

Under the Resource Management Act 1991

In the matter of hearings of submissions and further
submissions on the Proposed Wellington
City District Plan

By **The Trustees of the Eldin Family Trust**
Submitter

LEGAL SUBMISSIONS FOR HEARING STREAM THREE

5 MAY 2023

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LEGAL SUBMISSIONS FOR HEARING STREAM THREE

Summary of overall submission by Eldin Family Trust

1. The Trustees of the Eldin Family Trust own a residential dwelling at 9 Selwyn Terrace, Thorndon.
2. The proposed district plan (PDP) as notified adds Selwyn Terrace, Thorndon, to the City Centre Zone. This is a shift from the operative district plan, which has Selwyn Terrace as Inner Residential and subject to a demolition control for pre-1930 buildings.
3. The Trustees have lodged a submission opposing the proposed zoning for Selwyn Terrace. The relief sought by the Trustees is that:
 - (a) Selwyn Terrace is not included in the City Centre Zone;
 - (b) Selwyn Terrace is instead included in the Medium Density Residential Zone;
 - (c) Selwyn Terrace is included in a character precinct;
 - (d) As an alternative to the above, that the proposed minimum and maximum heights for Selwyn Terrace are replaced with a maximum height control of three storeys (11 metres); and
 - (e) Viewshafts VS1 and VS4 in the notified PDP are retained, with minor wording amendments, and a further viewshaft is added from the intersection of Bunny Street and Waterloo Quay.
4. Most of these relief points were addressed in the Trustees' submission in Hearing Stream 2.
5. The final relief point above relating to the viewshafts provisions is before the Panel in Hearing Stream 3. These submissions explain the Trustees' position further and in light of the expert evidence they have submitted from Benjamin Lamason, a landscape and architectural visualiser.
6. The Trustees wish to record that a number of other Selwyn Terrace residents have indicated their support for this submission, specifically the residents of 11

Selwyn Terrace (Sally Edmonds), 15 Selwyn Terrace (Belinda Milnes), 16 Selwyn Terrace (Lesley Rothwell), 19 Selwyn Terrace (Margaret Feather), 20 Selwyn Terrace (Andy and Rebecca Wynes), 21 Selwyn Terrace (Erica Guy), 11 Guildford Terrace (Briar Gordon),¹ and 64 Hill Street (Alistair Griffiths).

Issues for Hearing Stream 3 and relationship with other hearing streams

7. These submissions focus on the relief sought that relates to Hearing Stream 3. However there is unavoidable overlap with issues for other hearing streams.
8. The Trustees submitted in Hearing Stream 2 that Selwyn Terrace should be changed from City Centre Zone (as notified) to Medium Density Residential Zone, and included in a character precinct. That submission in part assumed the continued existence and protection of viewshafts VS1 and VS4, which are now being addressed in Hearing Stream 3.
9. These submissions address the following Hearing Stream 3 issues:
 - (a) Should viewshafts VS1 and VS4 be retained?
 - (b) Should the amendments to the descriptions of viewshafts VS1 and VS4 proposed by the Trustees be accepted?
 - (c) Should there be other amendments to the viewshafts chapter as proposed by the section 42A officer's report?
 - (d) Should viewshaft 3 from the operative district plan (ODP), which is a view towards Parliament from Waterloo Quay/Bunny Street, be retained in the PDP?

Should viewshafts VS1 and VS4 be retained?

10. The Trustees are pleased to see that the Council proposes in the notified PDP to continue the protection of views of the Beehive, Parliament Buildings (i.e. Parliament House and the General Assembly Library), and the Cenotaph by VS1 and VS4 and associated provisions. The section 42A report for Hearing Stream notes and agrees with submissions in support of retaining these viewshafts.²

¹ Submission 156.

² Section 42A report: Hearing Stream 3 – Viewshafts at [79]–[80].

11. The Beehive and Parliament Buildings in particular are internationally recognisable symbols of New Zealand. The outlooks towards Parliament from the corners of Bunny/Featherston Streets and Whitmore/Featherston Streets are significant contributors to Wellington's sense of place and identity.
12. Viewshafts VS1 and VS4 should therefore be retained, subject to the amendments and clarification discussed below.

Should the amendments to the descriptions of viewshafts VS1 and VS4 proposed by the Trustees be accepted?

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.
15. The Trustees' original submission proposed three wording amendments to VS1's Description, as follows and with the additions underlined:

"A view of the Beehive against the backdrop of Te Ahumairangi Hill from a major thoroughfare for commuters. This is one of two significant viewshafts (the other being VS4) which, when combined, promote the image of Wellington as a capital city in views from key points within the northern end of the City Centre Zone.

The Beehive and Parliament Buildings are two of the emblems of New Zealand's capital and key landmarks in the Wellington townscape. They are internationally recognised symbols of New Zealand. VS1, located on a major pedestrian route for commuters leaving the Wellington Rail Station, enhances wayfinding and contributes to Wellington's sense of place. The backdrop of Te Ahumairangi Hill adds striking contrast and visual interest."

16. As to the first amendment — the addition of the words “against the backdrop of Te Ahumairangi Hill” — the section 42A report and Ms Popova's expert evidence support the Trustees' proposal.³ It should therefore be adopted.
17. The second amendment is the addition of the words “They are internationally recognised symbols of New Zealand”. The Trustees submit that it is important for the PDP to expressly acknowledge the international status and recognition of these symbols of New Zealand.
18. Ms Popova's evidence suggests a slightly different wording to the first sentence of the second paragraph of VS1: “The Beehive and Parliament Buildings are two of the emblems of New Zealand's capital and key landmarks in the Wellington landscape, often recognised internationally as symbols of New Zealand”.⁴ The Trustees agree that this alternative wording is sufficient to address their concern.
19. The Trustees do not agree with the section 42A officer's view that their proposed additional words are unnecessary. As Ms Popova's evidence appears to acknowledge, the reference to the international recognition of the views of The Beehive and Parliament Buildings is a separate point from the reference in the Description to those buildings being “emblems of New Zealand's capital and key landmarks in the Wellington townscape”.
20. The third amendment is the addition of the words “The backdrop of Te Ahumairangi Hill adds striking contrast and visual interest”. The reason for these additional words is to acknowledge the importance of the backdrop as a component of what makes the view memorable and worthy of protection.
21. The section 42A officer and Ms Popova do not support this proposed amendment because they say it (a) reads as an evaluation of the visual contribution of the context element of the viewshaft, which has not been done for other viewshafts and (b) because the relationship between The Beehive and Te Ahumairangi Hill has already been referred to in the description.

³ Section 42A report: Hearing Stream 3 – Viewshafts at [124]; Statement of evidence of Deyana Popova at [80].

⁴ Statement of evidence of Deyana Popova at [80].

22. The Trustees disagree because:
- (a) Other viewshafts contain evaluative descriptions of the features or composition of the view. For example, the descriptions for VS13, VS14 and VS15 refer to “expansive views of Wellington’s memorable landscape” that “enable the city’s natural and urban context and sense of place to be experienced and enjoyed”. The proposed addition to VS1 is not out of keeping with the descriptions of these viewshafts.
 - (b) A statement about the visual contribution of Te Ahumairangi Hill as a context element is helpful and appropriate in promoting a consistent and efficient approach in later resource consent decisions.

23. Turning then to the Description of VS4, the Trustees proposed similar additions in their original submission as follows (additions underlined):

“VS4 is one of two viewshafts (the other being VS1) focused on the Beehive from the south and east as set against the backdrop of Te Ahumairangi Hill. Along with the Beehive this viewshaft includes the Cenotaph as an additional focal element. Both of these viewshafts are individually and collectively significant and promote the image of Wellington as NZ’s ‘seat of government’ and capital city in views from key points. Additionally, as the Beehive and Cenotaph are important physical reminders of Wellington’s rich history the views to and from them, as provided by VS4, contribute to the city’s sense of place. The Beehive is an internationally recognised symbol of New Zealand. The backdrop of Te Ahumairangi Hill adds striking contrast and visual interest.”

24. The first additional sentence for the VS4 description should be included for the same reasons to those given above in paragraphs 17–19.
25. Ms Popova has proposed an alternative way of referring to the international recognition of The Beehive in her evidence, by adding to the second sentence “Along with the Beehive, often an internationally recognised symbol of New Zealand, this viewshaft includes the Cenotaph as an additional focal element ...”. The Trustees agree that this alternative wording is sufficient to address their concern.

26. The second additional sentence for the VS4 description should be included for the same reasons as those given above in paragraphs 20–22.
27. Finally, the Trustees record that they have conferred with Parliamentary Services in relation to their submission on the viewshafts chapter. I understand from those discussions that Parliamentary Services supports the Trustees' position, and in addition requests that the PDP acknowledges or recognises the value of having other Parliamentary buildings as part of the context for the Beehive. The section 42A report notes that VS1 captures other contributory buildings in the Parliament Precinct and Te Ahumairangi Hill.⁵ The Trustees agree that there is value in the PDP recognising other contributing buildings in the Parliamentary Precinct as part of the context for the Beehive.

Should there be other amendments to the viewshafts chapter as proposed by the section 42A officer's report?

28. The section 42A report and officer's rebuttal evidence suggest further amendments to the viewshafts chapter.
29. The Trustees support the reporting officer's proposal for amendments to the viewshaft chapter to clarify that its provisions apply to more zones than just the city centre zone. Specifically, the Trustees support the officer's rebuttal statement to the extent that it proposes a new zone column for rule VIEW-R2 to clarify that the provision applies in the medium density residential, high density residential, and all other zones.⁶
30. However, the Trustees oppose some of the proposed amendments in their current form. Their primary concern is with the following recommendations:
 - (a) HS3-VIEW-Rec4, which is a recommendation for changes to the Viewshafts Chapter Introduction to make reference and amendments to "the existing Viewshaft Overlay mapping" and to make changes "to the extent and termination point of the Viewshaft Overlay Mapping for identified viewshafts".

⁵ Section 42A report: Hearing Stream 3 – Viewshafts at [86].

⁶ Statement of supplementary planning evidence of Anna Stevens at [21], second bullet point, and [29(b)], new column for VIEW-R2.

- (b) HS3-VIEW-Rec9, to the extent that it is a recommendation to amend the wording of rule VIEW-R2 to refer to construction activities “within the extent of the Viewshaft Overlay” (rather than “within a viewshaft”).
31. These recommendations bring into focus a significant unintended ambiguity in the drafting of the viewshafts chapter as notified.
 32. It was unclear on the wording of the notified Viewshafts Introduction and chapter provisions that the Council's intention was for the spatial extent and application of the viewshaft provisions to be governed by the “Viewshafts Overlay” in the PDP mapping. The Introduction referred in two places to the “Viewshafts Overlay”. However, there was no definition of that term in the Definitions section (by contrast other overlays such as the Coastal Hazard Overlays were defined by reference to maps).
 33. The Introduction in the notified PDP stated that “Views, including associated focal and context elements, that are the subject of this overlay are identified in Schedule 5”. Schedule 5 was in turn labelled “SCHED5 – Viewshafts”. This suggested that the extent of the views or viewshafts was to be defined by the technical descriptions in Schedule 5, which include a statement about the location, margins and base of each viewshaft. There was no statement in the notified plan to alert readers that the PDP mapping contained a separate Viewshaft Overlay that would also be relevant to understanding the intended spatial extent and application of the overlay provisions.
 34. The amendments proposed by the section 42A report appear to be drafted to resolve this ambiguity.
 35. The Trustees oppose the amendments proposed in HS3-VIEW-Rec4 and HS3-VIEW-Rec 9. As I now explain, the impacts of these amendments are significant and have not been the subject of robust consultation as they were not notified or tested through the plan change process.
 36. Viewshaft VS1 is an appropriate illustration of the impacts of the section 42A report's proposed changes from the ODP provisions.
 37. The equivalent viewshaft in the operative district plan is also labelled VS1, and is described in ODP Appendix 11 by reference to a viewpoint location,

focal elements, context elements, left margin, right margin, base, and the following map:

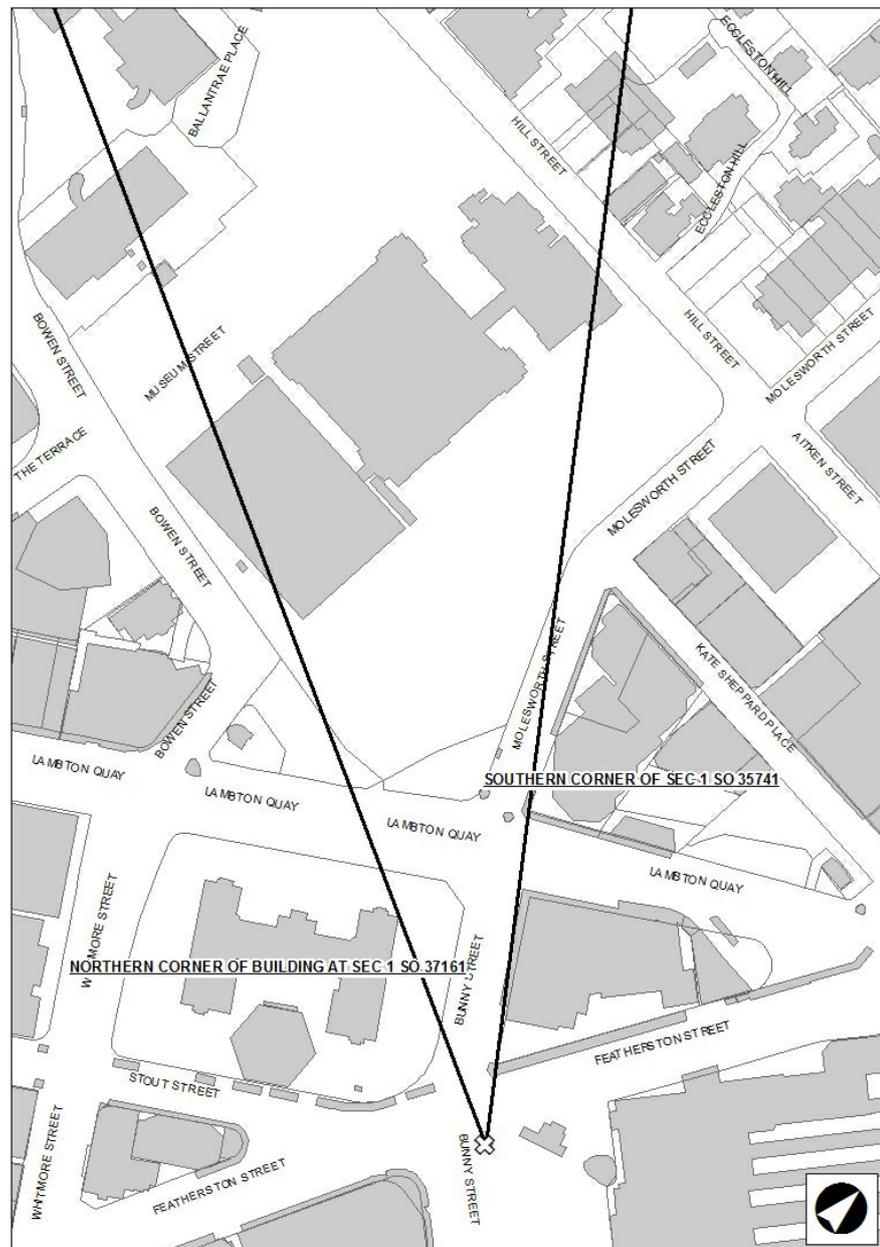


Figure 1: Map of VS1 in ODP

38. The viewshaft in the ODP is shown on the map as extending from the viewpoint location on the corner of Bunny and Featherston Streets, towards the Beehive and Parliament Buildings. Those are the three buildings in the centre of the diagram. The viewshaft extends further to the area behind those buildings (including Hill Street and Selwyn Terrace). There is nothing in the viewshaft description or map to suggest that it terminates at a particular boundary.

39. The relevant rule and standard in the ODP are rule 13.3.8 and standard 13.6.3.3.1. Standard 13.6.3.3.1 states that “No building or structure shall intrude on any viewshaft as shown in Appendix 11”. Rule 13.3.8 states that construction of buildings and structures are Discretionary Activities (Restricted) if they do not meet specific standards including standard 13.6.3.3.1.
40. The effect of these ODP provisions was that construction of a new building behind the Parliament Buildings (for example in Hill Street) would be a restricted discretionary activity if the building was in the central area zone and of a height and configuration such that it intruded on viewshaft VS1. The evidence that the Trustees have submitted from Ben Lamason shows that the construction of new 6–9 storey buildings in Selwyn Terrace would intrude into the viewshaft.
41. The amendments to the PDP provisions that are proposed by the section 42A report will change this situation significantly. By amending the wording of rule VIEW-R2 to refer to construction “within the extent of the Viewshaft Overlay”, the rule will no longer capture the construction of new buildings in the area behind the Parliament Buildings. This is because the Viewshaft Overlay labelled VS1 in the PDP mapping terminates at the front of the buildings and does not extend to cover the urban area behind Parliament:

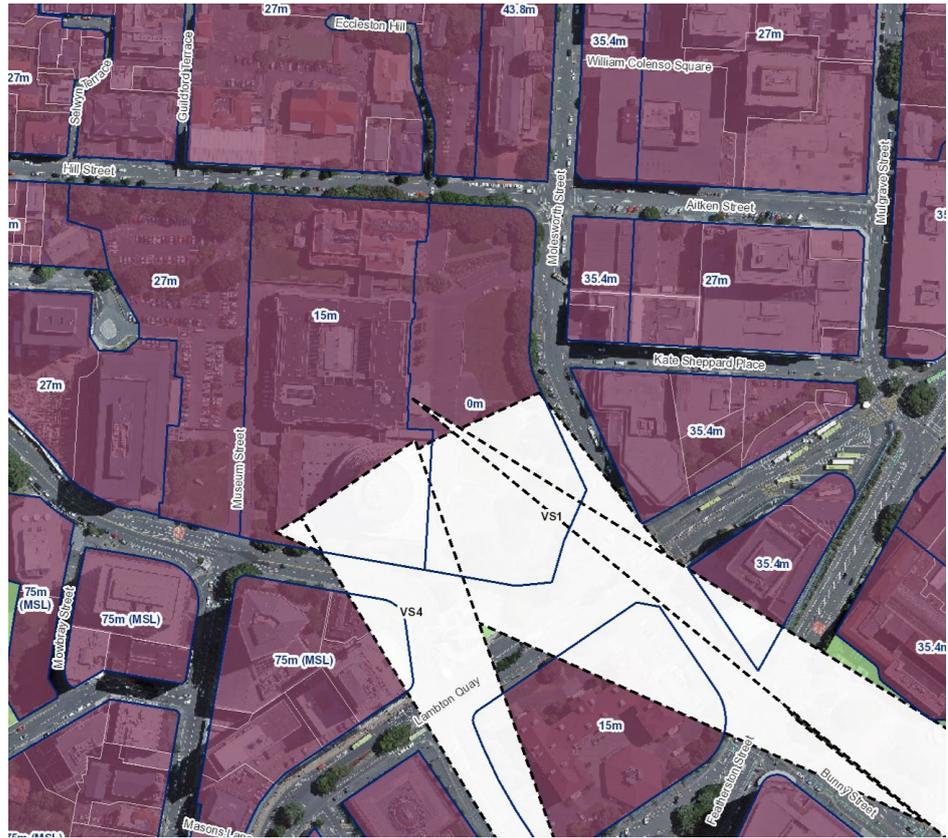


Figure 2: PDP mapping of Viewshafts Overlay, with VS1 terminating at the Beehive and Parliament Buildings

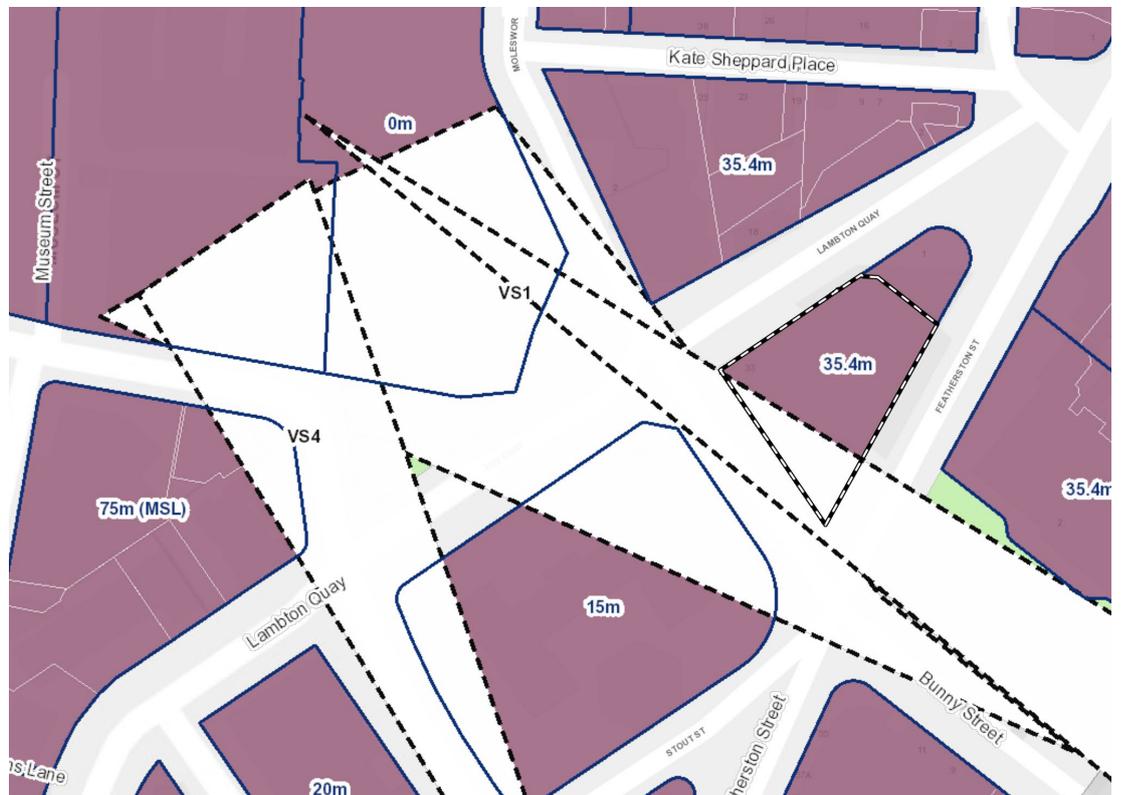


Figure 3: Viewshaft Overlay for VS1 from PDP mapping

42. If the section 42A report's recommended amendments are accepted in their current form, then a new ambiguity or inconsistency would be created in the plan provisions. The spatial extent of the Viewshaft Overlay for VS1 in the mapping would not include Hill Street and Selwyn Terrace and other residential areas behind Parliament. At the same time, however, it would seem likely that new 6–9 storey buildings in this area would intrude upon the views of Te Ahumairangi Hill from the viewshaft location.
43. That would be fundamentally inconsistent with the recognition of Te Ahumairangi Hill as a context element to this view, as well as the direction in policy VIEW-P2 to "maintain views ... by restricting development that could affect these views, having regard to ... the extent to which the relationship between context and focal elements will be maintained". It would also be at odds with the section 42A report's proposed amendments to the Introduction to state that "the Viewshaft Overlay identifies a number of viewshafts that identify where built development is restricted to ensure that 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".⁷ In short, the Viewshaft Overlay and associated provisions would fail to protect an important context element of VS1 and VS4 from intrusion by future development.
44. It is unlikely that the Council officer intended to create this inconsistency through her proposed s 42A amendments. There is no explanation in the Council reports of an intention to radically change the spatial application of the viewshafts that are intended to protect views of the Parliament Buildings against the backdrop of Te Ahumairangi Hill. Indeed, such a radical change would be inconsistent with the following aspects of the officer's section 42A report and rebuttal evidence:
- (a) The proposal to correct the definition of viewshaft to refer to a view "... that is publicly accessible to identified focal elements **and context elements** ..." (emphasis added);⁸

⁷ Section 42A report: Hearing Stream 3 – Viewshafts at HS3-VIEW-Rec4.

⁸ Section 42A report: Hearing Stream 3 – Viewshafts at HS3-VIEW-Rec32, item (e).

- (b) The proposal to add a definition that 'View' means "the focal **and context elements** protected by a Viewshaft" (emphasis added);⁹
- (c) A statement that the PDP's VS1 "captures a significant area of Te Ahu Mairangi, an important area of Wellington's Town Belt";¹⁰
- (d) A statement that amendments proposed by the section 42A report "are reflective of the actual and intended application of the Viewshafts rule framework in the ODP and PDP to properties not only within the viewshaft itself but also to properties that are context elements or that are within the vicinity of the focal element within the frame of the viewshaft also";¹¹ And
- (e) The proposed amendment in the rebuttal statement to introduce a new sub-rule within VIEW-R2 that specifically regulates construction in the medium density and high-density residential zones where development intrudes into viewshaft 1 or viewshaft 4.¹² On the current mapped extent of those viewshafts, they do not cover any medium density or high density residential zoned areas.

- 45. The Trustees consider there are two appropriate ways of resolving the issue that has arisen from the section 42A report's proposed amendments.
- 46. The first would be to reject the amendments proposed to the Viewshafts Introduction and VIEW-R2. Instead of those, there would need to be amendments to clarify that the spatial application of the viewshaft provisions is governed by the descriptions of those viewshafts in Schedule 5. This would require removing references to the "Viewshafts Overlay", and amending the definition of "Viewshafts" to include a cross-reference to the Schedule 5 descriptions of the viewshafts.

⁹ Section 42A report: Hearing Stream 3 – Viewshafts at HS3-VIEW-Rec32, item (f).

¹⁰ Section 42A report: Hearing Stream 3 – Viewshafts at [86]. See also statement of evidence of Dr Farzad Zamani (viewshafts) at [40].

¹¹ Section 42A report: Hearing Stream 3 – Viewshafts at [70(c)].

¹² Statement of supplementary planning evidence of Anna Stevens at [29(b)].

47. This approach would involve minimal departure from the structure of the viewshaff provisions in the operative district plan.
48. The second approach would be to amend the termination points of VS1 and VS4 in the Viewshaff Overlay mapping so that they extend behind the Parliament Buildings and encompass the residential area between the Parliament Buildings and Te Ahumairangi Hill.
49. I note that the section 42A report has recommended amendments of a similar nature to another viewshaff, VS8, which is a view down Panama Street with the Old Harbour Board Office Building, Inner Harbour and Oriental Bay as focal elements. The proposed amendments are to ensure that the mapped extent of viewshaff VS8 aligns with the descriptions in Schedule 5.¹³ The Council officer recommends further amendments of this nature in her rebuttal evidence.¹⁴ For consistency, similar amendments need to be made to the Viewshaff Overlay for VS1 and VS4.
50. Finally, there is one further recommendation in the section 42A report that the Trustees oppose. This is recommendation HS3-VIEW-Rec 32(v), which is to correct the PDP-VS4 description as follows:¹⁵

...

Additionally, as the Beehive and Cenotaph are important physical reminders of Wellington's rich history the views ~~to and~~ from them, as provided by VS4, contribute to the city's sense of place.

51. This change is not a "minor and inconsequential correction" as the section 42A report suggests. VS4 is the viewshaff looking towards The Beehive and The Cenotaph against the backdrop of Te Ahumairangi Hill from the corner of Whitmore and Featherston Streets. It is therefore the view "to" (not "from") the Beehive and Cenotaph that contributes to the city's sense of place.
52. It may be that there is an error in this recommendation, and that the section 42A author intended to suggest the deletion of the words "and from".

¹³ Section 42A report: Hearing Stream 3 – Viewshafts at [141]; Statement of evidence of Deyana Popova at [74].

¹⁴ Statement of supplementary planning evidence of Anna Stevens at [29].

¹⁵ Section 42A report: Hearing Stream 3 – Viewshafts at HS3-VIEW-Rec 32(v).

Should a further viewshaft from the corner of Waterloo Quay and Bunny Street be recognised in the PDP?

53. The final topic on which the Trustees have submitted for Hearing Stream 3 relates to viewshaft VS3 in the operative district plan (ODP-VS3). This viewshaft runs from the north west corner of Waterloo Quay and Bunny Street (Waterloo/Bunny Viewshaft). It has the Beehive as a focal element, with the Old Government Buildings and Tinakori Hill/Ahumairangi Ridge as context elements.
54. The PDP as notified does not carry over ODP-VS3.
55. The Trustees submit that the protection of ODP-VS3 should continue.
56. ODP-VS3 is from further back and captures some of the Old Government Buildings that now house the Victoria University Law Faculty. The Old Government Buildings are historically significant, and the outlook of them in combination with the Beehive is a symbolic link between the past and present homes of New Zealand's Government.
57. Further, the Waterloo/Bunny viewshaft captures more of the Tinakori Hill/Te Ahumairangi Hill backdrop. This striking green bush backdrop is visually significant.
58. The section 42A report and Ms Popova's evidence do not support the Trustees' submission on this ODP viewshaft. Their reasons are that the viewshaft is considered unnecessary because the Old Government Building is not a focal element of the view.¹⁶
59. While the Old Government Building was not a focal element of ODP-VS3, it is a significant building and has a Category 1 heritage listing by Heritage New Zealand Pouhere Taonga. It has sufficient historical significance and architectural elegance that could well result in it having the status of a focal

¹⁶ Section 42A report: Hearing Stream 3 – Viewshafts at [84]; Statement of evidence of Deyana Popova at [53].

element. The Trustees therefore submit that the views towards it should be protected by reinstating ODP-VS3.

A handwritten signature in black ink, appearing to read "D W Ballinger". The signature is written in a cursive, flowing style.

DUNCAN BALLINGER
Counsel for the Trustees of the Eldin Family Trust
5 MAY 2023