traverse other zones.
44. Mr Winchester also drew our attention to the lack of clarity in Schedule 5, which does not identify any end point. He resolved that uncertainty by reference to the planning maps, which show the properties potentially affected by viewshafts, but which do not all terminate at the focal or context elements described in Schedule 5.
45. We consider that the planning maps are a critical reference point for two reasons. First, as above, we have been particularly concerned about the potential for the lack of clarity in the words of both the Viewshaft Chapter and the accompanying Schedule 5 as notified to have misled submitters. It is not so much the submitters we heard from, who appear to have identified that the Viewshaft Chapter applies to residential areas<sup>6</sup>. It is

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<sup>6</sup> That was the basis, for instance, for the submission of Mr Walmsley [#229.1-2] because he objected to the Council applying a viewshaft overlay to his residential property at 1 Carlton Gore Road.

the people who did not make a submission, because they did not appreciate that that was the case.

46. While, in theory, Plan readers should have been able to rely on the Section 32 evaluation, we think that in practice, the planning maps are much more readily available and likely to be considered a more definitive guide by Plan readers.
47. Ultimately, we conclude that readers of the Plan will therefore have taken most guidance from the one thing in the Viewshafts Chapter that is expressed with precision, namely the maps showing their extent. As we discuss shortly, however, clarity and accuracy are not synonymous as far as the planning maps go – at least for certain viewshafts.
48. Secondly, it is difficult to conceive that any evaluation of the effect of the viewshafts could be undertaken on a site-specific basis, as required by Sections 77L and 77R, if the properties to which the viewshafts apply have not been mapped.
49. This poses something of a problem for the one viewshaft (VS18) which was not mapped. We asked Ms Stevens to advise us what the effect of Viewshaft 18 was in terms of the activities that it regulated, and she told us in her initial Reply that its inclusion in the Plan was an error. She recommended that it be deleted. We have accepted that recommendation in Section 6.7 below, where we have determined that we should recommend its deletion as an out-of-scope change to the Plan. Perhaps fortunately, therefore, we need not wrestle with the provisions of the chapter as they relate to Viewshaft 18.
50. In summary, we proceed on the basis that the planning maps show the full extent of each viewshaft, and that any changes to the Plan provisions that purport to regulate activities outside the mapped extent of the viewshafts need to be justified either with reference to a submission seeking that relief, or as an out-of-scope change. As regards the latter, we note our general discussion of the principles to be applied when determining whether to make out-of-scope changes in Section 1.6 of Report 1A.
51. For the reasons set out in that section, we consider that proposals to make out-of-scope changes that would affect a material number of properties and/or have a material adverse effect on the properties that it affects need to be approached with considerable caution.

52. Before leaving this topic, we should note an aspect of the Council's case before us that we found troubling. At each stage, Ms Stevens proffered more and more amendments to the Viewshafts Chapter to 'clarify' the intent. The amended provisions were not specifically referenced on their face to any submission, and we asked Mr Winchester to advise us also on the scope to make the suggested changes. His advice, that we agree with, was that scope is fundamentally derived from relief sought in submission, and that clarification of what the planning instrument should have said does not of itself provide scope for amendments in the absence of a submission which seeks relevant relief.
53. To the extent that Ms Stevens relied on the power to make minor amendments in Clause 16(2) of the First Schedule, we agree with Mr Winchester's advice that the test to be applied is whether the amendment affects the rights of some members of the public, because only neutral changes can be made under clause 16<sup>7</sup>.
54. Mr Whittington submitted to us in his further Reply dated 14 September 2023 that we should address each change individually, and not as a package. We consider that he is right in his observation that the High Court is not likely to take a numerical approach and conclude, say, that 17 changes would have been fine, but 18 is too many. We put changes responding to submissions to one side. Clearly, there is scope for those, if made out on the evidence. As regards other changes that have been proposed, however, we consider that we need to have regard to the cumulative effect of the suggested changes to check whether the end result has moved too far from what was notified, so as to disadvantage people who have had no opportunity to comment on the changes.
55. These principles need to be applied to the provisions of the Viewshaft Chapter, Schedule 5, and the associated mapping and it is that to which we now turn.

#### **4. PROVISIONS IN THE VIEWSHAFT CHAPTER**

56. Our discussion here is organised to address the provisions in the viewshaft chapter sequentially as they appear to the reader, starting with the introduction.

##### **4.1 Introduction**

57. The Council's submission point quoted above is the sole submission on the Introduction.

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<sup>7</sup> Relying on *Re an application by Christchurch City Council* (1996) 2ELRNZ 431

58. It seeks, in summary, a statement that the rules apply to sites within the CCZ, the WFZ and the Viewshaft Control Area, which a related submission defines as dissecting the TEDZ, MRZ and HRZ. It also seeks clarification that it only regulates development impinging on the ‘specific parameters of each view’ set out in Schedule 5.
59. As discussed earlier, Schedule 5 contains photographs of the relevant views – with a frame identifying the viewshaft itself within each photo – and a description, including the ‘focal elements’ and ‘context elements’ of what the photograph shows in each case. Each section of Schedule 5 also describes in detail the viewpoint from which the photograph was taken, the left and right margins of the photograph and the base. Against that background, we interpret reference to the specific parameters of each view in the Council’s submission as referring to the defined focal and contextual elements in each case.
60. More generally, we interpret the Council’s submission as seeking to make clear what the High Court has held to be the purpose of the ODP viewshaft provisions, namely that they protect the view of the focal and context elements, not what forms part of those focal and context elements<sup>8</sup>.
61. Turning to Ms Stevens recommendations in relation to the Introduction<sup>9</sup>, they were:
- (a) Use the term ‘viewshafts’ as a shortform for ‘viewshafts overlay’ and use the former term throughout, rather than ‘viewshaft overlay’;
  - (b) insert a new sentence stating that to achieve the identified purpose of the viewshafts overlay, *“a number of viewshafts identify where built development is restricted to ensure that the views (i.e. ‘focal’ elements at the end of the viewshaft and context’ elements that surround the focal elements) are not compromised by future development”*;
  - (c) introduce a reference to the ‘mapped extent’ of the viewshafts, and state that those views are identified in Schedule 5;
  - (d) amend the reference to views having ‘local’ significance to *“city-wide public significance”* and an additional rationale – they promote the relationship of the city to its landscape setting;

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<sup>8</sup> Waterfront Watch Inc v Wellington City Council [2018] NZHC 3454

<sup>9</sup> As per her further reply dated 14 September 2023. Some provisions were introduced earlier and subsequently deleted.



- (e) qualify the reference to viewshafts being recognised regionally, nationally or internationally by talking about “*elements protected by viewshafts*”;
- (f) expand the list of zones that the viewshafts traverse to include the HRZ, MRZ, Special Purpose Wellington Town Belt Zone (WTBZ), TEDZ and Open Space Zone (OSZ);
- (g) add reference to the fact that viewshafts protect views;
- (h) add commentary about the varying significance of different viewshafts, including public significance, and introduce the distinction drawn between Category 1 and Category 2 viewshafts<sup>10</sup>. As a consequential change, delete the subsequent reference to views that had been identified due to their focus on important landmark buildings or iconic places;
- (i) amend the description of different types of views to state that viewshafts protect views of the described types and delete the reference to cable-car based views providing elevated views “*across the harbour*”;
- (j) remove the reference to spatial characterisation and amend to state that viewshafts protect views of the listed types;
- (k) substitute “*enabled*” for a reference to “*future permitted*” buildings;
- (l) substitute “*experienced*” for “*viewed*” when describing vista views, and refer to “*views*” rather than “*viewshafts*” in this context;
- (m) substitute “*identified*” for “*associated*” when referring to focal and context elements and amend the text to refer to the fact that views are identified both in Schedule 5 “*and the Viewshaft Overlay*”;
- (n) add a paragraph to state that the rules in this chapter apply to sites across multiple zones “*as identified in Schedule 5 and on the District Plan maps (through the Viewshaft Overlay)*”. The new paragraph stated further:

*“The purpose of the rule framework is to regulate development that intrudes on the specific parameters of each viewshaft as set out in Schedule 5, but not to prevent changes to the views’ focal and context elements themselves. Any*

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<sup>10</sup> Each viewshaft included in Schedule 5 has a recorded view significance category of either ‘local’ or ‘iconic and landmark’ as detailed in Schedule 5 and referred to throughout the Viewshaft Chapter. Ms Stevens recommended these category names be replaced with the terms ‘Category 1’ and ‘Category 2’. Category 1 was recommended to replace ‘iconic and landmark’ and Category 2 to replace ‘local’ significance category names.

*such development will be subject to the provisions of the relevant zone based chapter.”*

62. In addition, Ms Stevens recommended that the discussion of the CCZ and WFZ be deleted from the ‘Other relevant District Plan provisions’ section.
63. Notwithstanding the deletion of some existing text, the end result was to almost double the length of the Introduction.
64. Mr Winchester provided us with a detailed commentary on each of the suggested changes. He concluded that:
  - The changes summarised in paragraph (b) above are probably beyond scope, except potentially as consequential relief on the Council’s submission, although he noted that the Council did not seek parallel changes to the rules, which he considered to be a problem;
  - The changes summarised in paragraph (c) above are beyond scope;
  - The changes summarised in paragraphs (d) and (e) above are likely beyond scope, but probably inoffensive as factual and contextual statements;
  - The expansion of the references to zones affected in paragraph (f) above are within scope as clarification of the actual effect of the provisions as notified was the subject the Council’s submission;
  - The changes summarised in paragraph (g) above are within scope;
  - The changes summarised in paragraph (h) above are out of scope, but are possibly a reasonable statement;
  - The changes summarised in paragraph (i) above are out of scope, but probably reflect the effect of the provisions as notified;
  - The changes summarised in paragraph (j) are probably beyond scope, but also probably reflect the effect of the provisions as notified;
  - The changes summarised in paragraphs (k) and (l) above are probably beyond scope, but inoffensive and non-material;

- The changes summarised in paragraph (m) above are probably beyond scope, but they could be considered consequential relief of the Council's submission;
- The additions summarised in paragraph (n) above are largely within scope as a consequence of the Council's express relief, but go further than that relief insofar as they suggest that the purpose of the rule framework is not to prevent changes in the focal and context elements themselves;
- The deletion of text in relation to other relevant District Plan provisions is likely within scope as consequential on the Council's submission relief.

65. For her part, in her further Reply, Ms Stevens accepted that some of the amendments to the Introduction were out-of-scope. However, she did not itemise which ones.

66. Working through each suggested change ourselves with reference to the breakdown in paragraph 61 above:

(a) Mr Winchester did not specifically comment on this change. While editorial in nature, we consider that rather than simplifying interpretation of the Introduction, it complicates it because the shortform chosen ("*viewshaft*") is used in different contexts and with different meanings. Substituting it for "*viewshaft overlay*" therefore creates the need for further clarifications. The fact that Ms Stevens recommended (and we have accepted) that a definition of 'viewshaft overlay' creates additional confusion. We do not recommend that that amendment be made.

(b) we consider that the suggested amendment goes further than the Council's submission would authorise. We interpret that submission as seeking that development is only regulated where it impinges on the view of the focal and context elements. We consider that that clarification is desirable and therefore reword the suggested amendment to read:

*"To achieve this purpose, a number of viewshafts are defined so as to limit built development that would impinge on views of the focal elements at the end of viewshaft, and the context elements that provide a setting for those focal elements."*

(c) we agree with Mr Winchester's comment that the suggested amendment is out-of-scope. We also consider it is incorrect. The mapped extent of the viewshaft

overlay is not identified in Schedule 5. It is identified in the District Plan maps. We reject that suggested amendment;

- (d) we agree with Mr Winchester that that the suggested change is relatively anodyne. We consider it moderately useful. For the avoidance of doubt, we recommend that that amendment as an out-of-scope change;
- (e) we do not recommend this change. It is not the focal and contextual elements that are protected. It is views of those elements. This is recognised in a subsequent suggested change that we recommend accepting (refer (g) below). We therefore recommend only a minor clarification, to link back to the previous sentence.
- (f) we do not agree with Mr Winchester that the suggested expansion of the list of zones is wholly within the Council submission relief. That submission only referred to the HRZ, MRZ and TEDZ. However, as a consequence of our finding that the mapped extent of the viewshafts is determinative, we consider that it describes the viewshafts as they currently exist and therefore, to the extent that it goes further than the Council's submission, this is not a material change. We recommend that amendment be made;
- (g) we agree with Mr Winchester's opinion that the suggested change is within scope, and we have no difficulties with it. Accordingly, we adopt that recommendation;
- (h) we agree that the description of a scale of significance is out of scope. However, we consider the introduction of the Category 1/ Category 2 terminology is a helpful simplification. We recommend it as an out-of-scope change, linked to the text Ms Stevens recommended be deleted;
- (i) we agree that the suggested changes, while out-of-scope, accurately describe the provisions as notified. We recommend these as out-of-scope changes;
- (j) we agree that the suggested changes, while out-of-scope, accurately describe the provisions as notified. We recommend these as out-of-scope changes;
- (k) we do not accept the altered terminology here. While it appears to be equivalent, the fact that the NPSUD regards anything up to and including a restricted discretionary activity classification as "*enabled*" means that using that term conveys quite a different meaning to "*future permitted*". We reject that recommendation;
- (l) Mr Winchester considered this change is probably out-of-scope but inoffensive. We agree. We also consider that in a discussion with repeated references to

viewshafts and views, an alternative expression to “viewed” is to be preferred. Likewise, reference to “views” is consistent with the previous discussion. We recommend these as out-of-scope changes;

(m) we agree with Mr Winchester that this is a consequential change focussing greater attention on the focal and context elements. We consider, however, that the word “including” has the opposite effect to the relief the Council have sought, because it implies that there are other identified elements, and so we do not recommend that specific change. We note also that the suggested addition of the words “and the viewshaft overlay” is unnecessary if our recommendation not to accept the substitution of that term by the word “viewshaft” is accepted. As a result, we recommend that the second sentence be revised to read:

*“Views of the identified ~~including associated~~ focal and context elements that are the subject of the ~~this~~ Viewshaft Overlay are identified in Schedule 5.”*

(n) as regards the final paragraph, reversal of the suggested definition as per (a) above enables simplification of the language of this paragraph. We accept Mr Winchester’s view that addition of commentary on the rules not preventing changes to the focal and context elements themselves is out-of-scope. However, we regard this as a helpful addition given that it picks up the key findings in the *Waterfront Watch* (Chinese Garden) litigation referred to earlier that we believe remain equally valid and applicable. We therefore recommend that the notified text be amended to add a final paragraph as follows:

*“The rules in this Chapter apply to sites across multiple zones where the viewshaft overlay applies, as shown on the District Plan maps. The views themselves are described in Schedule 5. The purpose of the rule framework is to regulate development that intrudes on the focal and context elements identified in Schedule 5, but not to prevent changes to those elements themselves. Any such development will be subject to the provisions of the relevant zone based chapter.”*

In that regard, our recommendation is for an out-of-scope change.

67. Lastly, we agree with Mr Winchester’s view that the deletions from the “any relevant District Plan provisions” that Ms Stevens proposes are within scope as a consequential change of the Council’s submission. We do not see any difficulty deleting them, particularly given the clarification above.
68. The end result of our recommendations is shown in Appendix 1.

## 4.2 Objectives

69. No submissions were received on either of the two objectives in the VIEW chapter. Notwithstanding that, Ms Stevens recommended changes to both objectives on the basis that they represent minor amendments to improve clarity and better distinguish the outcomes sought for iconic/landmark viewshafts from those sought for more locally significant viewshafts. The amendments she ultimately proposed were as follows:

### **VIEW-O1 Purpose**

Views that have been identified as having city-wide public significance, townscape value, or are representative of the City's identity at a national or international scale are recognised and maintained.

~~Views that contribute to the City's identity and sense of place, and that support an understanding of the City's topography and urban form, are recognised and maintained.~~

### **VIEW-O2 Category 1 (Iconic and landmark views)**

Category 1 Viewshafts from public places to key City landmarks are recognised and given an enhanced protection maintained due to their regional, national and/or international significance.

70. To the extent that some of all of the recommendations of Ms Stevens can be genuinely described as minor, we share her view that the PDP's effective administration would be enhanced by providing greater clarity in these two objectives. That said, we consider that most of the refinements proposed by Ms Stevens go beyond what can fairly be categorised as minor, and there is an unequivocal lack of scope to make the changes on the basis of relief sought in submissions.
71. Report 1A discusses the principles guiding the exercise of our discretion to recommend out-of-scope amendments (at Section 1.6). Consistent with our findings in relation to scope and with that discussion, we have been less expansive with the proposed refinements that Ms Stevens advocates for the reasons set out here.
72. The minor, out-of-scope amendments that we consider to be acceptable in this regard are limited to Objective VIEW-O2, and comprise:
- (a) the introduction of the 'Category 1' concept which is replicated further in other provisions for clarity; and
  - (b) the deletion of the words "*from public places to key City landmarks*".
73. Regarding the latter, the description of the basis for identification of iconic and landmark/Category 1 viewshafts is unnecessary and we agree that in this case the

description is not accurate either; iconic and landmark viewshafts account for more than 'key City landmarks' within their extent. We adopt Mr Winchester's appraisal<sup>11</sup> of such refinements as having a neutral effect.

74. We are not inclined to adopt the balance of Ms Stevens' recommended changes to Objective VIEW-O2 (as set out in paragraph 69) for the following reasons:

(a) substantively:

- i. the phrase "*given an enhanced protection*" recommended by Ms Stevens is an altogether different outcome to the concept of "*maintenance*";
- ii. while intrusions on Category 1 Viewshafts will be considered in a potentially more wide-ranging inquiry, reflecting the difference between Discretionary and Restricted Discretionary Activity status, the amendment implies a higher regulatory hurdle;
- iii. accordingly, replacing one with the other would not amount to a neutral effect, as we discuss further in the context of associated amendments proposed by Ms Stevens to the viewshaft rules;

(b) we do not consider that such a change could reasonably be anticipated by a potentially interested party as a minor amendment; and

(c) we are uncomfortable with the prospect of exercising our 'out-of-scope' recommendatory powers under Clause 99 of RMA Schedule 1 based on the evidence before us on this particular matter, which is not sufficient to justify the amendments at the expense of potential impacts on persons who have not had the opportunity to fairly contest them.

75. Similarly, we consider that Ms Stevens' proposed refinements to Objective VIEW-O1 would have the effect of modifying the substance of what the objective seeks to 'recognise and maintain' to too great an extent. The 'City's identity' is common to both the notified and refined drafting, but that is where the similarities end.

76. While not necessarily unrelated, the concepts of "*sense of place and an understanding of the City's topography and urban form*" are not completely synonymous with "*townscape value, public significance, and representativeness*". The concepts are of such distinctiveness, in our reading, that we cannot comfortably adopt the shift

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<sup>11</sup> James Winchester, Legal Advice to the Hearing Panel, 27 July 2023, para 108.

recommended by Ms Stevens in the absence of an opportunity for potentially interested parties to consider or challenge that content.

77. Moreover, we are not prepared to adopt Ms Stevens' refinements by utilising our ability to recommend amendments to the PDP beyond the scope of submissions received. Again, the evidence before us is not sufficiently convincing that such amendments are necessary or desirable for the purposes of s80E of the RMA.

#### **4.3 Policies**

78. As with the VIEW chapter objectives, no submissions sought amendments to the associated policies<sup>12</sup>. Ms Stevens nevertheless recommended refinements to each of the three policies, again contending that such amendments are all minor in nature.
79. In contrast to our discussion of objectives, we consider that most of the amendments recommended by Ms Stevens in this regard are genuinely minor, and all have an overall neutral effect. Those changes include administrative refinements comprising:
- (a) changing the word 'view' to 'viewshaft' in each of the policies and adding the word 'viewshaft' at junctures to enhance clarity;
  - (b) use of the 'Category 1' drafting convention we discussed previously; and
  - (c) deletion of extraneous language, including the word 'experienced' in Policy VIEW-P3.1.
80. We are also generally comfortable with and supportive of the more substantive amendment proposed by Ms Stevens to consolidate sub-clauses 3 and 4 of Policy VIEW-P2. As part of the amendment, reference to 'disrupting' views is changed to 'intrusions'. It could be argued that the focus in the notified policy on disruptions to identified views captures a different and possibly narrower range of activities and effects than would an explicit reference to 'intrusions'. However, the Section 32 evaluation gives no indication that a substantive change from the ODP was intended, and the fact that the rules and the single standard all use the language of intrusion suggests that any perceived difference is unintended. The language of sub-policy (4), which talks about encroachments, would also support that view.
81. The net effect is therefore neutral in our view, and there is no associated change to the breadth of matters addressed or the substance of direction applied. The clear

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<sup>12</sup> One submission was received from Argosy in support of the proposed policies (VIEW-P2 and VIEW-P3).



administration of the PDP will be enhanced through streamlining the matters to be considered under the policy accordingly.

82. The exception to the above is Ms Stevens' proposed introduction of context elements within this consolidated assessment criterion under the policy. The effect of that change is that intrusions into context elements would be assessed, whereas formerly that was not the case. As we discuss later in this report, we do not recommend extension of the Viewshaft Overlay to include contextual elements where it does not already do so.
83. For these reasons, we have adopted all of Ms Stevens proposed out-of-scope changes to the VIEW chapter policies apart from the one exception summarised above.
84. We recommend one additional consequential change. It seems to us that having accepted Ms Stevens' suggested Category 1/Category 2 terminology, it is unnecessary to retain reference in View-P3 to "*iconic and landmark views*". The single reference by way of explanation in VIEW-O2 is sufficient.

#### **4.4 Rules & standard**

85. VIEW-R1 relates to verandahs within viewshafts. Ms Stevens recommended three amendments to it:
- Identify that it applies in the CCZ;
  - Amend the cross reference to the Standards of the CCZ Chapter to refer to CCZ-S7;
  - Amend the reference to verandahs intruding "*into*" VS 1 and VS 4, and substitute with:  
  

*"The veranda does not intrude ~~on~~into Viewshaft 1 or Viewshaft 4."*
86. The first two suggested amendments were sought in the Council's submissions<sup>13</sup>.
87. Ms Stevens' analysis in her Section 42A Report explained that the cross reference to CCZ-S8 is a simple error. The correct reference is to CCZ-S7. The latter relates to verandahs. The former does not.

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<sup>13</sup> Submissions #266.90-93

88. She also supported the Council's submission that a zone column be added to this and the other rules in the Viewshaft Chapter. In relation to VIEW-R1, she advised that the only zone which requires verandahs through which the viewshafts traverse is the CCZ, and therefore it is the only zone required to be referenced.
89. Mr Winchester confirmed our initial impression which was that the suggested changes are in scope. We accept Ms Stevens' reasoning and recommend adoption of the amendments she has suggested.
90. Ms Stevens did not explicitly explain the basis for the third change, but we infer that this is part of a process of seeking to standardise references within the chapter. We do not detect any substantive change in meaning as a result, and we accept the recommended change.
91. Turning to VIEW-R2, as notified, this was a relatively simple provision which provided for two situations. Under the first, operating in conjunction with VIEW-S1, buildings or structures intruding on the second tier of viewshafts (VS3, VS5-12 (inclusive) and VS16-17) that we have recommended be labelled 'Category 2' were classified as Restricted Discretionary Activities.
92. Under the second, development intruding into any of the first tier (iconic and landmark) viewshafts (now 'Category 1') were Discretionary Activities.
93. Ms Stevens referred us to the same Council submissions that seek that a zones column be added. She also noted a submission from Argosy seeking that the matters of discretion be expanded to include VIEW-P3.
94. More specifically, the Council sought that VIEW-R2.1 (the Restricted Discretionary Activity rule) be noted as applying in the CCZ and the WFZ, and VIEW-R2.2 (the full discretionary activity rule) be noted as applying in the CCZ, the WFZ and the '*Viewshaft Control Area*'. As above, reference to another Council submission<sup>14</sup> indicates that the viewshaft control area was intended to apply within the TEDZ, MRZ and HRZ, with the purpose of allowing residentially zoned properties to achieve the MDRS standards.
95. Against that rather slender submission base, Ms Stevens recommended:

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<sup>14</sup> Submission #266.37

- (a) a change to the description of the activity caught by the rule, referring to buildings and structures “*within the extent of the Viewshaft Overlay*” instead of “*within a viewshaft*”;
- (b) adding a new Permitted Activity rule in the MRZ, subject to compliance with MRZ building height standards (excluding properties in Kelburn within the Viewshaft Overlay for Viewshafts 13-15) and the MRZ standard for building heights within the Oriental Bay Height Precinct.
- (c) a new HRZ Permitted Activity rule that is similarly subject to compliance with the HRZ height standards (excluding Kelburn development in relation to the multi-unit housing and retirement village height standard)
- (d) insert reference to ‘Category 1’ and ‘Category 2’;
- (e) note the Restricted Discretionary Activity rule applies in “*all other zones*”;
- (f) add a new Restricted Discretionary Activity rule applying in the MRZ and HRZ for situations where buildings or structures intrude on one of the Category 2 viewshafts and do not meet the Permitted Activity standards in the new rules as above;
- (g) add a new Discretionary Activity rule applying in the MRZ and HRZ covering the situation where development intrudes into one of the Category 1 viewshafts and it does not meet the Permitted Activity standards in the new rules, as above;
- (h) both in the new Discretionary Activity rule as above, and the existing Discretionary activity rule, reclassify Viewshafts 11 (Willeston Street) and 12 (Chews Lane/Harris Street) as Category 1 viewshafts managed under those rules (rather than, as previously, the Restricted Discretionary Activity rule);
- (i) change the existing Discretionary Rule to add reference to it applying in “*all other zones*”, delete reference to View 18 (Cable Car Panoramic view) and amend cross references from “*View*” to “*Viewshaft*”.

96. Mr Winchester’s commentary on these changes was as follows:

- (a) it is arguable that the Council’s submission provides a basis for a more zone-specific approach which would also enable the suggested change to the heading, which identifies the activities that trigger the rule;

- (b) the new Permitted Activity rules could be seen as consequential on the submission of Mr Jonathan Markwick<sup>15</sup> (which sought that six storey high density residential building be allowed in all of Kelburn with a viewshaft protection from the top of the cable car);
  - (c) Mr Winchester considered that the new Restricted Discretionary activity rule also a foreseeable consequence the introduction of the new permitted activity rules, but he drew our attention specifically to the identification of VIEW-P1 as a matter of discretion. In his view, that was out-of-scope;
  - (d) Mr Winchester similarly regarded most of the changes to introduce a new Discretionary Activity rule and to amend the existing Discretionary Activity rule as consequential on the Council's submission. However, he did not regard the reclassification of Viewshafts 11 and 12 as Category 1 viewshafts as being within scope.
97. For her part, in her further Reply, Ms Stevens accepted that the following changes were out-of-scope:
- (a) introducing the Category 1 and Category 2 classification in lieu of 'iconic and landmark' and 'local' classification respectively;
  - (b) amending incorrect "*view*" references to "*viewshaft*";
  - (c) amending the classification of Viewshafts 11 and 12 from Category 2 to Category 1.
98. However, she considered that all of these changes would be desirable planning outcomes and recommended that the Panel consider whether it is appropriate to make an out-of-scope recommendations in respect of them.
99. We make the following initial comments. We agree with the amendment to include reference to the Viewshaft 'Overlay'. Mr Winchester considered that it was arguable that the change to the rule heading was consequential on the Council submission. We consider that this change to reference '*the extent of the*' Viewshaft Overlay is not necessary given the new definition of Viewshaft Overlay we recommend in Section 6 below.

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<sup>15</sup> Submission #490.23

100. We have already discussed the change in terminology to include the 'Category 1' and 'Category 2' labelling. We regard it as a helpful simplification in this context also and again recommend this as an out-of-scope amendment.
101. We do not consider it appropriate to recommend reclassification of Viewshafts 11 and 12 as Category 1 viewshafts on an out-of-scope basis. We discuss this further in Section 7.2 below. In summary, the change in rule status between Restricted Discretionary and Discretionary is a more stringent level of regulation, and it affects all of those whose properties are within these viewshafts. It was also not obvious to us that these two viewshafts required a greater level of regulation or unfettered discretion to consider wider effects than is already provided.
102. We do agree, however, with Ms Stevens' recommendation to cross reference individual Viewshafts, rather than views.
103. Turning to the broader rule structuring issues, we agree in principle with the concept of inserting a column so that the zones in which each rule applies are clearly stated. We find it ironic that Ms Stevens justified this change, in part, on the basis that otherwise the rules would be taken as applying in all zones when, for the existing rules, she has recommended a description of the zones they apply to as being "*all other zones*". All other zones in this context are the Tertiary Education Zone, the Wellington Town Belt Zone, the Open Space Zone, the Central City Zone and the Waterfront Zone. They should be listed in the relevant rules.
104. The desirability of providing Permitted Activity rules governing development within the extent of viewshafts in residential zones was first canvassed in Ms Stevens supplementary planning evidence. She was concerned that due to properties being directly under the viewing point for Viewshafts 13, 14 and 15 (the Cable Car lookout), development above the maximum heights of the MRZ and HRZ might potentially compromise the base of the viewshafts. Initially, she considered that by providing for development up to the MRZ and HRZ maximum height limits of 11m and 14m would adequately provide for the viewshafts values. However, on the basis of more modelling work, she reconsidered that view. In her further Reply, she recommended a maximum height limit in both MRZ and HRZ of 11m for Kelburn residential developments. She was less concerned about residential developments in Oriental Bay/Roseneath that were at the far end of Viewshafts 14 and 15. Nevertheless, on the back of the Council's modelling work, Ms Stevens recommended any development not complying with MRZ-PREC03-S3 (the Oriental Bay Height Precinct height controls) require a resource

consent for the purpose of Viewshaft 15, to manage the risk of development intruding into the view of St Gerard's Monastery from the Cable Car Lookout.

105. Provision of these Permitted Activity rules also addressed another problem Mr Winchester identified. As above, in VIEW-R2 as notified, the rule regulated buildings and structures within a viewshaft, with an entry level of Restricted Discretionary for buildings and structures that do not comply with the sole standard, which tested whether the building or structure intruded on any of the viewshafts now identified as Category 2, and Discretionary, where development intrudes into a Category 1 viewshaft. The rule did not say what happened to buildings or structures within the Viewshaft Overlay that do not intrude into either a Category 1 or Category 2 viewshaft. Mr Winchester considered that Section 9(3) of the Act would have the effect that because such activities do not contravene any District Plan rule, they are not regulated by it, but that there was a risk that such activities might be considered innominate and therefore require a consent as a Discretionary Activity under Section 87B(1)(b).
106. Mr Winchester also considered the Permitted Activity rules to be within scope by virtue of Mr Markwick's submission. We do not think that is entirely correct. Mr Markwick sought that six storey developments in Kelburn be subject to viewshafts. He did not seek that viewshafts would apply to MRZ developments.
107. However, in our view, the Council's submission<sup>16</sup> fills that gap with its suggestion of a Viewshaft Control Area.
108. We have some more fundamental problems with Ms Stevens suggested Permitted Activity rules.
109. As above, her intention was that residential development in Kelburn, whether in HRZ or MRZ areas, be subject to an 11m height limit. The problem is that the way she has drafted the rules has the opposite effect in our view. Specifically, Ms Stevens recommended that the exclusion for properties in Kelburn apply to MRZ-S2 and HRZ-S2 (as applicable), but the draft rules do not specify what standard the activities not subject to MRZ-S1 and HRZ-S1 (multi-unit developments and retirement villages among others) do have to meet. They would still be Permitted Activities, but not subject to any height control. In other words, they could be built to any height within a viewshaft and not be subject to the Viewshafts Chapter.

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<sup>16</sup> Submission #266

110. Clearly this was not intended and needs to be addressed.
111. There is a separate and more easily solved problem identifying what is meant by 'Kelburn' in this context.
112. More substantively, we have an inherent problem with Ms Stevens' suggestion that developments in the HRZ be subject to an 11m height limit. Her reasoning was that further modelling needed to be undertaken to establish the exact extent of any possible incursions into the Cable Car viewshafts, and that in the interim, an 11m height limit was prudent. That, however, is not how the NPSUD works. It is for Council to justify restrictions on development capacity if it seeks to limit development to less than the prescribed standard – in this case a minimum of six storeys or 21-22m. What is more, that analysis has to be on a site-specific basis pursuant to Section 77L. As far as we can identify, the Council has not done that.
113. Moreover, the further modelling undertaken by Council that is discussed in Ms Stevens Further Reply dated 14 September, demonstrates that it is not necessary either. That modelling showed that so long as the spatial extent of the HRZ remained as notified, no buildings in the HRZ areas of Kelburn penetrate Viewshafts 13-15. Ms Stevens did not amend her marked up provisions to remove the Kelburn exclusion (presumably because her colleague Mr Wharton had recommended an extension of the walkable catchment above the University in Stream 1 and/or because Kāinga Ora had sought more enabling height limits), but we are satisfied that against a background of Report 2A not recommending an expansion of the notified HRZ areas in Kelburn, a height of 21-22m can be provided for. That removes the problem of the absence of any statutory evaluation (at least as regards Kelburn).
114. In her Further Reply, Ms Stevens drew our attention to a potential problem if the Hearing Panel accepted Kāinga Ora's submission that the area notified as Oriental Bay Height Precinct is rezoned HRZ, because Council had not modelled the effect of that on Viewshaft 15- whether in particular, it would impinge on the view of St Gerard's Monastery (Viewshaft 15's focal element). Based on the modelling work undertaken as part of the further reply, Ms Stevens was comfortable that any development that complied with MRZ-PREC03-S3 Oriental Bay Height Precinct's height controls would not intrude into Viewshaft 15, but any development above these limits could do so, would thus require resource consent for the purpose of avoiding intrusions into Viewshaft 15. She therefore suggested that buildings on Oriental Parade within

Viewshaft 15 be subject to a reduced height limit. She did not, however, evaluate that option under Sections 77J and 77L.

115. In Report 2A we have found that the height limits applying within the Oriental Bay Height Precinct cannot be less than 21m because Council did not evaluate that against the statutory criteria either. It seems to us that the same result must follow in this context, although that may just compound the need the Hearing Panel noted in Report 2A for Council to look again at these issues, and if appropriate, amend that outcome via a Plan Change.
116. The need for amendment will be dependent on further modelling. While Ms Stevens was rightly cautious, given the importance of the views of St Gerard's, it may be that developments of 21m (or more) on Oriental Parade will not in fact intrude into Viewshaft 15.
117. In summary, therefore, the recommended permitted activity rules require amendment as follows:
  - The MRZ Permitted Activity rule needs to be amended to ensure that other than within the Oriental Bay Height Precinct all development (i.e. including within Kelburn) is subject to a height limit of 11m above ground level;
  - The HRZ Permitted Activity rule needs to be amended to ensure that all development (i.e. including within Kelburn) is subject to a height limit of at least 21m above ground level (that being the minimum necessary to provide for 6 storey developments); and
  - In both cases, development may also exceed the above limits as a Permitted Activity, provided that it is demonstrated that the development does not intrude into relevant viewshaft(s) – we discuss this further shortly.
118. We have redrafted the rules in Appendix 1 accordingly to show the results of our recommendations.
119. As regards the balance of the suggested rules, we record first that the reference in the new Discretionary Activity rule to Viewshafts 11 and 12 should be deleted, for the reasons set out above. They are not Category 1 viewshafts.
120. Secondly, we note Mr Winchester's view that introduction of reference to VIEW-P1 as a matter of discretion in the new Restricted Discretionary Activity is out of scope. We



agree with that and we do not consider an out-of-scope change is warranted given that the operative instruction (to “*maintain*” viewshafts) is duplicated in VIEW-P2.

121. Ms Stevens did not consider that it was appropriate to add reference in the existing Restricted Discretionary Activity rule to VIEW-P3 (as Argosy requested). We agree with that view. The Restricted Discretionary Activity rule relates to Category 2 viewshafts. Policy 3 provides direction in relation to Category 1 viewshafts. Adding reference to it as an additional matter of discretion would provide no value.
122. Thirdly, we have taken the opportunity to simplify the structure of the rules overall. This includes removing the cross reference proposed by Ms Stevens to the HRZ and MRZ height standards which in our view unnecessarily complicates the rules. The revised chapter now specifies the respective Permitted Activity heights for the MRZ and HRZ rules in situ. While this appears to provide a more restrictive height limit for development that would otherwise have been subject to MRZ-S2, this does not arise because the MRZ areas on Oriental Bay and Roseneath under the relevant viewshafts are within Height Area 1 (11m), except within the Oriental Bay Height Precinct, which we have provided for separately.
123. We have also inserted a new Permitted Activity rule for all other relevant zones to overcome the issue identified by Mr Winchester regarding the potential for consent to be required for buildings and structures that do not intrude into a viewshaft, due to such an activity being otherwise innominate. Arguably, this might be considered a minor change since Mr Winchester considered that would be the effect of Section 9 of the RMA anyway. However, for the avoidance of doubt, we recommend that as an out-of-scope change.
124. Lastly, we have rationalised the various ‘default’ rules proposed by Ms Stevens into a single Restricted Discretionary Activity rule that applies to all zones where buildings and structures intrude into a Category 2 viewshaft and a single Discretionary rule for all zones where Category 1 viewshafts are intruded into. Exceptions are made in both cases for buildings and structures in the MRZ that do not exceed the MDRS height standard, and in the HRZ where the 22m height limit is not exceeded.
125. Turning to the sole standard, the only changes required to VIEW-S1 are consequential on our rule recommendations as above. We note for completeness, however, that we have cross referenced the assessment matters specified under the standard as matters of discretion to be considered for any activities that fall under the consolidated restricted

discretionary activity rule in VIEW-R2. This follows the approach adopted across the PDP for such rules.

126. As a concluding comment for this discussion on the VIEW Chapter rules, we record that the amendments we have adopted here have, in effect, resolved issues with the mapped extent of viewshafts 13-15 which we would have otherwise addressed in Section 7.

## 5. DEFINITIONS

127. Ms Stevens recommended eight new definitions, for the following terms:

- Category 1 viewshaft;
- Category 2 viewshaft;
- Context elements;
- Continuum elements;
- Focal element;
- Termination point;
- View;
- Viewshaft overlay.

128. She also recommended amendment to the definition of 'iconic and landmark' views to insert the word 'enhanced' so it refers to views that have been identified as having 'enhanced public significance', along with a more complex set of amendments to the definition of 'viewshaft'.

129. Ms Stevens accepted (in her further reply) that these new definitions, and amendments to definitions were out of scope. That was also Mr Winchester's view, save that he considered that the definition of 'viewshaft overlay' was potentially within scope as a consequence of the relief sought in the Council's submission. He also considered that most of the changes and additions were material given the importance of definitions to the interpretation and application of the provisions.

130. We can deal with the suggested definition of 'termination point' quite readily. Quite apart from issues of scope, the term is not used in either the Viewshaft Chapter or Schedule 5. Having a definition is therefore of no utility.

131. Similarly, the term ‘continuum elements’ was only used in the Schedule 5 description of Viewshaft 18, which we have recommended be deleted. Accordingly, we see no value in this definition either.
132. Working through the other definitions, we do not think that the definition of ‘Category 1 viewshaft’ and ‘Category 2 viewshaft’ adds any value over and above the recommended content of the Chapter. The definitions for ‘context elements’ and ‘focal element’ similarly seem to add little to their ordinary and natural meaning i.e. context elements provide context, and focal elements are the elements that are the focus of the viewshaft. We do not recommend these definitions be inserted.
133. The recommended definition of ‘view’ is highly significant, and we are not at all sure that the proposed definition accurately defines the intent of the Plan provisions. In particular, the proposed wording indicates that that the focal and context elements are protected by the viewshaft, which would suggest to us that changes to the focal and context elements themselves are regulated, contrary to the High Court’s decision in the *Waterfront Watch (Chinese Garden)* case referred to above, and to the apparent intention that that remains the position. We reject the suggested definition accordingly.
134. The remaining suggested definition is ‘viewshaft overlay’ which is proposed to be defined as:
- “The mapped extent of the viewshafts in the ePlan included in Schedule 5, which are associated with the Viewshaft Chapter provisions.”*
135. We consider that the focus on the mapped extent of viewshafts is helpful but the balance of the definition is problematic. The word “*associated*” rather undersells the relationship between the provisions of the Chapter and what is mapped.
136. We recommend it be reworded as follows:
- “The mapped extent of the viewshafts described in Schedule 5 of the ePlan and which are the subject of the Viewshaft Chapter provisions.”*
137. For the avoidance of doubt (given that Mr Winchester’s view that this was only possibly within scope), we recommend this new definition as an out-of-scope change.
138. Turning to the two amended definitions, we do not have a problem with the amendment to ‘iconic and landmark views’. We think it is fair to say that all viewshafts have public significance, but the iconic and landmark views (i.e. Category 1 viewshafts) have a greater level of significance.

139. We recommend that change as an out-of-scope amendment also.
140. The suggested amendments to ‘viewshaft’ are more problematic, in our view, save for deletion of the reference to panoramic viewshafts (and consequential changes related to that). That deletion is consequential on our recommendation to delete Viewshaft 18 in alignment with Ms Stevens’s recommendation.
141. As regards the balance of the suggested changes to the ‘Viewshaft’ definition, we have already rejected Ms Stevens’ recommendation to amend reference to ‘future permitted’ buildings and structures to ‘enabled’ buildings and structures in the context of the introduction to the chapter.
142. We have a particular problem with defining viewshafts as meaning a view ‘to’ focal and context elements, given that many of the mapped viewshafts do not extend to those elements. We discuss that issue further in Section 7 below.
143. While the balance of amendments appears reasonable and factual, we are not comfortable making that recommendation on an out-of-scope basis given the absence of opportunity for interested parties to provide input and the potential significance of the changes.
144. Accordingly, the only amendment we recommend to this definition is to delete reference to panoramic views and amend the description of the types of viewshaft to say that there are two (not three). This is an out-of-scope amendment.

## **6. SCHEDULE 5**

### **6.1 Overview and relationship with mapped extents**

145. Here, we consider submissions relating to, and amendments proposed by Ms Stevens on, the detailed contents of Schedule 5.
146. As summarised at the outset of section 2.4 above, there is a correlation between the spatial information provided in Schedule 5 for each viewshaft and the related mapped extent shown on the planning maps. In adopting changes to the spatial details of each viewshaft, we have been mindful of this relationship to ensure consistency between these two related PDP components.
147. As we discuss spatial elements of the viewshafts here and in section 6 – often independently of the other to avoid unnecessary duplication – these two sections

should be read conjunctively for a complete picture on our analysis and recommendations in this regard.

148. Those preliminary comments aside, our discussion here is organised to consider the following aspects of Schedule 5 in turn:
- (a) the description of each viewshaft's significance;
  - (b) viewshafts VS1 and VS4;
  - (c) viewshaft VS8;
  - (d) viewshaft VS9;
  - (e) viewshaft VS11;
  - (f) viewshaft VS18; and
  - (g) minor edits.
149. Before we address those matters, we briefly discuss the inclusion of advice notes in the schedule to assist plan users.

## 6.2 Notes

150. In her Section 42A Report, Ms Stevens recommended insertion of an Advice Note at the front of Schedule 5, worded as follows:

***Note:** In order to accurately survey sites with regards to viewshafts identified in Schedule 5, surveyors will need to look at the base, left margin and right margin descriptions.*

151. She regarded it as an inconsequential change. We agree with that characterisation, and that it should be inserted as recommended, save that it should be headed, "Advice Notes", to be clear about its status, and to reflect our recommendation below that a second Note be added.

152. In her initial reply, Ms Stevens recommended insertion of a second note, worded:

***Note:** Where a development intrudes upon an identified viewshaft, line drawings of the development in relation to the viewshaft must be supplied to demonstrate the level of compliance with the Viewshaft Chapter Rules VIEW-R1 and VIEW-R2, and standard VIEW-S1. The drawings must be of a scale that allows the accurate assessment of the visual effects and must be accompanied*

*by a certificate from a registered land surveyor or person with an appropriate level of professional expertise.”*

153. Ms Stevens noted that this wording was taken from the ODP. She did not identify a submission seeking its inclusion and we are not aware of any. Unlike the first note, this note implies a degree of direction that means it has more than minor effect. It could be taken as a mandatory information requirement, without which, applications will be rejected.
154. For that reason, we do not consider it appropriate as an out-of-scope change in its present form.
155. We accept that Council will require information supporting an application to intrude on a viewshaft that is sufficient to enable assessment of the effects, and that if this is not supplied with the application, it will likely be the subject of a request for further information. That is how the note should be framed.
156. Accordingly, we recommend, as an out-of-scope change, insertion of the following note at the start of Schedule 5:

*“Applicants for resource consent for a development that intrudes upon an identified viewshaft should note that the Council will likely require information to be provided supporting the application, including line drawings of the development in relation to the viewshaft to demonstrate the level of compliance with the Viewshaft Chapter Rules VIEW-R1 and VIEW-R2, and standard VIEW-S1. Such drawings should be of a scale that allows the accurate assessment of the visual effects and be accompanied by a certificate from a registered land surveyor or person with an appropriate level of professional expertise.”*

### **6.3 Significance descriptions**

157. In her supplementary statement, Ms Stevens recommended<sup>17</sup> a simplification of the language used to categorise each viewshaft’s significance in the objectives, policies, rules, standard and Schedule 5. This involves amending the two notified terms which defined relative significance – ‘iconic and landmark’ and ‘local’ respectively – with simpler and less descriptive terms: ‘Category 1’ and ‘Category 2’ respectively.
158. We have discussed this suggested change in Section 5 above, finding it of value. We share Ms Stevens’ view that this minor editorial change will assist with the clear administration of the PDP in this context also and have accordingly amended the

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<sup>17</sup> Supplementary statement, para 50

statement of significance for each viewshaft in Schedule 5 to apply the simpler naming convention. This is an out-of-scope recommendation.

159. We note that Ms Stevens also recommended that the significance ascribed to certain viewshafts in the Schedule be altered despite no submissions seeking such relief. Those amendments included:
- (a) viewshafts VS2, VS11 and VS12 being afforded greater significance (from 'local' to 'Category 1'); and
  - (b) viewshaft VS9 being afforded lesser significance (from 'Iconic and Landmark' to 'Category 2').
160. Ms Stevens' basis for recommending the above changes was to remedy errors she had identified. For example, Ms Stevens drew our attention to the inconsistency between the significance ascribed to viewshafts VS2 and VS9 and the corresponding significance ascribed under rule VIEW-R2 and standard VIEW-S1. Ms Stevens considered that the rules and standards reflect the 'correct' significance in this regard. She also had concerns with the categorisation of viewshafts VS11 and VS12.
161. Starting with viewshafts VS11 and VS12, Ms Stevens' view was that these are misidentified as being of Local/Category 2 significance in the schedule, rules and standard. In her first of two replies, she expressed the view<sup>18</sup> that scope is available to make the amendment through the submission of Juliet Broadmore. However, she subsequently changed her view in her further reply<sup>19</sup>.
162. We interpolate here to align with Ms Stevens' revised position on this point. Ms Broadmore's submission simply supports viewshafts to protect the views to important and connecting landmarks in the City. Interpreting this *general* support as amounting to a request to elevate the significance of an otherwise unspecified selection of some viewshafts requires a considerable 'leap' in our view, and one we are not prepared to take.
163. Nor do we adopt Ms Stevens' substantive recommendation to elevate the significance of VS11 and VS12. As far as that goes, we found Ms Stevens' ultimate analysis<sup>20</sup> of the proposed change to be of assistance, and we adopt it, albeit as rationale to arrive

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<sup>18</sup> Right of Reply, para 13

<sup>19</sup> Further Right of Reply, para 14

<sup>20</sup> Further Right of Reply, pages 32-33

at the conclusion that the change is *inappropriate*. Namely, we agree with Ms Stevens that:

- (a) there is no scope for the change in submissions;
- (b) the change can be described as 'substantial', particularly owing to the shift in activity status and associated policy direction;
- (c) the change introduces moderate-to-high natural justice concerns for those parties affected by the change who have had no opportunity to challenge the recommendation; and
- (d) the risk of *not* implementing the change is low, given that incursions into the viewshaft will still require resource consent and be subject to appropriate scrutiny whether as Category 1 or Category 2.

164. We find the situation with VS2 and VS9 to be distinguishable from VS10 and VS11. For both VS2 and VS9 the notified rules and standards are aligned, with VS2 clearly identified as having iconic/landmark significance and VS9 identified as having local significance. It appears to us that the schedule is the outlier for these two viewshafts, and we are convinced of the need to remedy that, so that there is no inconsistency and consequential lack of certainty for future plan users.

165. Having considered similar factors to those for VS10 and VS11 above, we find:

- (a) there is no scope for changes to the significance of VS2 or VS9 in submissions;
- (b) the change for VS2 is as substantial as that recommended by Ms Stevens for VS10 and 11, but for VS9 is less substantial – again largely owing to the change in relative activity status and policy direction;
- (c) the natural justice issues are less for these two viewshafts than as described for VS10 and VS11 as the notified rules and standard signalled to potentially interested parties the significance is as per the level we have adopted;
- (d) the risk of not implementing the change is low, given that incursions into the viewshaft will require resource consent and be subject to appropriate scrutiny whether as Category 1 or Category 2.

166. Further to the above, an important distinguishing factor for these two viewshafts compared to V10 and VS11 is that a decision for us *not* to act will result in the PDP being internally inconsistent. Such an outcome is undesirable in many respects, and it



is appropriate for us to remedy the matter so that the rules, standard and schedule are coherent.

167. One reasonable alternative might be to ascribe the lower overall significance, and therefore perceived regulatory stringency, to both VS2 and VS9, so as to minimise potential prejudice for parties who may be affected. Such an alternative is not supported in the evidence of Ms Stevens and Dr Zamani. Nor is it helpful to the implementation of the proposed objectives and policies in our view. In this regard, we have satisfied ourselves that the potential natural justice issues are sufficiently benign such that they need not be prioritised over the effective administration of the PDP on this particular matter.
168. For the reasons above, we consider that the appropriate remedy is to amend the significance of VS2 to Category 1, and of VS9 to Category 2, so as to achieve the necessary coherence with the rules and standard.
169. We recommend these changes as out-of-scope amendments.

#### **6.4 Viewshafts VS1 and VS4**

170. The submission from Eldin Family Trust supported viewshafts VS1 and VS4 subject to some minor refinements to their respective Schedule 5 content. The impetus for the submission was well summarised by counsel for the Trust, Mr Ballinger<sup>21</sup>, as follows:

*13. The Descriptions of VS1 and VS4 in the notified PDP recognise the backdrop of Te Ahumairangi Hill (Tinakori Hill) as a context element. The green bush background provides a dramatic contrast and conveys a sense of New Zealand's clean green image and the high value that we place on nature and conservation. This is an important aspect of our tourism industry and international identity, and ought to be recognised as part of the view of The Beehive and Parliament Buildings.*

*14. The Trustees submit that amendments should be made to the Descriptions of VS1 and VS4 to place greater recognition on the international significance of the Beehive as well as the contributing role of the Te Ahumairangi Hill backdrop.*

171. Ms Stevens recommended the acceptance in part of the Trust's submission, insofar as she proposed an addition to the viewshaft VS1 description to echo VS4's recognition that Te Ahumairangi provides a backdrop for the Beehive (in both views). Ms Stevens

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<sup>21</sup> Ballinger submissions, para 13-14

did not support the additional refinements sought by the Trust, which comprise additions to the descriptions of both viewshafts to:

- (a) acknowledge that the Beehive and Parliament Buildings are internationally recognised; and
- (b) reflect the role that Te Ahumairangi plays as a named context element by noting in the description that the hill adds contrast and visual interest.

172. Mr Ballinger drew our attention to other viewshaft examples where the role of key context elements is reflected in the corresponding description, and he noted that this approach makes for increased legibility for decision-makers at resource consent stage who may be considering applications that involve viewshaft intrusions<sup>22</sup>.
173. In considering the Trust's proposed amendments, we firstly record that there is no reason for us to depart from the shared view of Ms Stevens and the Trust that Te Ahumairangi Hill as a backdrop to the Beehive should be factually recorded in the VS1 description in the same way as it is in the VS4 description.
174. We also agree with the Trust that it is apt for the description to note the symbolic recognition that the Beehive and Parliament have internationally. In contrast to Ms Stevens' view that this duplicates the recognition that the buildings are key landmarks in Wellington's townscape, we consider that the addition is complementary and rightly reflects that the buildings are genuinely recognisable overseas. Such a distinction is rare for buildings in New Zealand generally, let alone in Wellington<sup>23</sup>.
175. We also agree with the Trust that Te Ahumairangi provides contrast to the built form elements in the foreground of these views and adds to the overall visual interest experienced from each of the viewpoints. That contribution should rightly be noted in the description in our view.
176. The Eldin Trust's submission sought that that contrast be described as 'striking'. In our view, it is sufficient to emphasise the contrast itself, and the inclusion of additional subjective language is at odds with the general approach otherwise utilised in the descriptions elsewhere in the schedule.

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<sup>22</sup> Ballinger submissions, para 22

<sup>23</sup> This is not to suggest that New Zealand is lacking in buildings of considerable architectural or other merit, but to reflect that beyond specialist circles, there are few examples of buildings that are widely recognised outside of the country.

177. We accordingly accept the Trust's submission on both viewshafts other than to delete the word 'striking' in the context of the contrast Te Ahumairangi provides to the Beehive and Parliament buildings.

## 6.5 Viewshaft VS8

178. As shown in **Figure 1** above, the proposed viewshafts generally have a flat base, which, when combined with the left and right (vertical) margins, projects as a rectangular 'slice' in the photos contained in Schedule 5. Viewshaft VS8 is unique in that the framed view has a 'stepped' base which follows the observed built form of the podium at the base of the Intercontinental Hotel building. While that spatial aspect of the viewshaft is evident in the VS8 photo, it was not well conveyed in the notified 'base' and 'right margin' descriptions in the schedule.

179. This shortcoming of the schedule and the corresponding map projection of the viewshaft were identified by the Council in its submission on the PDP, which noted:

*"The mapped viewshaft 8 does not match with the VS8 description and picture in Schedule 5 as it extends over Customhouse Quay and Jervois Quay. In the maps, it dog-legs inwards at the boundary with Customhouse Quay. Also, VS8 in Schedule 5 describes the viewshaft as protecting views to the inner harbour and Oriental Bay, with Roseneath and Town Belt as context elements. To achieve this, the mapped overlay needs to extend over Queens Wharf to the water's edge in the same way the other viewshafts do. Otherwise, development in the Waterfront Zone could block the view described and photographed in Schedule 5."*

180. The relief sought by the Council in this regard was that the viewshaft be extended on the Planning Maps *"to be an even fan (i.e. remove cut-out from Intercontinental Hotel) over Jervois Quay and Queens Wharf to the water's edge."*

181. We discuss the mapped projection of the viewshaft in section 7.3 below, but record here that Ms Stevens recommended some related edits to the spatial descriptions in Schedule 5 for VS8.

182. To the extent that the submission addresses the nexus between the planning maps and the spatial information in Schedule 5 we consider there is scope for changes to both, provided they are within the outer bounds established by the Council's relief sought.

183. In this regard, Ms Popova’s evidence provided a helpful analysis of this viewshaft, and the relief sought in the Council’s submission. This indicated that an amendment was required, but in her words, “*not in the way suggested by the submission ...*”. Put simply, Ms Popova suggested that the right-hand margin of the viewshaft needed to be extended outward above the Intercontinental Hotel Podium, to the northern edge of the Hotel Tower, rather than being pulled inward to the northern edge of the Hotel Podium, as the submission sought. The difference is shown in **Figure 3** below.



**FIGURE 3** – Ms Stevens’ recommended changes to VS8 mapped extent. Left and right viewshaft margins indicated in heavy dark blue line, and notified extent in transparent white.

184. Scope considerations aside, however, the amendments to the base and right margin recommended by Ms Stevens for VS8 are in our view genuinely minor and neutral in effect. They improve the reader’s understanding of the unique geometry of the viewshaft as represented in the photo and the notified description of the base and right margin.

185. To the extent that they mean a slightly larger area of Waterfront Zone land is the subject of the viewshaft, the extent of that addition is mitigated by the overlap with VS 14, and is in our view acceptable from a natural justice perspective. That would not have been the case if the viewshaft were extended to Oriental Bay and Roseneath, as Ms Stevens

proposed, and that we have rejected (refer Section 7.2 below). Similarly, to the extent that the amendment affects sites on the western side of Featherston Street, we consider any additional regulatory burden to be minor.

186. We have accordingly adopted Ms Stevens' consequential refinements to Schedule 5 and consider they will assist with the clear interpretation and administration of the PDP.

187. We recommend these amendments as an out-of-scope change.

## **6.6 Viewshaft VS9**

188. We further discuss a proposed amendment to the spatial extent of viewshaft VS9 under section 7 below, but note here two matters of relevance to Schedule 5; being:

(a) a change to the left margin description of the viewshaft in Schedule 5 recommended by Ms Stevens; and

(b) whether the photo in Schedule 5 should exclude the event banners mounted on lampposts along Lambton Quay.

189. Addressing these in turn, we firstly record the advice of Ms Stevens in her further reply<sup>24</sup> that there is no scope to alter the left margin description in submissions.

190. Ostensibly, the recommended change more accurately reflects the left margin of the viewshaft as shown in the photo in Schedule 5. That 2D representation of the viewshaft aligns the left margin with the interface of the MLC building and the Old Bank Arcade (on the Hunter Street elevation), rather than – as the notified description in Schedule 5 states – '*North-east corner of the Old BNZ Centre (Old Bank Arcade) at 233-237 Lambton Quay (Lot 1 DP 85253)*'.

191. With reference to the legal description referred to above, the margin as captured in the 2D representations of the viewshaft is clearly not framed by the *north-east* corner of the Old Bank Arcade site – which is located further to the east at the intersection of Hunter Street and Customhouse Quay.

192. That said, we have some sympathy for the authors of the viewshaft schedule, and for Ms Stevens in attempting to assist us on this particular matter, as there are a range of factors that make it difficult to accurately describe the spatial context here; namely:

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<sup>24</sup> Further Right of Reply, para 14

- (a) the street block is irregular, comprising a geometry in plan view akin to an isosceles triangle;
  - (b) the block is also slightly askew from true north south; and
  - (c) the MLC building abuts the Old Bank Arcade, which is itself a cluster of three historic buildings that are often considered as a collective whole, on two sides.
193. This is compounded further by the fact that the geometry of the viewshaft as projected on the notified planning maps is in error. As advised by Ms Stevens, the map projection is of VS9's predecessor in the ODP (VS9A), the viewpoint of which is located further north along Lambton Quay compared to the proposed location for VS9 in the PDP. We discuss this in further detail in section 7.2 below.
194. As the above relates to Schedule 5, Ms Stevens recommended that the margin be described as the 'Interface of the north-east corner of the MLC Building and the north-west corner of the Old BNZ Centre (Old Bank Arcade) at 233-237 Lambton Quay (Lot 1 DP 85253)'. This is, in our view, preferable to the notified drafting; however, the above factors make it difficult for one to categorically say whether the north-west corner of the Old Bank Arcade site is on its Lambton Quay or Hunter Street frontage. In that regard, we find the following refinement is more accurate and better reflects the 2D representation shown in the Schedule 5 photo:
- North-east corner of the MLC Building at the interface with the Old BNZ Centre (Old Bank Arcade) on the Hunter Street frontage at 233-237 Lambton Quay (Lot 1 DP 85253)*
195. This amounts to a clause 16 RMA minor correction in our view, and we have satisfied ourselves that the refinement does not – in of itself – unduly prejudice any party who might have otherwise been interested in the matter.
196. However, this suggested change does not sit in isolation. It forms part of a more comprehensive amendment to this viewpoint that we discuss in detail in Section 7.3. For the reasons set out there, we have ultimately resolved to also modify the viewshaft extent to avoid undesirable natural justice effects.
197. The second matter we discuss here is the presence of lamppost-mounted banners in the Schedule 5 photo for VS9 and the extent to which they impair one from being able to discern the dimensions of existing buildings behind them. This matter arose from Panel questioning during the hearing.

198. In her original right of reply, Ms Stevens helpfully provided a fresh photograph from the viewshaft viewpoint, taken in a window of time when no banners were present. She also confirmed that the matter was not raised in written submissions, nor addressed by submitters in their oral presentations.
199. Substantively, Ms Stevens expressed the view that the replacement image is less representative than the notified image. While she added that the banners change in colour and content throughout the year, they are present more often than not. Her preference was that the notified image be retained.
200. We share Ms Stevens' view for the reasons she has expressed, and recommend retaining the notified image in Schedule 5 accordingly.

### **6.7 Viewshaft VS11**

201. As with Viewshaft VS9, the notified mapped extent of viewshaft VS11 and its description in Schedule 5 were not consistent. While the notified Schedule was updated to record a new viewpoint location, as recommended in the urban design report produced by Ms Popova in 2020, the planning maps retained the ODP alignment and viewpoint location. The left and right margin points are identical under the ODP and PDP, which is helpful to a point; however, the lack of cohesion between maps and Schedule again presents us with a need to improve clarity if possible.
202. We expect this may have been avoided if the viewshafts were individually selectable on the map viewer – as notified, the viewpoint for VS11 is completely obscured by VS9 and careful examination is required to uncover the error. We return to this point shortly.
203. As the identified problem with VS11 is principally a mapping issue, we address it substantively in section 7 below; however, we note here that the mapping changes adopted have given rise to consequential amendments in the Schedule. Namely, we recommend shifting the left margin interception point from the southeastern corner of 22 Willeston Street to the southeastern corner of 11 Victoria Street. As we explain shortly, this allows the mapped extent of the viewshaft and its description in the Schedule to be aligned with no corresponding natural justice issues arising.
204. This is a further out-of-scope recommendation.

### **6.8 Viewshaft VS18**

205. Viewshaft VS18 is distinct from all other viewshafts in its panoramic scope. As shown in **Figure 4**, it encompasses a wide-angle view from the Cable Car lookout of much of



the City Centre, Wellington Harbour, Mt Victoria, Miramar peninsula, and the distant hills within the Remutaka and Orongorongo Ranges.



**FIGURE 4** – Viewshaft VS18 as notified.

206. Its Schedule 5 content does not include any description for its left margin, right margin, or base, again being unique in this respect.
207. No submissions sought changes to the viewshaft.
208. We queried the extent to which this viewshaft regulated activities within the field of view given that the extent of the viewshaft is not mapped (or otherwise limited by the description in Schedule 5).
209. Somewhat surprisingly (to us at least), Ms Stevens advised that this viewshaft had been included in error. She recommended that the viewshaft be deleted from all viewshaft provisions and the planning maps. Her rationale for this recommendation can be summarised as follows:
  - (a) the regulatory burden of VS18 as notified in the PDP is drastically different compared to the ODP viewshaft requirements where this panoramic view is only a policy<sup>25</sup> consideration unlike in the PDP where it is listed as an iconic and landmark viewshaft and has an associated full Discretionary rule for any intrusions into it, as well as in comparison to other PDP viewshafts whose application is limited to smaller framed extents within Schedule 5;

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<sup>25</sup> ODP Central Area Policy 12.2.6.6



- (b) it accordingly affects a much greater quantum of properties than all other viewshafts;
- (c) because its extent is not limited, it captures any building, irrespective of whether the building is above a certain height;
- (d) the intent of this panoramic view in the ODP was only for it to be a consideration when developments exceed the Central Area maximum height limits, whereas the application of the PDP rules affects buildings below the PDP height limits;
- (e) as a result, the viewshaft is not in keeping with the strategic direction of the Plan or, by extension the NPSUD, and in particular Policy 3 of the latter, to enable heights in the CCZ to realise as much development capacity as possible;
- (f) the viewshaft is also at odds with Ms Stevens' recommendations in Hearing Stream 4 on the CCZ provisions to enable unlimited building heights; and
- (g) if retained, the viewshaft would have a significant impact on the enabled development capacity of the city.<sup>26</sup>

210. Assessing the implications of the recommended deletion, Ms Stevens' view was that:

- (a) the net effect of the change is high;
- (b) the natural justice concerns should be considered negligible on the assumption that *"no one anticipated or intended for this to be a viewshaft with subsequent rules"* in the PDP; and
- (c) the risk of not making the change is high for the reasons summarised in the preceding paragraph.

211. Turning to our evaluation of the matter, we firstly share Ms Stevens' view that the impact of the proposed change goes well beyond what could be considered neutral, and it does not qualify as a minor change.

212. While no party has expressly sought the deletion of the viewshaft, a suggestion that the deletion is outside of the scope of submissions is not entirely clear cut in our view; namely:

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<sup>26</sup> Further Right of Reply, para 93-98

- (a) multiple submitters have sought to enable greater building heights across the many zones affected by VS18's wide application, including requests for no maximum height limit in the CCZ, and generous increases in height across residential and other zones;
  - (b) there is a clear nexus between this viewshaft and the extent to which building heights are 'enabled' in the affected area; and
  - (c) given this and the integrated format of the PDP dictated by the National Planning Standards, it could be argued that removal of the viewshaft is consistent with the relief sought in those submissions, albeit in a tangential way.
213. Irrespective of the above, we are prepared to adopt a conservative interpretation that no scope is available for the change, but to also exercise our discretion to make an out-of-scope recommendation that the change be adopted.
214. We share Ms Stevens' view that retaining this viewshaft would sterilise an important shift in the PDP's approach for enabling development as sought by the NPSUD. In that regard, we note that in order for development to be deemed 'enabled' under the NPSUD, corresponding activity status must be permitted, controlled or restricted discretionary. As notified, the VIEW Chapter provisions would impose a blanket Discretionary Activity status to a significant proportion of the City. This limitation is not discussed, much less evaluated in the Section 32 Report. Nor has it been evaluated as a Qualifying Matter in accordance with the statutory provisions discussed above.
215. As noted above, it is also incumbent upon us to ensure consistency across the PDP to the extent we are able. In that respect, a decision to retain this viewshaft would undermine our recommendation to accept submissions seeking unlimited building heights for the City Centre. The clear, consistent administration of the PDP dictates that we adopt Ms Stevens' recommendation that the viewshaft be deleted.
216. We note also, however, that the impact of this change is tempered to a degree by the existence of viewshafts VS13-15, which account for important portions of the panoramic view in VS18. Those three viewshafts have been retained and will assist with the implementation of the PDP's objectives accordingly.
217. We have also turned our mind to potential natural justice issues arising from this change, and are satisfied that the risks are suitably low. It is highly relevant in our view that the extent of VS18 was not mapped and accordingly, parties with an interest in the

matter (whether in favour or opposed) may well not have appreciated its potential effect. We share Ms Stevens' view that the risk of potential prejudice is greater if the proposed viewshaft is retained given the wide-reaching and yet seemingly unnoticed impact it would have.

218. We note also the considerable safeguards in the zone-based provisions within the PDP to otherwise manage the design, scale and appearance of built form within the zones affected by the panoramic view. Removing the viewshaft does not, by any means, amount to unfettered development potential or a likely degradation to the view experienced from the Cable Car lookout.
219. For all of the foregoing reasons, the most appropriate outcome is for this viewshaft to be deleted. This also dictates the need to consequentially remove the cross reference to VS18 at the end of the descriptions in Schedule 5 for viewshafts VS13 – VS15 and within the VIEW chapter as notified.
220. The combination of considerations means that this is a genuine exception to the considerations discussed in Report 1A justifying the exercise of our discretion to make an out-of-scope recommendation.

## **6.9 Minor edits to Schedule 5 content**

221. Here we discuss some further minor amendments we have recommended to Schedule 5, comprising: updated photos; and other descriptive text.
222. Firstly, we have adopted Ms Stevens' recommendation that the photos for viewshafts VS3 and VS5 should be replaced with more recent images than contained in the notified schedule. Both the original and replacement photos have been taken from the same location as the notified counterparts, and the frame of each viewshaft retained in the same position.
223. The key difference between the notified and revised photos is that the newer images better illustrate recently constructed buildings at 1 Whitmore Street (BNZ building) and Lady Elizabeth Lane (Bell Gully building), including where they intrude into VS3. The Bell Gully building is also now visible in the VS5 photo, albeit outside the left margin of the viewshaft.
224. We share Ms Stevens' view that these photos will assist with the clear administration of the PDP, despite the fact that the changes are not within the scope of submissions received. The impact of updating the images in the schedule is neutral and we have

accordingly amended the schedule for these two viewshafts in our recommendation version of the PDP as a minor correction.

225. We have also adopted Ms Stevens' recommendation to make two further out-of-scope amendments to descriptive text in viewshafts VS6 and VS11 (respectively). Namely:
- (a) we have amended the left and right margin descriptions of viewshaft VS6 to provide additional positional detail; and
  - (b) we have added the word 'monastery' after 'St Gerard's' in the focal element description for viewshaft VS11.
226. The former provides greater clarity for the reader without changing the frame of the viewshaft. Including 'monastery' in VS11 is consistent with the other three examples in Schedule 5 which otherwise refer to the building.
227. Both amendments are genuinely minor and neutral in effect that can be made pursuant to Clause 16 of the First Schedule, and we they are reflected in our recommendation version of Schedule 5 accordingly.

## **7. MAPPED EXTENT OF VIEWSHAFTS**

### **7.1 Introduction**

228. Here we sequentially discuss the mapped extent of viewshafts under the following sub-categories:
- (a) Extensions to existing viewshafts recommended by Ms Stevens on an out-of-scope basis;
  - (b) changes to the spatial extent of notified viewshafts VS3, VS8, VS9, VS11 and VS13 – VS15 sought in submissions;
  - (c) new viewshafts sought by submissions for inclusion in the PDP.
229. We note that a number of further changes to the extent of notified viewshafts recommended by Ms Stevens which are beyond the scope of submissions have already been addressed in section 6 above.

### **7.2 Viewshaft Extensions**

230. In her Supplementary evidence, Ms Stevens noted that her consideration of Mr de Leijer's evidence (for David Walmsley) which we discuss further below, had prompted her to consider the need to change the extent of Viewshaft Overlays to show "*their full*

*extent and to cover their focal elements*". Accordingly she recommended extension of Viewshafts 2, 5, 6, and 10 from their mapped termination at the near edge of the inner harbour, to the Mount Victoria ridgeline (VS2, 5 and 6) and the Town Belt on Roseneath (VS10). She also recommended that Viewshaft 14 be extended from its notified termination point at Point Jerningham, to Point Halswell.

231. When she appeared, Ms Stevens advised that Viewshafts 3, 11 and 12 needed to be extended for the same reason.
232. In her reply, Ms Stevens told us that the Viewshaft Overlays should be extended to cover contextual elements. Viewshafts 1 and 4 should therefore be extended to the ridgeline of Te Ahimarangi/Tinakori Hill (from their current termination point at the Beehive and in front of the Parliament Buildings).
233. In her further reply, Ms Stevens advised us that none of these changes would be within the scope of any submission. However, she remained of the view that they were desirable (if not important) outcomes, and she considered the effects of doing so would not prejudice submitters as they had been canvassed in her evidence<sup>27</sup>.
234. We note that Mr Ballinger, counsel for the Eldin Family Trust, supported the desirability of making out-of-scope recommendations, noting that his client had interpreted Schedule 5 as meaning that Viewshafts 1 and 4 already protected against developments obscuring the view of Te Ahimarangi/ Tinakori Hill.
235. We have considerable sympathy for Eldin Family Trust. The lack of clarity as to what the notified viewshafts covered was unfortunate to say the least. However, as above, we have determined that the appropriate course is to primarily rely on the Plan maps as the authoritative direction as to the spatial extent of each viewshaft.
236. From that perspective, the amendments proposed are highly significant, particularly those that would extend viewshafts over existing urban areas that they do not currently cover.
237. Saying, as Ms Stevens does in her further reply, that parties are not prejudiced because the changes were addressed in her evidence is, in our view, no answer. Quite apart from the fact that some changes emerged for the first time in her initial reply, the issue is not about possible prejudice to the parties we heard. It is prejudice to the parties who did not make a submission, and who could not have anticipated this outcome. Ms

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<sup>27</sup> Anna Stevens, Further Right of Reply, 14 September, 2023, paras 14 and 15.

Stevens did not quantify the number of properties affected, but we suspect it would number in the hundreds.

238. Suffice it to say, while we accept that in some cases, failure to extend the viewshafts makes them vulnerable to being compromised by uncontrolled development, we are not prepared to recommend that outcome on an out-of-scope basis.
239. We emphasise to Council, however, that this is an issue which needs to be addressed urgently through a review of the issue and, if appropriate, a Plan Change.

### **7.3 Viewshaft VS3 & VS9**

240. Argosy supported the viewshaft provisions in the PDP, but sought that viewshaft VS3 be amended to exclude its site at 7 Waterloo Quay, and that viewshaft VS9 be amended to exclude its site at 360 Lambton Quay.
241. Argosy did not call any expert evidence on these submission points, but counsel for the submitter, Ms Tree, addressed the matter in legal submissions. Regarding VS3, Ms Tree's submissions included a figure and two photographs that supported her contention<sup>28</sup> that the submission should be accepted as follows:

*“Realigning the boundary of this viewshaft so that to [sic] does not encroach on Argosy’s site is justified because there are no implications for doing so; the viewshaft has already been encroached and any development on Argosy’s site, to the property boundary would not further affect the viewshaft. Retaining it simply because of the 2020 review is not fair or reasonable.”*

242. Ms Tree's assertion was that recent development at 75 Featherston Street immediately west of Argosy's site at 7 Waterloo Quay has encroached into the viewshaft, thereby realigning the left margin of the viewshaft in a manner that obscures Argosy's site from the VS3 viewpoint<sup>29</sup>.
243. Ms Stevens addressed the matter further in her right of reply<sup>30</sup>, expressing the view that the submission should be rejected for the following reasons:
- (a) the photos attached to Ms Tree's submissions are not taken from the correct viewpoint. The viewpoint in Schedule 5 is located at the southwest corner of the Lambton Quay / Bowen Street intersection, whereas Ms Tree's photos are taken

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<sup>28</sup> Legal submissions, at para 55.

<sup>29</sup> Legal submissions, para 54.

<sup>30</sup> Right of Reply, para 27

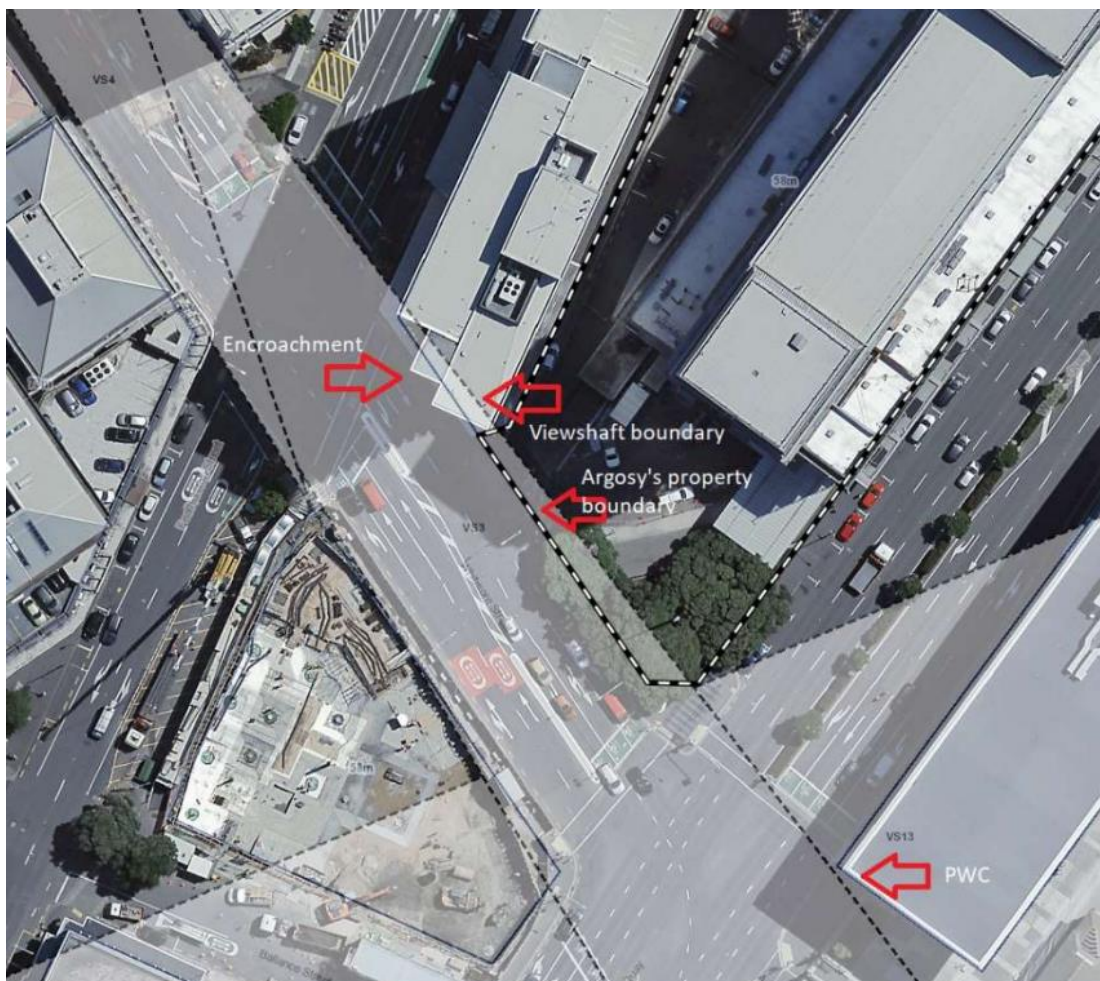
further to the south and east along Whitmore Street, near the intersection with Stout Street;

(b) as a result of the above, a greater proportion of the building at 75 Featherston Street appears to obscure 7 Waterloo Quay than as shown in Schedule 5; whereas

(c) as seen in the notified viewshaft photo, only a small portion of the Featherston Street site intrudes into the viewshaft at roof level.

244. We share Ms Stevens' assessment that the photos attached to Ms Tree's submissions are not representative. Like Ms Stevens, we consider this is largely owing to the position from which those photos have been taken, which considerably changes the viewpoint, margins and views of various context and focal elements for the viewshaft.

245. We also suspect that Figure A from Ms Tree's submissions (and replicated below as **Figure 5**) has contributed to the low reliability of her analysis – though we do not consider her error to be deliberate in this regard.



**FIGURE 5** – 'Figure A' from Ms Tree's Legal Submissions.

246. As is evident from the figure above, VS3 and VS4 coalesce in this location. There is no ability for plan users to select and deselect individual viewshafts in the PDP map viewer; and as VS4 is projected 'on top' of VS3, it is difficult (or impossible even) to see where the VS3 viewpoint is on the planning maps – it is completely obscured by VS4.
247. Furthermore, one could easily mistake the dashed line between the two viewshafts to comprise the left-hand side of VS3 when in fact it is the right-hand side of VS4. On that interpretation, one would logically deem the viewpoint for VS3 to be roughly in the position as represented in the photos attached to Ms Tree's submissions.
248. Compounding the matter even further, Ms Tree's analysis also does not take account of any distortion effect of the orthophotography used in the PDP. As is evident from Figure 5, this distortion effect can give the impression that the building is encroaching well into the road reserve. However, that clearly is not representative of the case on the ground when one views the building with the naked eye.
249. A more reliable understanding of the spatial context can be garnered from comparing the two 2D representations of the viewshaft in the Schedule 5 photo and the map viewer with only the parcel boundaries visible. Such an exercise, when accounting for the correct VS3 viewpoint, clearly illustrates that Ms Tree's assertion is not well founded.
250. Accordingly, while we prefer the assessment and recommendation of Ms Stevens that the submission be rejected, we recommend to Council that it consider whether it can prevent future plan users from making a similar error to Ms Tree. Namely, if it is possible for the map viewer to enable users to select and deselect individual viewshafts at their leisure, we think this will ultimately make for a clearer and more reliable e-plan format. We note that the issue is not unique to VS3 and VS4, but also would remedy where, in the notified maps:
- (a) VS2 obscures VS1;
  - (b) VS4 obscures VS1;
  - (c) VS3, VS5, VS6, and VS7 obscure VS13;
  - (d) VS9 obscures VS11 and VS14;
  - (e) VS14 obscures VS10; and
  - (f) VS12, VS15, VS16 and VS17 obscure each other variably.



251. We now return to the matter foreshadowed at section 6.5 above, being the spatial extent of viewshaft VS9.
252. The focus of Ms Tree's submissions was on the lack of balance struck by the viewshaft as relates to the impact on Argosy's site at 360 Lambton Quay (cost) by affording view protection of the Aon Centre (benefit) – the latter being a focal element of the viewshaft. Ms Tree asserted that the viewshaft position is unjustified as:
- (a) views of the Aon Centre are already limited by other buildings in the area, meaning it cannot be seen in totality at present;
  - (b) the Aon Centre can be viewed and will always be prominent in VS9 due to its corner location, and amending the viewshaft to exclude 360 Lambton Quay will not affect the building's ability to be seen as a landmark from the viewpoint;
  - (c) imposing development controls on the Argosy site up to a depth of 7.5m into the site is onerous in this context<sup>31</sup>.
253. Ms Stevens did not support the amendment sought by Argosy for the following reasons:
- (a) changing the right-hand margin to exclude 360 Lambton Quay would narrow the frame of the viewshaft, thereby also excluding additional sites closer to the viewpoint and modifying the visibility of context and focal elements;
  - (b) it is inappropriate to change the extent of the viewshaft in response to one submitter's request as it could undermine the integrity of the viewshaft and set an unjustifiable precedent; and
  - (c) the Argosy site has been affected by viewshaft VS9A in the ODP to a similar degree<sup>32</sup>.
254. Notwithstanding the above, Ms Stevens also acknowledged the mapping error we have discussed previously, being that the viewpoint for VS9 should be projected on the planning maps as being on the western footpath of Lambton Quay outside #318 (Westpac Building)<sup>33</sup> – instead of the previous position opposite Grey Street on the western side of Lambton Quay as projected on ODP VS9A<sup>34</sup>. She recommended that this error be remedied.

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<sup>31</sup> Legal submissions, para 57.

<sup>32</sup> S42A Report, para 145.

<sup>33</sup> As stated in Schedule 5

<sup>34</sup> *ibid*

255. Ms Stevens noted that the change in viewpoint from ODP VS9A to PDP VS9 was deliberate to better frame the key focal elements<sup>35</sup>. In her reply, Ms Stevens produced a figure illustrating a ‘corrected’ VS9 geometry, which we have reproduced in **Figure 6** below.



**FIGURE 6** – Ms Stevens’ proposed corrections to VS9 geometry. Image rotated such that north is at left. Left and right amended viewshaft margins indicated in heavy dark blue line. Notified viewshaft margin shown as dotted lines.

256. In considering the submission and Ms Stevens’ analysis, we firstly observe that in projecting the viewshaft as recommended by Ms Stevens, there would be a (very) modest reduction in the total area of Argosy’s site affected by the right-hand margin. As far as that goes, Ms Stevens’ recommendation that we adopt the correction can be said to be within the scope provided by Argosy’s submission for the right-hand margin.

257. That said, we are not prepared to fully remove the Argosy site from the right-hand margin for the following reasons:

- (a) as noted by Ms Stevens, snapping the margin to the Argosy site boundary would also reduce the impact of development controls on neighbouring sites to the north;
- (b) the key to the Council’s decision to adopt a new viewpoint for the viewshaft was to better frame the two key focal elements of the view comprising the MLC Building and Aon Centre – and narrowing the right-hand margin would undermine that

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<sup>35</sup> *ibid.*

deliberate decision as a major proportion of the Aon Centre's Willis Street frontage would be in the 'shadow' of the viewshaft's right margin; and

(c) the purpose of the viewshaft is better achieved in a plan-making sense if the view of the two focal elements is intact to begin with, and this will provide for a more appropriate starting point to assess potential future incursions against.

258. Nor, however, are we comfortable on natural justice grounds with the repositioning of the mapped extent of the viewshaft as recommended by Ms Stevens. While the photograph in the schedule indicates that the viewshaft position in the notified PDP has moved relative to the ODP, the repositioning is relatively subtle and may not have been fully appreciated by interested parties, particularly given that the mapped extent is identical in the ODP and PDP. This is not aided by the inaccurate description of the left-hand margin in the schedule as we have summarised above.

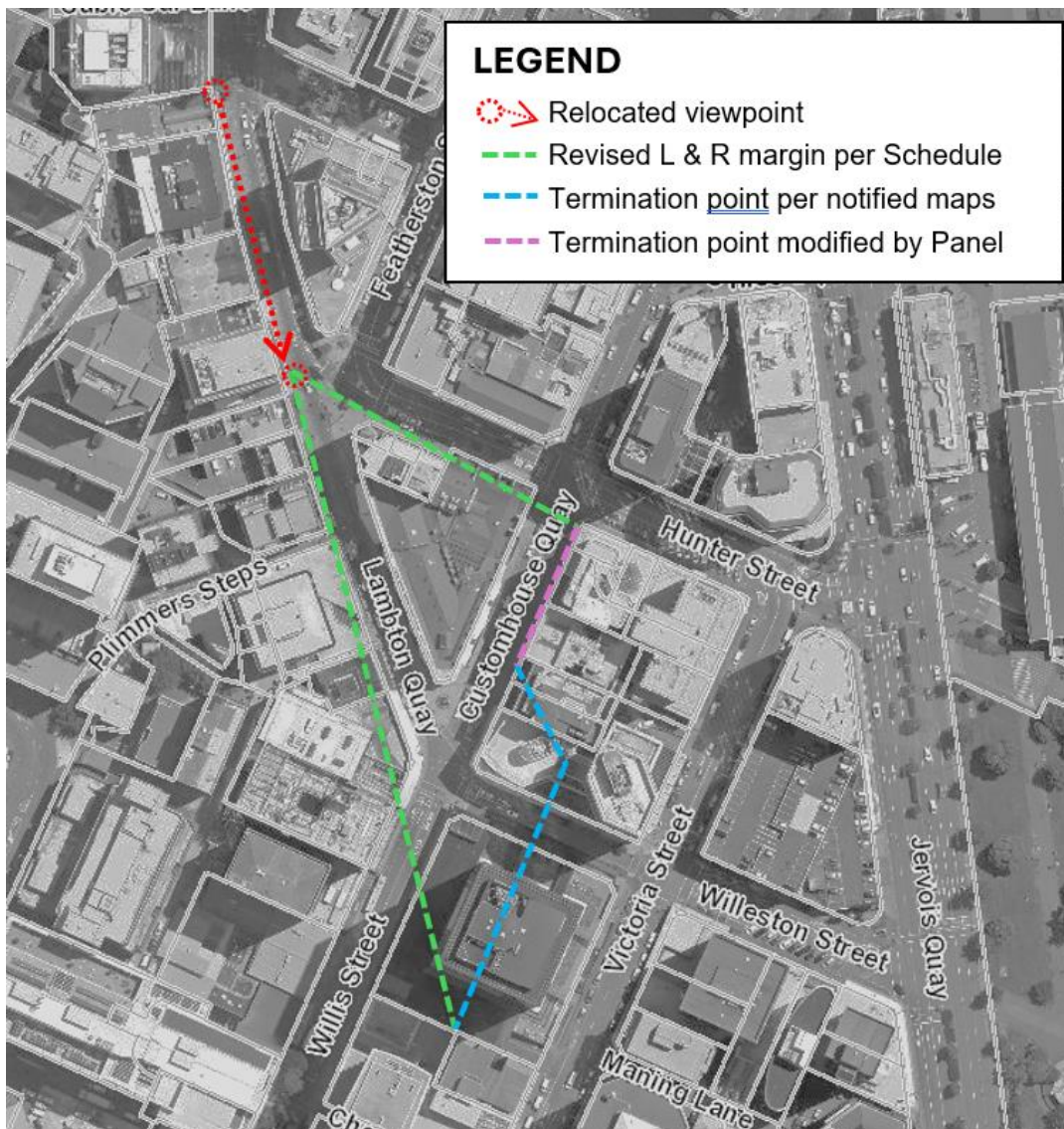
259. Were we to align the mapped extent to reflect the viewshaft as projected in the Schedule 5 photo, we fear that potentially interested parties would be prejudiced to an unacceptable degree. Namely properties on the eastern side of Customhouse Quay between the Hunter Street intersection and around 109 Customhouse Quay would now be included within the mapped extent of the viewshaft, having not been within the extent as notified. In the absence of the ability for such potentially interested parties to participate in the consideration of these changes, we are not prepared to adopt Ms Stevens' recommendation without further qualification.

260. It is incumbent on us to acknowledge also that maintaining the ODP viewshaft extent would unintentionally affect the land at 215 Lambton Quay – comprising the southern part of the podium of the building at the corner of Lambton Quay, Featherson Street and Hunter Street. Ms Popova and Ms Stevens made clear in their evidence (and reports preceding notification of the PDP) that the decision to move the viewpoint for the viewshaft south along Lambton Quay would 'free-up' the development potential over the podium as well as better framing the two focal buildings within the viewshaft. We must take account of potential natural justice issues for the owner of 215 Lambton Quay that would arise from reinstating the development restriction inherent in the operative provisions.

261. Ultimately, we consider that the most appropriate course of action is to shift the viewpoint to the south along Lambton Quay as recommended by Ms Stevens, and to frame the viewshaft left and right margins to reflect Schedule 5. However, the termination point of the viewshaft must be modified to avoid affecting certain land to

the east of Customhouse Quay for the reasons we have traversed above. The modification we recommend is shown in **Figure 7** and includes:

- (a) starting from the revised right margin, the termination point following the notified viewshaft extent on the planning maps as it affects 1 Willis Street, 111 Customhouse Quay and 22 Willeston Street; and
- (b) the balance of the termination point running the length of Customhouse Quay along its eastern edge up to the point of intersection with the revised left margin.



**FIGURE 7** – Recommended amendments to Viewshaft VS9.

262. The above amendments align with our proposed refinements to Schedule 5 as discussed previously. In our view, this outcome will best balance the intent of the

notified provisions with the natural justice concerns arising as a by-product of correcting errors in those provisions. We note that Council may want to explore further refinements to the viewshaft extent in a future plan change if, for example, it considers the integrity of the viewshaft is best managed by including the properties on the eastern side of Customhouse Quay within the viewshaft, but which we have recommended excluding at this juncture.

#### **7.4 Viewshaft VS8**

- 263. As discussed previously, we have adopted Ms Stevens' recommendation to modify the marginal descriptions for viewshaft VS8 as an out-of-scope change.
- 264. For similar reasons, we accept Ms Stevens' recommendation that the viewshaft's geometry be corrected on the planning maps.
- 265. We have already discussed the lack of scope for Ms Stevens' recommendations to extend the 'length' of viewshafts as shown on the planning maps across Lambton Harbour to include Oriental Bay and Roseneath. This viewshaft is further distinguishable from that discussion insofar as the Council's submission sought for the viewshaft to specifically be extended 'over Jervois Quay and Queens' Wharf to the water's edge' – and by inference, no further. We accept the Council's submission on that basis.

#### **7.5 Viewshaft VS11**

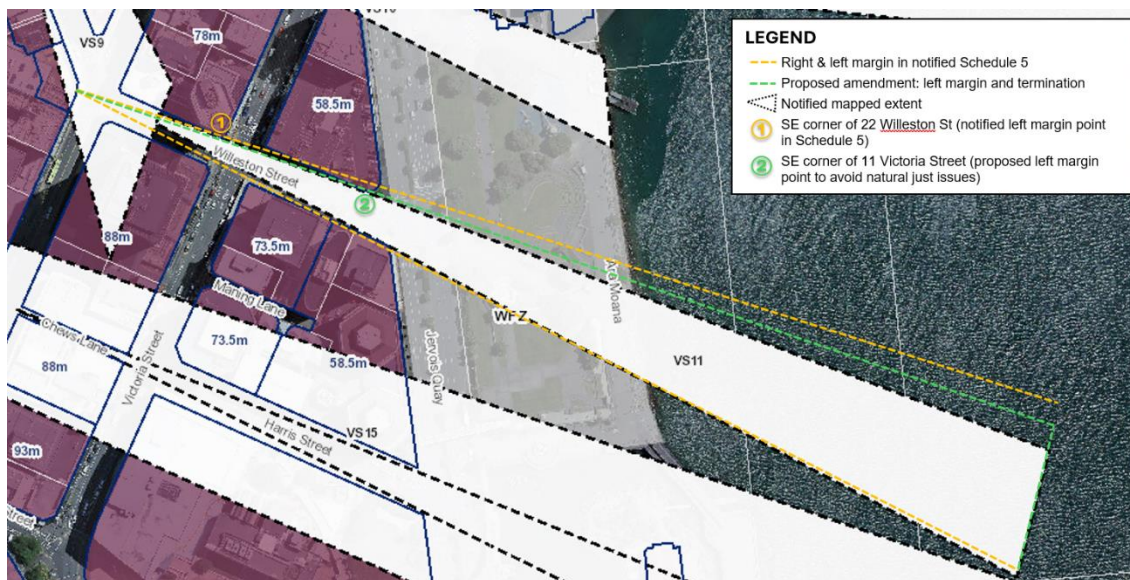
- 266. As signalled in section 6 above, we have identified that the notified mapped extent of Viewshaft VS11 is not aligned with its description in Schedule 5. While the photo and location description for VS11 in Schedule 5 makes clear that the viewpoint location is on Stewart Dawson's Corner *along the centreline of Willeston Street*, the mapped extent of the viewshaft appears to retain the ODP version of the viewshaft – with the viewpoint location being slightly further to the north. Though again, a sharp eye is required to notice this given that the viewpoint location for VS11 is obscured on the planning maps.
- 267. The upshot of this issue is that there is uncertainty as to properties that should be within the viewshaft extent.
- 268. Ms Stevens recommended as a minor consequential change in her Section 42A Report that we make out-of-scope changes to the left and right margin of the viewshaft. However, she did not address us on the more demonstrable error related to the



viewshaft location. Modifying any one or more of these elements would have an impact on the spatial extent of properties affected – principally comprising privately owned land on Willeston Street (between Victoria Street and Jervois Quay), Jervois Quay itself, and Frank Kitts Park. The latter, we note, is one of the viewshaft’s two focal elements along with St Gerard’s Monastery.

269. We have considered four options for addressing the mapping error, comprising:
- (a) allowing the map and Schedule to remain inconsistent until addressed by a future plan change;
  - (b) amending Schedule 5 to match the mapped extent (per the ODP);
  - (c) amending the mapped extent to align with the Schedule 5 description; or
  - (d) a hybrid of (b) and (c).
270. We have noted previously that, where such errors have been identified, our preference has been to resolve them such that the viewshaft provisions are as consistent as possible when read as a whole. While we have not been able to remedy all errors, we are confident we can do so with this viewshaft such that option (a) can be discarded. That, we believe, will ultimately enhance the clarity, efficiency and effectiveness of the PDP rules and methods relative to the notified provisions.
271. We have equally discarded option (b) for the sake of efficacy. The substantive evidence before us – in Ms Popova’s 2020 report – is that the more logical viewpoint position for the viewshaft is aligned with the centreline of Willeston Street, rather than the northern kerb line. Retaining the ODP alignment is suboptimal in that respect.
272. While option (c) remedies that shortcoming, it also introduces natural justice issues. Namely, shifting the viewpoint location *and* retaining the right margin intersection point would result in the viewshaft extent broadening in a northerly direction relative to the notified mapped extent. The net effect would be that the southern portion of 11 Victoria Street – comprising the Wilson’s carparking building – would fall within the viewshaft extent. In contrast, the notified mapped extent avoids the site, with the left margin being contained within Willeston Street itself. As with the Customhouse Quay properties we identified above in relation to Viewshaft 9, we are not prepared to impose new development restrictions over 11 Victoria Street in the absence of affected parties having the ability to participate in the determination process around the appropriateness of that course of action. Option (c) is accordingly discarded.

273. Option (d), however, is fruitful in our view given the specific context of this viewshaft. Namely, we consider that the viewpoint location can be relocated as recommended in Ms Popova's 2020 Report in a manner that also avoids natural justice issues on third parties. As signalled in section 6 above, and shown in Figure 8, this necessitates that we also amend the left margin intersection point from the notified location at 22 Willeston Street to the southeastern corner of 11 Victoria Street.



**FIGURE 7** – Recommended amendments to Viewshaft VS11.

274. As with the approach we have adopted for VS9, we consider this outcome will best balance the intent of the notified provisions with the natural justice concerns arising as a by-product of correcting errors in those provisions. For completeness, we note the change will alter the geometry of the viewshaft as it affects Jervois Quay and Frank Kitts Park. However, that is minor in the scheme of things and we note further that the latter is a Focal Element in the viewshaft. We do not consider the Council as owner of both properties will be materially impacted by the change, and we recommend it as an out-of-scope change accordingly.

275. Again, this may be a matter for the Council to consider in further detail through a future plan change.

## 7.6 Viewshafts VS13 – VS15

276. We deal with these three viewshafts as a collective whole given their shared viewpoint and commonality of relevant issues arising. We firstly deal with a submission which is

specific to VS14, before considering two submissions relating to these three viewshafts more broadly.

277. Viewshaft 14 was the subject of submissions from Mr David Walmsley<sup>36</sup> objecting to the fact that his property at 1 Carlton Gore Road was affected by the viewshaft. Ms Stevens initially recommended that the viewshaft be pulled back to terminate at the Oriental Bay waters' edge. Subsequently, however, she reconsidered that view, and as noted above, recommended that it be extended to Point Halswell. That is in conjunction with the rule changes she recommended that would permit a building up to the 11m height limit in the MDRS.
278. Mr de Leijer, who gave evidence for Mr Walmsley, told us he thought that the latter would be an acceptable outcome.
279. We also consider that the rules we have recommended will blunt the effect Mr Walmsley is concerned about. We recommend that his submission points therefore be accepted in part to that extent.
280. For the other two submissions, respectively made by the Council and Mr Markwick, we noted at the conclusion of section 5 above that these have largely been resolved by virtue of changes we have adopted to the VIEW Chapter rules.
281. The Council's submission considered that the mapping of viewshafts needs to be amended to provide clarity and certainty around the associated rule framework to avoid impacts on development potential of residentially zoned properties under VS13 – VS15. We agree, and for the reasons set out in section 5 above, we have amended the rules to enable building heights up to the MDRS and HRZ permitted limits as a minimum, or even higher where they do not intrude into any viewshaft.
282. Mr Markwick sought at least 6 storey residential buildings in all of Kelburn to accommodate demand for student and staff housing close to the Victoria University campus, "*with a viewshaft protection from the top of the Cable Car.*" The outcome we have adopted can be said to accept Mr Markwick's relief in part to the extent that 6-storey buildings are enabled in those parts of Kelburn that are zoned HRZ, and as demonstrated by Council's viewshaft map tool, those heights can be realised without intruding into the Cable Car-based viewshafts.

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<sup>36</sup> Submissions 229.1-2



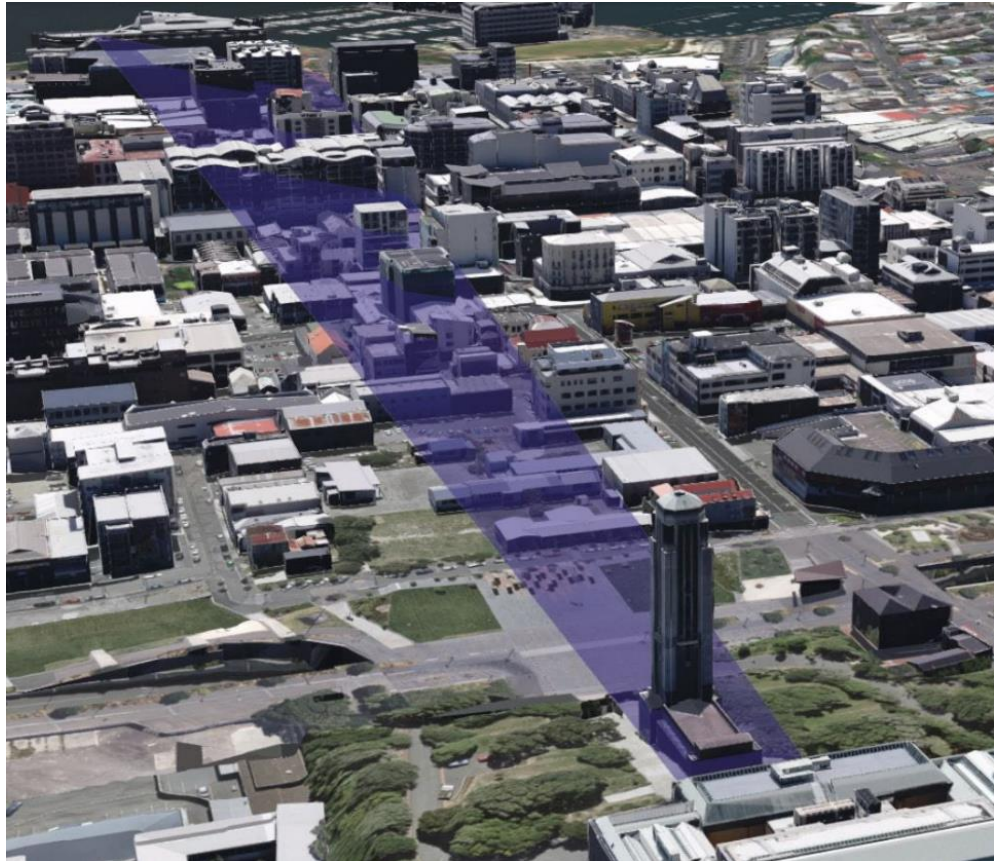
## 7.7 Reinstate Viewshaft VS21 from ODP

283. The first of the proposed 'new' viewshafts we consider in this concluding portion of this report is more aptly described as a request by submitters<sup>37</sup> to reinstate viewshaft VS21 as included in the ODP.
284. Ms Stevens' Section 42A Report outlined the following key reasons underpinning the Council's decision to not include the viewshaft in the notified PDP:
- (a) ODP VS21 has been significantly diminished through intrusions into the viewshaft over the lifetime of the ODP, with the inner harbour focal element and Te Papa context elements being obscured by buildings in Tory and Vivian Streets, and by mature Pohutukawa trees in the immediate foreground of the VS21 viewpoints; and
  - (b) retaining the viewshaft would adversely affect development potential of the Te Aro Basin which has been afforded increased building heights under the PDP to enable further growth and development so as to implement the NPS-UD<sup>38</sup>.
285. In considering the submissions to reinstate the viewshaft, Ms Stevens maintained that the view has been compromised such that reinstatement is not appropriate. She provided a 3D perspective to illustrate the degree to which the view has been compromised, which we have reproduced at **Figure 9**. This, we note, does not account for the further compromising of the viewshaft from the mature Pohutukawa trees mentioned previously.

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<sup>37</sup> HNZ [70.74]; Sarah Walker [367.3-4]; Thomas John Broadmore [417.3]; Il Casino Apartment Body Corporate [426.5]; Harish Ravij [427.1]; and Juliet Broadmore [471.2-3].

<sup>38</sup> S42A Report, para 90-93.



**FIGURE 9** – 3D visualisation of ODP VS21 intrusions

286. Notwithstanding the above, Ms Stevens provided a considerable amount of analysis of a potential alternative to the reinstatement of VS21– comprising a viewpoint from the Tomb of the Unknown Warrior adjacent to the Carillon towards the Western Hills and Mount Kaukau. While the position she set out in the Section 42A Report and original reply was that the submissions seeking reinstatement of VS21 afford scope for her amended viewshaft recommendation, she subsequently changed her view on that matter in her further reply<sup>39</sup>.

287. In his evidence for HNZ, Mr Dean Raymond expressed the view that the alternative viewshaft recommended by Ms Stevens would satisfy the matters raised in the HNZ submission<sup>40</sup>. However, he provided no additional evidence as to the appropriateness of the viewshaft as a method for achieving the objectives and policies of the PDP<sup>41</sup>.

288. We also heard from other submitters seeking reinstatement of VS21 at the wrap-up hearing for the IPI component of the PDP. The Il Casino Apartments Body Corporate and Thomas and Juliet Broadmore were represented by their counsel, Mr Ian Gordon.

<sup>39</sup> Further right of reply, para 14.7.

<sup>40</sup> Evidence of D Raymond, para 16

<sup>41</sup> Either as relates specifically to the VIEW chapter, or to the PDP as a whole

Mr Tim Castle gave evidence for the Body Corporate. Mr Thomas Broadmore, who is a resident of Il Casino Apartments, also gave evidence on behalf of himself and his wife in their capacity as individual submitters on the PDP in their own right. Key points raised in their joint presentation included:

- (a) the alternative (new) viewshaft to VS21 proposed by Ms Stevens is not supported by the submitters<sup>42</sup>;
- (b) the Carillon is historic heritage and a taonga, and protection of its historic and cultural values from inappropriate subdivision, use and development may be considered as a qualifying matter for the purposes of the IPI components of the PDP<sup>43</sup>;
- (c) intensification in Central Wellington (generally) amounts to ‘use and development’, albeit not of the Carillon, but in a way that potentially diminishes views of it and therefore its role in Wellington and nationally – if visibility of the Carillon is diminished, so is its historic heritage<sup>44</sup>;
- (d) inclusion of the former viewshaft from the ODP supports the importance of Pukeahu Park and the Carillon, and also contributes to the overall provision of openness and green space in the City<sup>45</sup>;
- (e) the former viewshaft has particular value in as far as it precludes redevelopment of existing low-rise buildings on Jessie Street until their suitability as a potential new green space is investigated and, if appropriate, implemented<sup>46</sup>;
- (f) the former viewshaft from the ODP also plays a role in the amenity values enjoyed by current residents of the Il Casino apartments, which immediately adjoins the viewshaft extent on its eastern side<sup>47</sup>; and
- (g) by failing to include the former viewshaft from the ODP, the Council is signalling that the Carillon is to be demoted to a location tucked away from public view except at close quarters and closed off from the city by taller buildings, with odd glimpses of the Carillon from parts of the city becoming less accessible<sup>48</sup>.

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<sup>42</sup> Gordon legal submissions, para 5

<sup>43</sup> Gordon legal submissions, para 8-9

<sup>44</sup> Gordon legal submissions, para 10

<sup>45</sup> Broadmore statement, para 4

<sup>46</sup> Ibid at paras 34-42

<sup>47</sup> Ibid at para 43

<sup>48</sup> Broadmore statement, para 13

289. Having considered all of the presentations to us on this matter, we consider that the submissions seeking reinstatement of the ODP viewshaft should not be accepted. We also are not inclined to adopt Ms Stevens' recommendation for an alternative viewshaft, both on substantive and scope grounds.
290. In outlining our reasoning, we start by adopting Ms Stevens' clear evidence that this viewshaft is compromised as it exists in the ODP. Its retention is untenable for the purposes of protecting views of the inner harbour and the Western Hills based on the evidence before us. We also adopt Ms Popova's evidence that the aim of this viewshaft has always been to maintain views *from* the Carillon, not views *toward* it.
291. We accept that the viewshaft may, in its current form, provide some indirect protection to the amenity enjoyed by Il Casino residents. However, that is not the purpose of the viewshaft under the ODP, nor would it be under the PDP. To the extent that the protection of those residents' amenity is to be a specific matter to be addressed by the PDP, we expect that a more expressly fit-for-purpose method (or methods) should generally be utilised for that purpose. Such matters are indeed addressed in Hearing Reports 4A and 4B.
292. Our view is similar as regards methods for the protection of the Carillon as historic heritage from inappropriate subdivision, use and development. We have not been presented with sufficient evidence to find that retention of the ODP viewshaft is the most appropriate method to achieve the higher order aims of the PDP – either as relates to historic heritage, viewshafts, or when fairly read as a whole, taking into account all relevant matters we must consider.
293. While we accept the notion expressed by the Il Casino Apartment presenters that the extent to which the Carillon is visible has a relationship with the manner in which its historic value is appreciated from a range of viewpoints, we are cautious to take that notion any further. Those presenters did not, for example, provide us with any qualitative visual analysis about the Carillon's visibility from different parts of the City, or indeed the related importance of VS21 *specifically* to maintaining or enhancing that visibility. Nor did they present us with any analysis of how such benefits should be weighed against potentially competing aims that we must also take account of, having regard in particular to the NPSUD. We adopt Ms Popova's evidence<sup>49</sup> that such analysis is essential.

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<sup>49</sup> Evidence in chief, para 29

294. We note also that the presenters did not consider the immediate environment to the north of the Carillon, which comprises Pukeahu, Martin Square and Mt Cook School – all of which provide a practical buffer of sorts to the scale of intensification of concern to the submitters.
295. Also related to this, if the aim of the viewshaft is to maintain or enhance visibility *of* the Carillon rather than views *from* it to surrounding elements, a more logical approach might be for a viewshaft (or series of viewshafts) to be identified from relevant viewpoint(s) *toward* the Carillon as a key focal element. We discuss this further at section 7.7 below.
296. As far as the above matters go, we consider the Il Casino Apartment presenters' criticism of Council's design experts for not taking a wider view as to the potential urban design benefits of retaining VS21 is not well founded. The PDP is to be read and applied as a whole, and such benefits may well be delivered through other provisions in the PDP; for example, through sunlight access requirements to Pukeahu and other open spaces in the City Centre, application of urban design-based policies and methods in other chapters of the PDP, and provisions applying to listed heritage buildings and heritage areas in Te Aro to name a few. To elevate those wider matters as primary reasons for reinstating the ODP viewshaft would, at best, be a case of 'the tail wagging the dog', and is certainly not justified in terms of RMA section 32AA based on the evidence before us.
297. We also fail to see a defensible nexus to support the presenters' contention that the incidence of undeveloped low-rise buildings resulting from lower building height limits within the viewshaft will necessarily provide for further open space opportunities in Te Aro relative to a regime geared toward greater intensification. Respectfully, we consider the provision of open space in dense urban areas is altogether more complex than that. And even if there were a defensible nexus, there is a real issue in our minds as to whether provision of future green space in currently developed areas is a legitimate ground to retain a compromised viewshaft that has little value for the reasons it was originally identified; "*to pause*" as Mr Gordon put it. While provision of additional urban green space is certainly a worthwhile objective, we consider that such a decision would arguably be for an impermissible collateral purpose.
298. As noted above, we are also not prepared to adopt Ms Stevens' recommendation for an alternative viewshaft at the Tomb of the Unknown Warrior. Our primary reason in this regard is the lack of clear scope for making the change. However, even if we were

to be satisfied that scope is available, we do not find the Council's evidence sufficient to justify the new viewshaft. The visualisations Ms Stevens put before us suggested that at most, a small slice of the western escarpment on the skyline would be protected. We regard the accompanying benefits as dubious at best. The level of analysis supporting the suggested new viewshaft also compared poorly with the report we were provided with analysing other potential new viewshafts that Council did not pursue<sup>50</sup>.

299. There were other issues with the suggested new viewshaft. We note in particular the lack of survey assessment and further analysis necessary to provide for the specific base, margins, description and detail consistent with the balance of viewshafts in Schedule 5. That might have been overcome, but ultimately, we consider there was insufficient Section 32AA analysis comparing the costs of implementing the (unconfirmed) details of the viewshaft with attendant benefits.
300. For the above reasons, we do not accept the submissions seeking reinstatement of the viewshaft as per the ODP, and we recommend that any implementation of alternatives to it is best addressed through a subsequent plan change process.

## **7.8 Reinstatement Viewshaft VS3 from ODP**

301. In addition to the amendments it sought on PDP viewshafts VS1 and VS4, Eldin Family Trust also sought the reinstatement of viewshaft VS3 as it exists in the ODP. The viewpoint location for that viewshaft is at the intersection of Waterloo Quay and Bunny Street, and the viewshaft itself comprises the Beehive as a focal element, and Te Ahumairangi and the Old Government Buildings (OGB) used currently by Victoria University as context elements.
302. On a related note, and somewhat unfortunately, we note that the mapped extent in the PDP of VS1, appears to be more akin to ODP VS3 than to the viewpoint location, marginal description and photo for VS1 in PDP Schedule 5. This was described by Ms Stevens as an error and she recommended in her Section 42A report that we make a series of changes to the viewpoint location and marginal details on the mapped extent as minor changes<sup>51</sup>. Ms Stevens advised that additional errors applied to the mapped extent, including a failure to incorporate the focal and context elements within the end point of the viewshaft, and an irregularity in the geometry of the right margin<sup>52</sup>.

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<sup>50</sup> Attached as Appendix C to the Viewshafts S42A Report

<sup>51</sup> S42A Report, para 200(p)(ii)

<sup>52</sup> Further Right of Reply, para 135

303. We need to address the merits of including an additional viewshaft separately to the recommendation of Ms Stevens to correct the apparent error.
304. Considering the request for the additional viewshaft first, Ms Popova helpfully provided us with the rationale underpinning the Council's decision to exclude the viewshaft from the PDP in her evidence in chief. In summary, those reasons include<sup>53</sup>:
- (a) while the viewshaft remains relevant and worthy of retention, PDP VS1 already provides a level of protection to the Beehive and Te Ahumairangi as focal and context elements;
  - (b) while the OGB are identified as a context element in the ODP viewshaft, they do not have that classification under PDP VS1 – however, the risk of losing the visual relationship between the OGB and the Beehive is very low due to the heritage listing of the former; and
  - (c) if the viewshaft was to be retained, it should be relocated to a safer, more well-utilised position to better view the Beehive.
305. Ms Popova also disagreed with the sentiment expressed in the submission by the Trust that the operative viewshaft captures more of Te Ahumairangi as a backdrop to the Beehive compared to other viewshafts. In her view, PDP VS1 better achieves that end by virtue of a wider margin being applied.<sup>54</sup>
306. Ms Stevens added that the view of the OGB in the location of the ODP viewshaft is naturally protected by its location, its positioning across an entire block, and the fact that it is surrounded by roading on all sides.
307. The submitter did not call evidence on this matter, though Mr Ballinger addressed it in his legal submissions, noting:
- (a) that the Trust maintains its preference that the viewshaft is reinstated in the PDP;
  - (b) the viewshaft reinforces the symbolic link between the past and present homes of New Zealand's Government;

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<sup>53</sup> Evidence in chief, para 53

<sup>54</sup> Evidence in chief, para 55

- (c) the historical significance of the OGB, including their Category 1 heritage listing by HNZ, justifies them being identified as a focal element, which is best captured by the operative viewshaft.
308. We have adopted Ms Stevens' recommendation that the submission is not accepted for the reasons she and Ms Popova expressed.
309. While the submitter's rationale that the operative viewshaft reinforces the link between past and present homes of Government is well established, like Ms Stevens, we consider the risk of that relationship being affected by development that would otherwise be located in the viewshaft is very low. All of the land comprising the space between the viewpoint, the OGB and Beehive is:
- (a) either legal road or the respective sites containing those two buildings; and
  - (b) within the margins of PDP VS1 (albeit from a longer-range viewpoint).
310. In the absence of any detailed evidence from the submitter to justify otherwise, we agree with the Council's experts that ODP VS3 is essentially redundant and should not be reinstated in the PDP.
311. That said, we must also acknowledge that the mapping error has put us in a similar situation to VS9 and VS11 as discussed above, insofar as we cannot rationalise the mapped extent and spatial detail in the schedule without first addressing whether there is any undue prejudice to potentially interested parties.
312. This was borne out in practice through correspondence the Panel received from a representative of Parliamentary Service as a result of his reviewing Mr Winchester's advice to us. We captured this exchange in Minute 32 as follows:
- "6. Lastly, we have been contacted by Mr Peter Coop on behalf of Parliamentary Services who has noted two issues with the end point of Viewshafts 1 and 4. It is suggested that Parliamentary Services only became aware of the fact that the PDP includes an end point to Viewshafts through reading Mr Winchester's opinion.*
- 7. It is said also that had Parliamentary Services been aware of that fact, it would have lodged a submission seeking amendment to these two Viewshafts as follows:*
- The mapped Viewshaft 1 does not extend to include Parliament Buildings and the south-east facade of the General Assembly Library, but should do so as both are listed as focal elements in Schedule 5;*



- *The end point of Viewshaft 4 should be amended so that it traverses through the middle of the Beehive.”*

313. As we recorded in Minute 32, Parliamentary Services is not a submitter on the Viewshaft Chapter, either in a general sense, or in relation to these specific viewshafts. We accordingly have no scope to make the changes sought, and we are not prepared to exercise our powers to make out-of-scope recommendations, for the natural justice reasons we have already traversed.
314. Mr Coop’s correspondence does, however, underscore our decision to proceed with a high degree of caution in determining how best to act.
315. In contrast to VS9 and VS11, that precaution has ultimately led us to retain the mapped extent for VS1 and the spatial descriptions for the viewshaft in Schedule 5 as notified, despite the fact that they are not internally consistent. We explored whether we could adopt some sort of middle ground option to address these errors, but we have been unable to conceive of any fruitful alternative that does not give rise to unacceptable natural justice issues. Acknowledging that this is suboptimal, we recommend that the Council addresses this as a matter of urgency by way of a plan change.

## **7.9 New viewshafts: Carillon at Pukeahu, Old St Paul’s and Oriental Bay**

316. HPW sought that three new viewshafts be included in the PDP to provide enhanced protection of views to:
- (a) the Carillon at Pukeahu Park (no viewpoint specified);
  - (b) Old St Paul’s Church (no viewpoint specified); and
  - (c) Oriental Bay from the top of Parliament Steps and Cable Car respectively;
317. The submitter did not address us on this matter at the hearing. Nor did it attach any supporting analysis, detail or justification for the viewshafts in its submission notice.
318. The additional viewshafts were considered in detail by Ms Stevens<sup>55</sup> and Ms Popova<sup>56</sup>. We found their analysis to be well reasoned and we adopt it accordingly, as follows:
- (a) the submission provides no detail as to the exact viewpoint, margins, bases, focal elements, context elements and descriptions, and it is therefore not possible to

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<sup>55</sup> Section 42A report, para 170-178 & 193-196

<sup>56</sup> Evidence in chief, para 27-38

make an informed view as to the appropriateness or otherwise of the additional viewshafts proposed. As we have already noted above, such analysis is essential;

(b) the submission does not appear to acknowledge the presence of other viewshafts in the PDP which already provide view protection of the features identified in the submission notice, namely:

- i. VS2, comprising the view from Parliament Steps to Oriental Bay; and
- ii. VS14 & VS15, comprising views from the Cable Car lookout to Oriental Bay.

(c) the submission is unclear what is meant by 'enhanced' protection, and as assessed by Ms Popova, the existing viewshafts noted above have already been 'optimised' such that further enhancement is potentially unachievable; and

(d) views from Pukeahu toward the Carillon are already protected by virtue of the Park's open space zoning, and immediate proximity to the Carillon such that there is no material risk to the view/connection being lost.

319. For the above reasons, we have not accepted the submission from HPW on this matter.

#### **7.10 New Viewshaft: Tawa**

320. Claire Bibby sought that a new viewshaft be established at 395 Middleton Road, Glenside, in conjunction with a new heritage structure proposed in her submission. The supporting information attached to the submission noted:

*"This application seeks heritage listing for a railway survey mark in Glenside and setting land aside for a view shaft from the mark to the Glenside entrance of the Tawa No. 2 tunnel. Council could also purchase the hill on which the mark is located and set it aside as a future reserve to protect the site. Potentially, funding contributions could be got through Central Government, as this is a site of national significance."*

321. Ms Bibby presented to us in support of her submission, and a statement was also tabled on behalf of Ms Bibby by Barry O'Donnell, Executive Officer of the Rail Heritage Trust of New Zealand. Ms Bibby expressed the view that the survey marker site is an important aspect of Wellington's Heritage and providing a viewshaft from the marker towards the railway tunnel is an appropriate way to link the value the marker site played in the construction of the #2 tunnel.

322. As noted in Hearing Report 3A at 2.17.2, Council’s heritage advisor, Ms Moira Smith<sup>57</sup>, recommended that the survey marker site and viewshaft should be subject to more detailed investigations by Council with a view of potential future listings/viewshafts being advanced by way of future plan change.
323. Ms Popova assessed the submission in her evidence in chief as follows:
- (a) the viewshaft would be unusual, given its location outside of the City Centre, and the unestablished heritage and public significance of the marker and proposed view;
  - (b) the viewpoint is located on private land with no associated publicly accessible route, which is in contrast to other viewshafts – all of which are views from ‘a fixed point that are publicly accessible;’ and
  - (c) it is unclear from the submission whether one wide angle viewshaft is sought, or two adjacent viewshafts with smaller margins<sup>58</sup>.
324. Ms Stevens similarly observed that the viewshaft would be unique in its location outside the City Centre and on private land. She added that including the viewshaft would not be consistent with the methodology applied to the proposed viewshafts in the PDP, and like Ms Smith, considered that a future plan change process would be a more appropriate avenue to advance the matter after appropriate assessment. Ms Stevens also expressed difficulty with the lack of Section 32 analysis and community engagement.<sup>59</sup>
325. We have adopted the collective assessment of the Council’s witnesses for the reasons they have expressed. In particular, we consider a more comprehensive assessment is required to understand the public and historic significance of the site and viewshaft, and to appropriately weigh those factors against other relevant aims in the PDP.
326. We expect the Council will add this to its ongoing file for future plan change investigations as recommended by Ms Smith.

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<sup>57</sup> Evidence in chief, para 697

<sup>58</sup> Evidence in chief, para 47-50

<sup>59</sup> Section 42A report, para 179-186

### **7.11 New Viewshaft: Replace Mt Victoria Precinct**

327. Kāinga Ora sought<sup>60</sup> identification of a new viewshaft managing public views to St Gerard's Monastery and Mount Victoria. This was part of Kāinga Ora's case to remove all Character Precincts. Ms Stevens opposed the suggestion, noting Officer recommendations in Stream 2 that the Character Precincts be retained, and the fact that multiple existing viewshafts already have St Gerard's as a focal point.
328. We have addressed Character Precincts in Report 2B, recommending that the Mount Victoria North Townscape Precinct be retained, but amending the height limits in the Oriental Bay Height Precinct consequent on the absence of any Qualifying Matter evaluation that would support the notified provisions.
329. Relevantly, however, Kāinga Ora did not pursue this submission, suggesting instead that the Council investigate protecting views of St Gerard's through heritage mechanisms. As a result, it did not provide us with the necessary technical details to allow us to take the potential for a new viewshaft further, even if we were minded to do so. Accordingly, we recommend that Kāinga Ora's submission point be rejected.

## **8. CONCLUSIONS**

330. We have sought to address all material issues the parties who appeared before us on Viewshafts (both in the Stream 3 hearing, and subsequently in the Wrap up/Integration hearing) put in contention.
331. To the extent that we have not discussed submissions on that topic, we agree with and adopt the reasoning of the Section 42A Report prepared by Ms Stevens, as amended in her Replies.
332. Appendix 1 sets out the amendments we recommend should be made to the PDP as a result.
333. To the extent that the Section 42A Reporting Officer has recommended amendments to the Plan requiring evaluation in terms of Section 32AA, we adopt her evaluation for this purpose.
334. Where we have discussed amendments, in particular where we have identified that further amendments should be made, our reasons in terms of Section 32AA of the Act are set out in the body of our Report.

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<sup>60</sup> Submission #391.769

335. Appendix 2 sets out in tabular form our recommendations on the submissions allocated to the Viewshaft topic (including those transferred from the Wrap-up/Integration hearing). Our recommendations on relevant Further Submissions reflect our recommendations on the primary submission to which they relate.
336. As part of our Report, we have recommended the following out-of-scope changes:
- A number of changes to the chapter introduction, as discussed in Section 4.2 of our report;
  - Amendment to VIEW-O2 (Section 4.2);
  - Amendments to all three policies (Section 4.3);
  - Amendments to the rules to insert the Category 1 and 2 distinction and to insert a new Permitted Activity rule in non-residential zones (Section 4.4);
  - A new definition of ‘viewshaft overlay’ and amendments to the definitions of ‘iconic and landmark views’ and ‘viewshaft’ (Section 5);
  - A new Advice Note at the start of Schedule 5 (Section 6.2);
  - Introduction of the Category 1 and 2 distinction into the viewshaft descriptions in Schedule 5 and the shift in categorisation of VS2 (to Category 1) and VS9 (to Category 2) (Section 6.3);
  - Amendment to the right margin of VS8 to enlarge the mapped viewshaft, amendment to its description in Schedule 5 (Section 6.4), and amendment to extend VS8 mapping to the water’s edge (Section 7.4);
  - Amendment to the viewpoint location, right and left margins, and/or termination points for VS9 and VS11 (Sections 6.6, 6.7, 7.3, 7.5);
  - Deletion of VS18 from the chapter, Schedule 5 and the Plan maps (Section 6.7);
  - Relatively minor text changes to VS 6 and VS11 (Section 6.9).
337. Before leaving this Report, we should draw the Council’s attention to the unsatisfactory state the Viewshafts Chapter will remain in, even if our recommendations are accepted.

338. It is fair to say that we were both surprised and disappointed by the number of evident errors in the chapter as notified. Not to put too fine a point on it, it seemed to us that every time we looked into an issue in any detail, we discovered aspects of the chapter where what was notified either did not represent what was intended, had potentially unsatisfactory outcomes, and/or was simply wrong. The length of our report for what is a relatively short section of the Plan bears testament to the unsatisfactory state the notified Plan provisions were in, and the amount of 'backfilling' the Reporting Officer felt obliged to recommend.
339. While we have endeavoured to address the most pressing issues, we have not been prepared to rewrite the chapter on an out-of-scope basis. As a result, we would struggle to describe the end result as completely 'fit for purpose'.
340. We recommend that Council undertake a complete review of the viewshaft chapter, Schedule 5 and the planning maps to provide the basis for a Plan Change which might put in place a more robust and better considered set of provisions.
341. We draw the Council's attention in particular to:
- the potential which Ms Stevens identified for development up to 21m in height within the Oriental Bay Height Precinct to intrude into the iconic and landmark view from the Cable Car lookout towards St Gerard's Monastery (refer Section 4.4 of our Report);
  - the fact that the backdrop to probably the most important viewshafts in the Plan (the views of the Beehive and Parliament Buildings in Viewshafts 1 and 4) is not subject to regulation; and
  - the errors we have noted in the definition of viewshafts VS1, VS9 and VS11.
342. We emphasise, however, that these are only the most urgent of a number of problems that we have identified.

343. Lastly, we note our observation (in Section 8.3 of our Report) that usability of the ePlan would be enhanced if individual viewshafts were able to be switched on and off, and recommend that Council consider whether it might be possible to offer that option.

For the Hearing Panel:



**Trevor Robinson**  
Chair  
Wellington City Proposed District Plan Hearings Panel

**Dated: 5 February 2024**