

**Before the Hearings Panel
At Wellington City Council**

Under Schedule 1 of the Resource Management Act 1991

In the matter of the Proposed Wellington City District Plan

**Stream 3 Reporting Officer Further Right of Reply of Anna Mariebel
Sutherland Stevens on behalf of Wellington City Council – Viewshafts Follow
Up**

Date: 14 September 2023

INTRODUCTION:

- 1 My full name is Anna Mariebel Sutherland Stevens. I am employed as a Team Leader in the District Planning Team at Wellington City Council (the Council).
- 2 My Hearing Stream 3 Section 42A Report section 1.3 sets out my qualifications and experience as an expert in planning.
- 3 I have prepared this Further Reply in respect of the matters identified in paragraph 7 and 8.
- 4 I have read Minutes 28 and 32 and Mr Winchester's legal memo.
- 5 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023, as applicable to this Independent Panel hearing.
- 6 Any data, information, facts, and assumptions I have considered in forming my opinions are set out in the part of the evidence in which I express my opinions. Where I have set out opinions in my evidence, I have given reasons for those opinions.

EXECUTIVE SUMMARY

7 This Right of Reply provides my final consolidated recommendations on the Viewshaft Chapter, Schedule 5 and ePlan Viewshaft Overlay Mapping.

8 It also responds to:

8.1 Questions raised by the Independent Hearings Panel (IHP) in Minute 28 (Viewshaft Follow Up) and Minute 32 (Hearing Stream 3 – Viewshaft Follow Up (2));

8.2 Points raised by Mr Winchester in his legal opinion contained within Minute 28;

8.3 Three memorandums received on behalf of Eldin Family Trust, Wellington's Character Charitable Trust Inc (WCCT) and Kāinga Ora Homes and Communities (Kāinga Ora) in response to Minutes 28 and 32.

9 In summary, the key issues discussed are:

9.1 The application of the provisions to zones beyond the City Centre Zone (CCZ) and Waterfront Zone (WFZ);

9.2 The intent of the notified viewshaft provisions and the legal effects of the notified provisions;

9.3 The extent of viewshaft mapping on the planning maps compared to the images in Schedule 5;

9.4 The changes I have recommended that are within scope of submissions and those that are not; and

9.5 The results of modelling undertaken in response to Minute 28.

CONSOLIDATED RECOMMENDATIONS ON THE VIEWSHAFT CHAPTER, SCHEDULE 5 AND EPLAN VIEWSHAFT OVERLAY MAPPING

10 The collective changes that I have recommended over the course of the s42a report through to Right of Reply are set out below. I have prepared a track change version of the chapter and schedule showing these changes at Appendix 1 and 2.

11 I have identified where there is submission scope to make these changes and where there is not.

12 I continue to recommend that the entire suite of changes are made, including those where there is not submission scope given they function as a package to achieve desirable planning outcomes.

13 There is submission scope to:

13.1 Continue to apply the viewshafts provisions to zones beyond the CCZ and WFZ, including to the Medium and High Density Residential zones.

13.2 Restrict building height standards for specific properties in Kelburn to that enabled by the MDRS to avoid potential intrusions (below the Wellington cable car lookout).

13.3 Amend the provisions to enable other residentially zoned properties to utilise the building height and density standards of the MDRS. These properties would in effect intrude or continue to intrude into viewshafts.

- 13.4 **Amend the mapped extent of the Viewshaft Overlay for PDP-VS13 – PDP-VS15 to cover the focal elements and context elements.** This aligns with notified SCHED5 and would manage development that block their visibility.
- 13.5 **Amend the mapped extent of the Viewshaft Overlay for PDP-VS8 to extend to the water’s edge.** This aligns with notified SCHED5.
- 13.6 **Amend the Viewshaft Chapter introduction** to identify which zones the provisions apply to and explain the rule framework.
- 13.7 **Amend VIEW-R1** to add zone boxes to clarify that this rule solely relates to the CCZ.
- 13.8 **Amend VIEW-R2** to include zone boxes, link the rule application to the Viewshaft Overlay and include permitted standards for building in the medium and high density residential zones and consequential restricted discretionary and discretionary rules, as well as exclusions for specific properties in Kelburn to which the Viewshaft Overlay traverses.
- 13.9 **Include a new Viewshaft Overlay definition.**
- 13.10 **Update PDP-VS1’s description and context elements detail and PDP-VS4’s description and significance detail.**
- 13.11 **Reintroduce ODP-VS21 viewshaft from the Carillon** from its original location.

14 There is not submission scope to:

- 14.1 Change the categorisation of PDP-VS11 and PDP-VS12** from 'Local'/Category 2 viewshafts to 'Iconic and Landmark Views'/Category 1 viewshafts and make the consequential changes to VIEW-R2 and VIEW-S1.
- 14.2 Extend the mapped extent of Viewshafts 1-7 and Viewshafts 9-12** to include their focal and context elements as described in Schedule 5.
- 14.3 Change the categorisation descriptions of viewshafts** from Iconic and 'Landmark' to 'Category 1' and 'Local' to 'Category 2' and consequential amendments to the Viewshaft Chapter and Schedule 5 to reflect this change.
- 14.4 Update the Schedule 5 photos for PDP-VS3, PDP-VS5 and PDP-VS9.**
- 14.5 Amend the notified PDP definitions – 'Iconic and Landmark Views' and 'Viewshaft'.**
- 14.6 Include new definitions for – 'Category 1 Viewshaft', 'Category 2 Viewshaft', 'Context Elements', 'Continuum Elements', 'Focal Element', 'Panoramic View', 'Termination Point' and 'View'.**
- 14.7 Reintroduce ODP-VS21 viewshaft from the Carillon from an amended location.**
- 14.8 Amend VIEW-O1 – VIEW-O2 and VIEW-P1-P3.**
- 14.9 Amend parts of the Viewshaft Introduction.**
- 14.10 Correct the left and right margin details of Viewshaft 6 in Schedule 5.**

- 14.11 **Update incorrect 'View' references to 'Viewshaft'**
throughout the Viewshaft chapter.
- 14.12 **Amend the left margin detail of PDP-VS9 in Schedule 5.**
- 14.13 **Amend reference in PDP-VS9 Description in Schedule 5 to**
update a viewshaft reference.
- 14.14 **Include two note sections in Schedule 5** for clarity of
application.
- 14.15 **Extend the mapped extent of the viewshaft overlay for**
PDP-VS1 and PDP-VS4 as addressed in Minute 32 and
paragraphs 135-140 of my memo to cover the context
elements of Te Ahumairangi Hill (Tinakori Hill) and Thorndon
Residential Area as detailed in Schedule 5.
- 14.16 **Amend wording to include reference to**
'intrusion/intrusions' to provide clarity and align with case
law and the ODP approach.

15 However, I consider that such changes would be desirable planning
outcomes and, if the Panel agrees, I recommend that the Panel
consider whether it is appropriate to make out-of-scope
recommendations under clause 99 of Schedule 1 in respect of these
matters.

16 They are desirable outcomes because:

- 16.1 They are essential for the interpretation and implementation
of the Viewshaft Chapter, mapped viewshaft overlay and
Schedule 5.

16.2 The effects of doing so do not prejudice submitters because these matters were addressed in my s42A report and supplementary evidence.

DELETION OF VIEWSHAFT 18 – PANORAMIC VIEW

17 Including the Cable Car Panoramic View (Viewshaft 18) within the notified PDP as a viewshaft was an administrative and editorial error. It should not have been included as a viewshaft at all. It is significantly different in scope and scale to all other viewshafts recommended to be included in the plan.

18 By way of background, the Panoramic View does not operate as a viewshaft in the ODP. Instead, the ODP directs at a policy level that the vast extent of the view be 'protected' and considered in resource consent applications for buildings that exceed the ODP's maximum height limits.

19 When the view was carried over into the PDP, it appears to have done so as a full viewshaft. Such an outcome is clearly in conflict with the policy direction of the NPS-UD and strategic direction of the PDP, fundamental to which are increasing building height and development capacity and recognising that an urban environment must change over time.

20 No submissions were received in support of viewshaft 18.

21 If it were to be retained it would have the effect of requiring a resource consent under the viewshaft rules for a significant extent of Te Aro and the City Centre Zone, as well as within the operational port area. This would pose an unreasonable compliance cost and burden on developers. It should therefore be deleted.

22 To enable consideration of the above my advice with respect to building heights in Kelburn and in response to Minute 28, a 3D viewer showing

the possible outcomes of different planning scenarios has been made available at:

<https://experience.arcgis.com/experience/8d55018156db437ea87a5fc2055ae9e3>

MINOR AND INCONSEQUENTIAL AMENDMENTS

23 **I recommend the Panel exercise its discretion under clause 16(2) with respect to the following amendments:**

23.1 **Correct the left and right margin detail of Viewshaft 6 in Schedule 5** due to an identified margin location description error.

23.2 **Amend reference in PDP-VS9 Description in Schedule 5** to update a viewshaft reference.

24 These amendments are minor and technical in nature consistent with the intent of clause 16(2).

RESPONSES TO CONCLUSIONS REACHED BY MR WINCHESTER

25 Mr Winchester in paragraphs 8 and 9 of his Viewshaft response notes the following observations:

- *There are however material differences between the ODP and the IPI/PDP which likely means that the interpretation and application of the notified viewshafts provisions is different.*
- *I am unclear whether WCC fully appreciated that what was notified in the IPI/PDP would have a substantially different legal effect to what was in the ODP. On the face of the issue, the viewshaft provisions as notified apply not only in the City Centre*

and Waterfront Zones (as is the case with the ODP), but also in multiple zones within the viewshaft overlays (except where expressly excluded). In addition, the activities regulated are, subject to some exclusions, wider than the ODP, being any development of buildings and structures within a viewshaft.

- *The Section 32 report does not clearly identify that this is the effect of the viewshaft provisions as notified...*
- *I consider that the IPI/PDP viewshaft provisions are relatively clear on their face. This in turn raises questions about whether some of the relief sought in the WCC submission is necessary. More importantly however, there is a live question as to whether the extent of clarification and amendment recommended in WCC's section 42A reports and written reply is within scope.*
- *The content of the original WCC section 32 report also raises a risk that people would not have understood the application and effect of the viewshafts provisions as notified, which could create concerns for the IHP in terms of fairness and natural justice.*
- *In terms of S32AA considerations, there now appears to be substantial analysis before the IHP which is focused on and supports the suite of provisions which has been recommended by WCC.*

Application to a wider suite of zones than the operative district plan

26 I note that many of the ODP viewshafts begin and end within Residential Zones (e.g. viewshafts from the Cable Car) after traversing through the Waterfront and Central Area zone (see Appendix 11 of the ODP). The approach of the ODP was to limit the application of the

provisions to the Central Area zone by locating viewshaft protection provisions within the Central Area Chapter.

27 I consider it was intended that the notified PDP viewshaft provisions had effect beyond the City Centre Zone (CCZ) and Waterfront Zone (WFZ) however.

28 I consider it is clear that the plan intended to apply the provisions more broadly (including to the residential zones) given the new policy context of the MDRS and NPS-UD which enables substantially taller buildings across the urban environment. If it did not, buildings in these zones may risk intruding into a viewshaft and impacting adversely on the appreciation of views which are protected by the overlay.

29 By way of example, two outcomes not previously enabled by ODP settings would now be:

29.1 Development being able to protrude into the base of the viewshafts at the beginning of the viewshaft and blocking the viewshaft in full e.g. underneath the Cable Car; and

29.2 Development within the viewshaft itself near focal or context elements that could block the view of particular focal or context elements i.e. development under St Gerard's Monastery or on Point Jerningham that could block the view of Point Halswell.

30 These possible outcomes are clearly inconsistent with those intended to be achieved by viewshaft provisions.

31 The notified PDP provisions addressed these scenarios by:

31.1 Including the provisions in a standalone 'Viewshafts' chapter, not limited to specific zones; and

31.2 Applying the provisions and clearly applying the mapped extent of the Viewshaft Overlay beyond just the CCZ and WFZ to other zones to which the overlay starts, traverses and terminates within.

32 However, I agree with Mr Winchester that it may not have been appreciated at the time of notification of the PDP how extensively the provisions would require resource consent, particularly for new buildings and additions and alterations to buildings within viewshafts irrespective of their scale (particularly in the residential zones).

33 The effect of this would be such that essentially all works to residential buildings within viewshafts would require resource consent, even those that could have no plausible effect on the protection of views. Clearly this is not efficient nor effective.

34 The Council submission on the notified viewshaft chapter sought to address this.

35 It did so by seeking that a 'Viewshaft Control Area' be included in Kelburn. The intent of the Viewshaft Control Area is identified within Wellington City Council (WCC) submission points 266.89, 266.93 and 266.37¹ which specifically seek:

- *Addition of the following sentence to the end of the last paragraph in the introduction: 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;***

¹ I have boldened words for emphasis.

- *Amendment of VIEW-R2.2 (Construction of new buildings and structures, and alterations and additions to existing buildings, within a viewshaft), to add a zones column for the Restricted Discretionary rule category as follows: City Centre Zone Waterfront Zone **Viewshaft Control Area**;*
- *Amendment of the mapping of the viewshafts 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); and***
- *Amendment of the ePlan by adding **a new specific control mapping layer ‘Viewshaft Control Area’** that dissects through TEDZ (Tertiary Education Zone), MRZ (Medium Density Residential Zone) and HRZ (High Density Residential Zone) **properties under Viewshafts 13-15.***

36 I therefore consider it to be clear that it was intended that the notified PDP provisions apply beyond the CCZ and WFZ (including to residential zones), and in addition were intended to have particular application to properties underneath the base of viewshafts 13-15 (in Kelburn, Mount Victoria and Oriental Bay) to ensure that they would not be able to build into and intrude viewshafts from the cable car lookout.

37 As I noted in paragraph 50 of my Viewshaft s42A report, this would assist in alleviating any concerns regarding the height of buildings in these areas encroaching into the base of Viewshafts 13, 14 and 15, without being subject to the rules and standards in the Viewshaft chapter.

38 Furthermore, a number of submitters as well as Mr Winchester himself identified that the notified provisions applied to the residential zones and had significant effect.

- 38.1 Mr Winchester notes the “viewshaft provisions as notified apply not only in the City Centre and Waterfront Zones (as is the case with the ODP), but also in multiple zones within the viewshaft overlays”. This acknowledges that the provisions did not expressly exclude application to other zones with no zone boxes in the rules, and with the overlay mapping being shown to dissect other zones.
- 38.2 As detailed in page 8 of my Right of Reply I consider it to be clear that through submission points some submitters have assumed that the notified PDP Viewshaft Chapter and Viewshaft Overlay ePlan mapping and Schedule 5 apply beyond just the CCZ and WFZ [David Walmsley ((229.1 and 229.2); Jonathan Markwick (490.30)];
- 38.3 Some submitters sought that additional viewshafts be added which traverse Residentially Zoned areas, for example TRAI’s further submission to “allow/seek that the concept of viewshafts to Te Ahumairangi Hill also be considered from both the Hobson Street and Portland residential areas.” (FS69.4 & FS69.5). Historic Places Wellington (HPW) also sought additional viewshafts into Oriental Bay (182.54 & 182.52); and
- 38.4 Kāinga Ora Homes and Communities (391.769) sought to create and identify a viewshaft managing significant public views to the monastery and the maunga (Mt Victoria) as an alternative to MRZ-PREC03. This indicates the use of a viewshaft overlay to manage development heights.

39 Given this, I do not agree with Mr Winchester that there are significant natural justice and fairness issues to consider with respect to the intent and effect of the notified provisions.

Section 32 Report

- 40 Paragraphs 80-84 of Mr Winchester’s legal opinion discusses the Section 32 report for the Viewshaft Chapter and Schedule.
- 41 Mr Winchester considers that it is *“apparent that the Section 32 report does not regard the IPI/PDP Viewshaft approach as being significantly different in intention and effect from the comparable approach in the ODP”* and lists examples.
- 42 On one hand Mr Winchester considers the exemplar statements and assessments are *“incorrect or materially inaccurate when compared against the actual interpretation and effect of the notified viewshaft provisions”* of which he then notes *“however that section 7.0 Overview of the Proposal does accurately and expressly identify the regulatory effect of the rules which is that they restrict the construction, alteration or addition or building and structures within the identified views”*.
- 43 However, Mr Winchester ultimately concludes that the Section 32 from an *“interpretation perspective provides little to no assistance”* and *“that the provisions on their face do not demonstrate the level of clarity nor certainty that has been asserted, compared to their actual effect.”*
- 44 I agree with Mr Winchester that it would have been beneficial that the S32 report include more analysis on the extent and effect of the notified provisions applying more broadly than those in the ODP. I note that page 23 of the report notes that *“some of the viewshafts end in Residential Zones.”*
- 45 However, the information available to submitters and the Panel now includes:
- 45.1 Detailed S32AA analysis in my S42A report and supplementary evidence; and

45.2 Extensive qualifying matter analysis contained within Appendix 4 and 5 of my Right of Reply. This provides an assessment against section 77J(3), 77J(4) and 77L of the RMA for each viewshaft and the impacts on development capacity.

SUBSEQUENT CHANGES RECOMMENDED IN REBUTTAL, ADDENDUM AND RIGHT OF REPLY TO THE VIEWSHAFT CHAPTER AND SCHEDULE 5

46 In this section I set out chronologically the changes I recommended in rebuttal, addendum and right of reply to the Viewshaft Chapter and Schedule 5.

47 This is intended to support the Panel to understand the order and sequence in which I recommended changes to the provisions.

48 As it eventuated, not all of these changes had submission scope to be made. I have identified at paragraphs 13 and 14 whether there is scope for these changes.

Section 42A Report recommendations²

49 With respect to the Council's submission, agreed with its intent to manage a particular group of properties in Kelburn which could risk the integrity of the viewshaft, but not the method by which it sought to do so.

50 I did not recommend a 'Viewshaft Control Area' as sought by the Council at paragraph 51 of that report and instead considered the following amendments to be a more efficient way to achieve the intent of the submission:

² Shown in red in my Right of Reply Appendix A [Viewshaft Chapter](#) and [SCHED5](#) changes.

- 50.1 Including reference to the Viewshaft Overlay mapping within the Viewshaft rule framework to directly link the provisions to the mapped overlay;
 - 50.2 Updating the extent of the Viewshaft Overlay mapping to match that described within Schedule 5;
 - 50.3 Updating the Viewshaft Chapter introduction to reflect that the provisions apply to a wider range of zones than the notified introduction indicates; and
 - 50.4 Changes recommended in section 6.9 and 7.0 of my S42A report to the extent and termination point of the Viewshaft Overlay Mapping for identified viewshafts.
- 51 By adding reference to 'All Zones' in View-R2 rather than CCZ, WFZ and the 'Viewshaft Control Area', and explicitly referring to the 'Viewshaft Overlay' in the rule heading to tie the Viewshaft Chapter rule framework to the Viewshaft Overlay, I considered that this would prevent the development of properties at the base of the viewshaft from protruding into the viewshaft overlay .
- 52 Mapping changes were recommended in my S42A to ensure that the Viewshaft Overlay mapping matched the descriptions and images, including:
- 52.1 Amending PDP-VS1 to align with the detail in SCHED5;
 - 52.2 Extending PDP-VS2 to Glasgow Wharf;
 - 52.3 Extending PDP-VS3, PDP-VS6 and PDP-VS10 to Oriental Parade;

- 52.4 Amending PDP-VS8 to align with SCHED5 frame detail and extending it to Oriental Bay;
- 52.5 Amending PDP-VS9 to reflect the detail in SCHED5 more accurately;
- 52.6 Amending PDP-VS10 - PDP-VS12 to correct the viewshaft margins in accordance with SCHED5 detail and to extend PDP-VS11 – PDP-VS12 to include St Gerard’s Monastery;
- 52.7 Amending PDP-VS13 and PDP-VS15 to correct the viewshaft margins in accordance with SCHED5 detail; and
- 52.8 Amending PDP-VS14’s termination point to Oriental Parade.
- 53 My recommendations included clipping back viewshafts to road edges to reduce the impact of these viewshafts upon residentially zoned properties where appropriate. For example, clipping back PDP-VS14 from properties in Roseneath to Oriental Parade.
- 54 My amendments were in partial response to WCC submission point 266.37, which sought amendments to avoid impacts on the development potential of residentially zoned properties.
- 55 As part of my recommendations, I also made minor amendments to Schedule 5 to provide more clarity regarding the viewshaft’s description, or in the case of PDP-VS5, update its photo to reflect the view had changed (the viewshaft previously showed construction works).

Rebuttal amendments³

56 Post S42A, while I had provided amendments to the rule framework to give effect to the Council's submission to manage development effects from properties under viewshafts PDP-VS13-15, I realised that my S42A amendments only gave partial relief to the Council's submission and I still needed to '*provide clarity and certainty around the rule framework*' 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)*'. Consequently, I recommended the following amendments:

56.1 That rule VIEW-R2 be amended (in replacement of my recommendation at HS3-VIEW-Rec9) to enable properties within the HRZ and MRZ to be able to build to their respective zones maximum building heights as a Permitted Activity within the Viewshaft Overlay, with resource consent required for development into the Viewshaft Overlay above the respective maximum buildings heights (11m - MRZ-S1 and HRZ-S1, and 14m MRZ-S2). This excluded the HRZ-S2 maximum building height of 21m.

57 The intent behind my S42A and ROR amendments was to give full relief to the Council's submission such that except for those specific properties in Kelburn, development in the residential zones would (more generally) be able to achieve the permitted heights in the zones (11m of the MDRS in the MRZ, and 14m in the HRZ).

58 I considered that this was a appropriate balance between protecting viewshafts from being intruded into whilst enabling sufficient development capacity within respective zones. Development within

³ Shown in green in my Right of Reply Appendix A [Viewshaft Chapter](#) and [SCHED5](#) changes.

these limits would be permitted, or otherwise Restricted Discretionary or Discretionary depending on the categorisation of the viewshafts aligning with the notified Viewshaft rules.

59 In absence of this amendment, the broad, all-encompassing drafting of the notified provisions had the unintentional consequence of disabling the MDRS for all residentially zoned properties within the viewshafts.

60 I also recommended that the mapped extent of the majority of the viewshafts needed to be amended to include all their respective focal elements as detailed in Schedule 5. This would ensure all viewshafts extend to their focal elements (except for Viewshaft PDP-VS171), thus making the mapped extent their original ODP termination point.

61 In paragraphs 49-50 of my rebuttal evidence, I identified minor technical errors, as well as desirable inconsequential changes to enhance clarity within the Viewshaft provisions, including that:

61.1 The term 'iconic and landmark' and 'local' viewshafts be replaced with the terms 'Category 1 Viewshafts' and 'Category 2 Viewshafts' in the Viewshaft Chapter and SCHED5 and associated introduction text and definitions be added;

61.2 Minor changes be made to the 'iconic and landmark', 'panoramic view' and 'viewshaft' definitions;

61.3 An amendment be made to VIEW-O1, VIEW-P1 and VIEW-P2 to reflect the change to 'categories';

61.4 Corrections be made to change references to 'view' with 'viewshaft'; and

61.5 The categorisation of viewshafts 11 and 12 in View-R2.2 and VIEW-S1 be amended.

Addendum amendments⁴

62 As detailed in my Hearing Stream 3 tabled summary⁵, while I sought to enable development up to 14m within the viewshaft focal areas, what I had not anticipated was that this may unintentionally enable development to intrude into the base of the Cable Car viewshafts within close proximity to the viewing platform. This was an unforeseen consequence of the position I landed on based on the Council's submission.

63 I considered that 11m and 14m height limits in MRZ for Kelburn properties underneath the cable car needed to be modelled to check whether intrusions could occur, particularly for Viewshaft 13 where residential properties are much closer to the base. To assist with the assessment, Council has built a 3D Viewshaft viewer, which has modelled the notified PDP maximum building heights within the MRZ and HRZ. The viewer showed that at 14m in the MRZ there were intrusions into PDP-VS13-PDP-VS15.

64 As such, I have made a change via addendum changes to VIEW-R2.1 so that MRZ properties in Kelburn within the Viewshaft Overlay for Viewshafts 13, 14 and 15 are excluded from being able to build to 14m as a permitted activity under the viewshaft chapter. Instead they would require a Discretionary resource consent, but could still build to the MDRS maximum height of 11m.

⁴ Shown in orange in my Right of Reply Appendix A [Viewshaft Chapter](#) and [SCHED5](#) changes.

⁵ Wellington City Council Proposed District Plan, Hearing Stream 3, [Right of reply – Appendix 8 – Viewshafts Anna Stevens draft HS3 introduction notes](#), 2023

65 In my view, this additional restriction for Kelburn properties is justified, noting the different treatment for properties within Roseneath, for example, which are near the focal area within the end of the viewshaft at a considerable distance from the viewing platform.

66 I also proposed minor amendments to the chapter to help with clarity and comprehension of provisions.

Right of Reply amendments⁶

67 I recommended changes to:

67.1 Amend VIEW-R2.2 to enable development up to the notified PDP HRZ-S2 maximum height limits of 21m within viewshafts as a permitted activity, except for properties within the Viewshaft Overlays for PDP-VS13-PDP through VS15 in Kelburn;

67.2 Clarify in VIEW-R2.3 that VIEW-S1 related to Category 2 Viewshaft Protection;

67.3 Amend VIEW-R2.3 by removing the listed viewshafts and instead referring to where compliance cannot be achieved with VIEW-S1 Category 2 Viewshaft Protection;

67.4 Add a note at the top of SCHED5 replicating that within ODP Chapter 3 District Plan General Provisions Chapter at 3.2.2.17, relating to where a development intrudes upon an identified viewshaft;

⁶ Shown in purple in my Right of Reply Appendix A [Viewshaft Chapter](#) and [SCHED5](#) changes.

- 67.5 Amend the photos of VS3 and VS5 which had construction occurring at the time obscuring the viewshafts;
- 67.6 Correct an error in the left and right margins of PDP-VS6; and
- 67.7 Amend PDP-VS9's photo within SCHED5 to reflect the view when street flags are not intruding upon the right margin as requested by the IHP.

SCOPE FOR CHANGES MADE SUBSEQUENT TO THE NOTIFIED PDP, RISKS OF CHANGES NOT BEING IMPLEMENTED, EFFECT OF CHANGES AND NATURAL JUSTICE

Brief summary of scope identified by Mr Winchester

- 68 Mr Winchester in paragraphs 95-120 of his legal opinion details his conclusions on whether the subsequent changes made to the notified PDP Viewshaft chapter are within or outside the scope of the submissions on the chapter and schedule.
- 69 Mr Winchester considers that there is scope for some amendments to changes to the introduction, but not all.
- 70 He notes that the effect of those without scope are largely neutral, inoffensive and non-material changes.
- 71 I note Mr Winchester did not provide an assessment of scope considerations with regard to the Viewshaft Overlay mapping or Schedule 5 changes I have recommended.

Summary of my scope assessment following Mr Winchester's review:

- 72 I have compared the notified PDP provisions, the collective suite of changes I have recommended and Mr Winchester's assessment of scope.
- 73 I have also undertaken my own assessment of the rationale for key changes, whether there is scope, the effect of the change, natural justice concerns and the risk if the suggested amendment is not actioned.
- 74 I have provided a summary of this in Table 1.

Change	Scope	Effect of change	Natural justice concerns?	Risk if not implemented
<p>Application of the Viewshaft provisions other zones</p>	<p>Yes, there is submission scope.</p> <ul style="list-style-type: none"> • WCC 266.89 - <i>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.</i> • WCC -266.93 - <i>Amend VIEW-R2.2 ... to add a zones column ... as follows: City Centre Zone Waterfront Zone Viewshaft Control Area</i> • WCC 266.37 - <i>Amend the ePlan by adding a new specific control mapping layer 'Viewshaft Control Area' that dissects through TEDZ (Tertiary Education Zone), MRZ (Medium Density Residential Zone) and HRZ (High Density Residential Zone) properties under Viewshafts 13-15.</i> 	<p>I note this is not a change per se because as Mr Winchester notes the notified PDP provisions apply beyond the WFZ and CCZ.</p>	<p>None</p>	<p>High – if Viewshaft provisions do not apply in residential zones then there is a real risk of development intruding into the base of the viewshafts or blocking focal elements.</p>

Change	Scope	Effect of change	Natural justice concerns?	Risk if not implemented
	<ul style="list-style-type: none"> <li data-bbox="504 279 1025 943">• David Walmsley 229.1 - <i>Considers that the site at 1 Carlton Gore Road is at the very end of the view shaft and that any development within this residential area will have no effect on the views out from the Cable Car location to the hill... Considers that as the viewshafts did not apply to the residential zones in the ODP this cannot be the case for the residential zones. Considers there is very little evidence to support the fact that view shafts are a qualifying matter for the property, or any properties subject to the MDRS.</i> <li data-bbox="504 965 1025 1193">• Jonathan Markwick 490.30 - <i>Considers that six storey high density residential buildings should be allowed in all of Kelburn (with a viewshaft protection from the top of the cable car).</i> 			
Restricting development	Yes, there is submission scope.	The effect of this change is relatively moderate as	Relatively minor given the Viewshaft	High – if Viewshaft provisions do not apply to Kelburn sites then

Change	Scope	Effect of change	Natural justice concerns?	Risk if not implemented
<p>within Kelburn to manage potential viewshaft intrusions</p>	<p>WCC 266.89 - <i>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.</i></p> <ul style="list-style-type: none"> • WCC -266.93 - <i>Amend VIEW-R2.2 ... to add a zones column ... as follows: City Centre Zone Waterfront Zone Viewshaft Control Area</i> • WCC 266.37 - <i>Amend the ePlan by adding a new specific control mapping layer 'Viewshaft Control Area' that dissects through TEDZ (Tertiary Education Zone), MRZ (Medium Density Residential Zone) and HRZ (High Density Residential Zone) properties under Viewshafts 13-15.</i> • Jonathan Markwick 490.30 - <i>Considers that six storey high density residential buildings</i> 	<p>impacts on development capacity are mitigated by enabling MDRS development up to 11m.</p>	<p>Overlays for PDP-VS13-15 are shown running through these properties and MDRS is enabled.</p>	<p>there is a real risk of development intruding into the base of the viewshafts or blocking focal elements. Particularly given how close residentially zoned land/developable land is to the Cable Car viewing platform.</p>

Change	Scope	Effect of change	Natural justice concerns?	Risk if not implemented
	<p><i>should be allowed in all of Kelburn (with a viewshaft protection from the top of the cable car).</i></p>			
<p>Restricting development in MRZ and HRZ areas outside of Kelburn (Thorndon, Mt Victoria, Oriental Bay and Roseneath) beyond the maximum height limits</p>	<p>Yes, there is submission scope.</p> <ul style="list-style-type: none"> WCC 266.89 - <i>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 <u>development that impinges on the specific parameters of each view set out in SCHED5.</u></i> WCC 266.37 - <i>Considers the mapping of the viewshafts needs to be amended to provide <u>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).</u></i> 	<p>Whilst I note the PDP provisions extend beyond the CCZ and WFZ, the key change here is the management of development within VIEW-R2.2 seeking to balance viewshaft protection with enabling development. Whilst a resource consent would be needed under the viewshaft provisions for exceedances above the maximum heights for the zone, I note:</p> <p>a. Consent under the respective zone</p>	<p>Relatively minor given the Viewshaft Overlays for PDP-VS13-15 are shown running through some of these properties already and MDRS and development up to max. height limit is enabled.</p>	<p>High – If these carve-outs to enable MDRS and greater development heights are not enabled then the provisions as notified would require a resource consent under the viewshaft chapter for any addition, alteration or construction of a building or structure which is costly, onerous and not what was intended. I note that WCC 266.37 seeks 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). This in my mind provides clear scope for consideration.</p>

Change	Scope	Effect of change	Natural justice concerns?	Risk if not implemented
	<ul style="list-style-type: none"> • WCC 266.37 - <i>Amend the ePlan by adding a new specific control mapping layer 'Viewshaft Control Area' that dissects through TEDZ (Tertiary Education Zone), MRZ (Medium Density Residential Zone) and HRZ (High Density Residential Zone) properties under Viewshafts 13-15.</i> • Jonathan Markwick 490.30 - <i>Considers that six storey high density residential buildings should be allowed in all of Kelburn (with a viewshaft protection from the top of the cable car).</i> 	<p>would be needed regardless; and</p> <p>b. These changes would allow MDRS and higher development to max. height limits.</p>		
<p>Mapping being extended to cover focal elements and context elements</p>	<p>Yes, there is submission scope for areas within PDP-VS13-PDP-VS15 and some of the focal elements of PDP-VS8.</p> <p>There is no submission scope for other viewshafts including those towards Te Ahumairangi.</p>	<p>Given there is scope for PDP-VS13-15, I will comment on extensions to other viewshafts instead. I consider the effect of extending these viewshaft overlays to be minor when paired with</p>	<p>Moderate to high given the notified PDP mapping does not show the viewshafts going across affected properties.</p>	<p>For Thorndon – moderate to high – Given there would be no ability to manage intrusions into the view of Te Ahumairangi, which is a context element in PDP-VS1 and PDP-VS4. Whilst development capacity would be impacted if it did extend, the</p>

Change	Scope	Effect of change	Natural justice concerns?	Risk if not implemented
	<ul style="list-style-type: none"> • WCC 266.89 - <i>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 <u>development that impinges on the specific parameters of each view set out in SCHED5.</u></i> • WCC 266.37 - <i>Considers the mapping of the viewshafts needs to be amended to provide <u>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).</u></i> • WCC 266.37 - <i>Amend the ePlan by adding a new specific control mapping layer <u>'Viewshaft Control Area' that dissects through TEDZ (Tertiary Education Zone), MRZ (Medium Density Residential Zone)</u></i> 	<p>my change to enable MDRS and development to the maximum building height. The effect becomes moderate to high if this is not allowed as it would impact development capacity in Thorndon, Roseneath, Oriental Bay and Mt Victoria.</p> <p>However, an important point to note is that Schedule 5 both shows and describes these viewshafts extending into these areas.</p>		<p>impact is relatively low given the restricted extent of development given the natural hazard overlays that affect this area.</p> <p>For Oriental Bay, Roseneath and Mt Victoria – moderate – in that there is a risk that focal elements could be built out without the Viewshaft Overlay. However, the effect on development capacity without my amendments would be substantial.</p>

Change	Scope	Effect of change	Natural justice concerns?	Risk if not implemented
	<p>and HRZ (High Density Residential Zone) properties under Viewshafts 13-15.</p> <ul style="list-style-type: none"> WCC 266.7 - <i>Considers the mapped viewshaft 8 (Panama Street) 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 (Viewshafts). Seeks to extend the VS8 (Panama Street) in the Planning Maps to be an even fan (i.e.</i> 			

Change	Scope	Effect of change	Natural justice concerns?	Risk if not implemented
	<i>remove cutout from Intercontinental Hotel) over Jervois Quay and Queens Wharf to the water's edge.</i>			
Change in categorisation terminology	There is no submission scope	The effect of this change is neutral. This change is inoffensive and seeks to enable greater clarity and comprehension than the notified provisions by changing category names to simple Category 1 and Category 2 references.	None – inoffensive and minor viewshaft category name change to aid clarity.	Minor to moderate – the only risk is that it may not be clear at face value that that Iconic and landmark viewshafts hold more public significance, and the ‘local’ category is unclear.
Re-classification of PDP-VS11 and PDP-VS12	There is no submission scope	This change is substantial noting it changes the activity status of resource consents for any intrusions into these viewshafts from Restricted Discretionary	Moderate – High for properties within these viewshafts.	Minor – the only concern is that this potentially highlights inconsistency with PDP-VS15 treatment in comparison, noting PDP-VS11-PDP-VS12 share the same focal element of St Gerard's Monastery (an iconic building) with PDP-VS15.

Change	Scope	Effect of change	Natural justice concerns?	Risk if not implemented
		to Discretionary Activity Status.		
New definitions	<p>There is no submission scope except for inclusion of a Viewshaft Overlay definition</p> <ul style="list-style-type: none"> WCC 266.89 and 266.37. 	<p>Minor - this change provides necessary clarity and comprehension of key viewshaft terms referenced within the Viewshaft Chapter and SCHED 5.</p>	<p>Minor – a lot of these definitions are contained the ODP.</p>	<p>Moderate – High – the IHP, both via the hearing and Minute 28, identified that the Viewshaft chapter is complex and technical. These definitions are fundamental to providing better clarity and comprehension for plan users and consent planners.</p>
Updated photos in SCHED5	<p>There is no submission scope</p>	<p>Minor – Moderate in terms of positive effects. These views show the true/current viewshaft making them more accurate when it comes to assessment and impacts on the margins in particular.</p>	<p>None</p>	<p>Moderate – The risk of not including these new (professionally captured) photos is that the ones currently in SCHED 5 do not accurately reflect the views seen within the viewshafts.</p>

Change	Scope	Effect of change	Natural justice concerns?	Risk if not implemented
<p>Reintroduce ODP-VS21 from the Carillon</p>	<p>There is no submission scope to reintroduce ODP-VS21 from the Carillon in an amended location as proposed.</p> <p>There is submission scope to reintroduce ODP-VS1 from the Carillon in its original location.</p> <p>(Heritage New Zealand Pouhere Taonga 70.74, and other submitters).</p>	<p>Minor to Moderate – ODP VS21 was compromised so could not be reinstated as included in the ODP.</p> <p>The recommended revised viewshaft would preserve nationally significant views from the Carillon as well as assist CCZ-S6 sunlight control to manage shading impacts upon Pukeahu National War Memorial. However, development was enabled up to the notified CCZ-S1 maximum height limit</p>	<p>No. Original submissions were received on this matter.</p>	<p>Minor to Moderate – If the revised viewshaft or ODP is not introduced there is a risk that views from the Carillon will over time become blocked out.</p>

Change	Scope	Effect of change	Natural justice concerns?	Risk if not implemented
		for Te Aro. So the effect of the proposed change would be less substantial with more impact felt for blocks adjacent to the park.		
<p>Changes to the Viewshaft Schedule Detail</p>	<p>Yes, there is submission scope in Eldin Family Trust 287.9, 287.10, 287.11 in relation to the SCHED 5 amendments to VS1 and VS4 as follows:</p> <ul style="list-style-type: none"> • 287.9 Retain viewshaft VS1 (The Beehive) with minor amendments to the descriptions of the viewshaft. • 287.10 Considers that amendments should be made to the Descriptions of VS1 to place greater recognition on the international significance of the Beehive as well as the contributing role of the Te Ahumairangi Hill (Tinakori Hill) backdrop. 	<p>Minor - the changes (those within scope and those outside-of-scope) make necessary corrections to aid the clarity and comprehension of each viewshaft, whether this is to correct location or viewshaft margin detail or other minor changes. It also helps planners, surveyors and architects</p>	<p>None. These changes are minor and all are intended to provide more clarity for plan users by correcting details, or providing better location details or newer viewshaft photos for comprehension, and up to date information on these viewshafts.</p>	<p>High – these amendments correct errors in schedule details e.g. accurate margin descriptions, more information about context elements, and new photos of viewshafts whose views had changed since original PDP photos were taken (e.g. VS3 and VS5 where the PDP photo showed construction intrusion which has now gone and buildings framing the views have been completed. This information is essential to assist surveyors,</p>

Change	Scope	Effect of change	Natural justice concerns?	Risk if not implemented
	<ul style="list-style-type: none"> • 287.10 Amend the description of the beehive as follows... • 287.11 Retain Viewshaft VS4 (The Beehive and The Cenotaph – Whitmore Street) with minor amendments to the descriptions of the viewshaft • 287.12 Considers that amendments should be made to the Descriptions of VS4 to place greater recognition on the international significance of the Beehive as well as the contributing role of the Te Ahumairangi Hill (Tinakori Hill) backdrop. • 287.12 Amend the description of the beehive as follows... <p>There is no scope for the other amendments made in SCHED 5.</p>	etc. assess the viewshafts.	No person or party is disadvantaged by any of these changes.	architects and planners assess the extent, margins and locations of viewshafts (alongside the mapping) to ensure development avoids or mitigates intrusions into the viewshafts.
Amendments to include reference to	There is no submission scope	Minor - this change provides necessary clarity and	None – this language is used in the ODP and case	Moderate to High - I seek to justify the use of the word 'intrusion' in paragraphs 87-88 of

Change	Scope	Effect of change	Natural justice concerns?	Risk if not implemented
'intrusion/intrusions'		comprehension of terminology, and is a carry-over of the ODP approach.	law. This terminology is relatively well understood due to its incorporation in the ODP.	my Right of Reply. Given the changes I make to align with existing case law that have the support of Mr Ballinger (legal counsel to Eldin Family Trust and WCCT), I consider it is an appropriate candidate for the IHP to consider as an out-of-scope recommendation.
Deletion of PDP-VS18 from rule framework and reversion back to ODP approach to Panoramic View	There is no submission scope	High – The effect of retaining the ODP panoramic view as the PDP Viewshaft 18 and its reference in rules is significant – it will mean that consent is needed for any development within the whole photo (noting no restricted frame is given) for	Minor if the panoramic view is still addressed and the ODP policy approach is incorporated into the PDP version. No one anticipated or intended for this to	High – this Panoramic view from the Cable Car was never intended to be a viewshaft. It was an inadvertent error that led to the ODP Panoramic View becoming a viewshaft in the PDP. Instead, the ODP approach should have been incorporated with no rules associated with it. Instead it should be a policy and townscape consideration. If it was not rolled

Change	Scope	Effect of change	Natural justice concerns?	Risk if not implemented
		<p>viewshaft intrusion.</p> <p>Removing it will have no effect because under the ODP it is not a viewshaft nor subject to rules (just a policy).</p>	<p>be a viewshaft with subsequent rules.</p>	<p>over from the ODP it should be deleted based on the perverse outcomes it will result in i.e. not giving effect to the NPS-UD in terms of enabling increased development capacity.</p>

RESPONSE TO LEGAL MEMORANDUMS

Eldin Family Trust and WCCT

75 Mr Ballinger has provided memorandums of counsel for Eldin Family Trust and WCCT on Minute 28. I agree with Mr Ballinger's commentary and conclusions in sections (a) – Geographical application of the viewshaft provisions as notified and (b) - Clarificatory amendments are required. I also agree with Mr Ballinger where he does not agree with or support certain conclusions of Mr Winchester with regard to geographical application, intent and clarification changes.

76 However, I do not support the need for a variation, which I acknowledge Mr Ballinger identifies as a last resort in section (c) of his Memorandum of Counsel. I do not support doing a standalone viewshaft variation because it would mean that there would be no viewshaft protection for a while unless the Council applied for it have immediate legal effect. Consequently people could develop, seek certificates of compliance to guarantee development and thus potentially intrude upon the integrity of viewshafts and weakening the merit of including a viewshaft, when development enabled by a certificate of compliance could be realised.

77 I note that his Memorandum of Counsel for WCCT simply supports the position taken by the Trustees of the Eldin Family Trust in relation to the viewshaft issues.

Kāinga Ora Homes and Communities

78 Ms Caldwell has provided a memorandum of Counsel on behalf of Kāinga Ora on Minutes 28 and 32. Kāinga Ora highlights that PDP-VS18

remains unmapped and considers it *“important that the extent of all viewshafts be mapped in order to ascertain the full impact of the viewshafts.”*

79 Furthermore, Kāinga Ora *“is concerned that Viewshaft 18 may impact on Council's ability to meet its development capacity requirements under the NPS-UD and the Amendment Act. However, unless this is in the PDP maps, it is not possible to understand the potential restrictions that Viewshaft 18 may have upon development otherwise enabled by the underlying zone.”* Kāinga Ora seeks that the Council be directed by the Panel to map Viewshaft 18, and to be provided with its response to Minute 28 by 13 September 2023. Kāinga Ora also considers it important that the Council outlines any development capacity constraints that the Viewshaft may have.

80 I have provided a response to the panel’s request to advise my view as to the *“area(s) within which activities are regulated by the Viewshaft Chapter as it relates to Viewshaft 18, and the reasons for that view”* in paragraphs 17-22 and 84-98. I note the panel has not issued a directive for me to provide mapping or to ‘outline development capacity’ as sought by Kāinga Ora.

81 Regardless, I asked that Viewshaft 18 be mapped and shown in a publicly accessible viewer in both 2D and 3D for the IHP, submitters and general public’s viewing. The link for this viewer is included in paragraph 22 of this memo.

82 However, I have recommended at paragraphs 17-22 and 96 that this viewshaft be deleted.

83 I note that in Hearing Stream 3 Kāinga Ora legal counsel verbally acknowledged that they are no longer seeking the decision sought in their submission point on Viewshafts.

ANSWERS TO QUESTIONS POSED BY THE PANEL IN MINUTE 28

Viewshaft 18 ODP settings and notified PDP error

“Advice as to the area(s) within which activities are regulated by the Viewshaft Chapter as it relates to Viewshaft 18, and the reasons for that view”

- 84 Appendix 10 of the ODP contains a picture of the view from the cable car as shown in Figure 1 below. Figure 1 also shows the Panoramic View. There is no associated mapping in the ODP appendix or ePlan of this Panoramic View, and unlike the ODP viewshafts shown in Appendix 11 there is no blurring of the Panoramic View photo to show a frame or margins of a particular aspect of the view.

APPENDIX 10: PANORAMIC VIEW



VIEWPOINT LOCATION:

Televiwer, to the north of the Cable Car station, popular because of its accessibility from Wellington's business district via the Cable Car and because of its fantastic views.
Height of ground: 120.7m
Eye level: 1.5m
Viewpoint: 122.2m (above mean sea level)



FOCAL ELEMENTS:

Point Jerningham and Point Halswell, Somes Island (Matiu) and Distant hills

CONTINUUM ELEMENTS:

Distant hills (Rimutaka and Orongorongo ranges), Eastbourne harbour edge, Mount Victoria and Town Belt

EXPLANATION:

Only proposals which exceed the maximum heights proposed in Map 32 and project into the Panoramic View are subject to consideration for view protection.

Figure 1: Showing ODP Central Area Appendix 10: Panoramic View detail.

- 85 The panoramic view differs in application and intent from the suite of ODP Appendix 11 Viewshafts.
- 86 Whereas the ODP Central Area chapter contains a standard and rule framework with regards to mapped *viewshafts* and requires consent

where a development proposes to intrude within it, the panoramic view is only addressed through policy direction.

87 The effect of these provisions is that a resource consent application for exceeding any height limits in Map 32 of the ODP requires consideration of the protection of the panoramic view.

88 To give effect to the National Planning Standards in the PDP:

88.1 The viewshaft provisions were removed from the Central Area (PDP CCZ) and placed in a standalone viewshaft chapter;

88.2 The ODP viewshaft appendices were transferred into a schedule within the PDP; and

88.3 Viewshafts were mapped within the ePlan and represented by an overlay tool as directed by the standards.

89 In doing this, the Panoramic View was apparently and unfortunately carried into the PDP as a viewshaft through inadvertence.

90 VS18 was categorised as an iconic and landmark view. These views are primarily considered by VIEW-P3 - *Avoiding intrusions into iconic and landmark views*. VS 18 is hooked to the rule framework through VIEW-R2 - *Construction of new buildings and structures, and alterations and additions to existing buildings, within a viewshaft*. Development that intrudes into VS 18 is a Discretionary activity under VIEW-R2.2.

Viewshaft 18 mapped extent shown in Viewshaft Viewer

91 Council's PDP Viewshafts and height control areas viewer modelled Viewshaft 18 in 2D. Figures 2-5 below shows the mapped extent of Viewshaft 18 in two forms, one being the panoramic view full extent

and the other where viewshaft 18's mapped extent is restricted to the ridgeline.



Figure 2: Showing Viewshaft 18 mapped but with extent restricted to the Mount Victoria Ridgeline.



Figure 3: Showing Viewshaft 18 mapped to full Panoramic View extent (within WCC boundaries).



Figure 4: Showing Viewshaft 18 mapped to full Panoramic View extent (within WCC boundaries) from viewing platform.



Figure 5: Showing Viewshaft 18 mapped to full Panoramic View extent (within WCC boundaries) from viewing platform with 3D Buildings shown within the view.

92 The mapping in Figures 2-5 above reflects both the full extent of viewshaft 18 (shown in white layer) and also what it could look like if it was restricted to the Mount Victoria ridgeline (hatch layer). Beyond the Mount Victoria ridgeline the other focal element of 'distant hills' and continuum elements of 'Distant hills (Remutaka and Orongorongo Ranges) and 'Eastbourne harbour edge' are not within Council's jurisdiction. I also note that the areas within WCC's jurisdiction beyond

the ridgeline i.e. Hataitai, Miramar etc. are not visible so do not need to be subject to the Viewshaft overlay and viewshaft provisions.

Justification for removal of Viewshaft 18

- 93 The regulatory burden of PDP-VS18 is drastically different when compared to the ODP viewshaft requirements, as well as in comparison to other PDP viewshafts whose application is limited to smaller framed extents within Schedule 5. Due to PDP-VS18's extent applying to the whole picture, and not a smaller frame, it captures a much larger number of properties than other viewshafts do. In addition, unlike other views from the Cable Car (VS13-15), because its extent is not limited, it captures any building, irrespective of whether the building is above a certain height.
- 94 It would also apply beyond the CCZ, as the picture captures properties in the MRZ, HRZ, OSZ and more across Kelburn, Mt Victoria, Roseneath, Oriental Parade and more. The ODP intent of this panoramic view is only for it to be a consideration when developments exceed the Central Area maximum height limits. This PDP application affects buildings below the PDP height limits
- 95 I consider that it was an inadvertent error to carry across this viewshaft given how significant its effects are. In my view, the fact that the viewshaft was not mapped with a viewshaft overlay in the PDP ePlan, and that no submitter has picked this up as part of submissions on the PDP Viewshaft Chapter and Schedule, reinforces that this was an inadvertent error, and was never intended to have the effect it did.
- 96 In my view, Viewshaft 18 needs to be deleted from both the Viewshaft Chapter and Schedule 5. The viewshaft is not in keeping with the strategic direction of the Plan, nor does it give effect to direction in the NPS-UD. It contravenes Policy 3(a)'s direction for the CCZ to enable building heights and density of urban form to realise as much

development capacity as possible. In association with this, it is now directly at odds with my recommendation as CCZ Council officer to enable unlimited building heights.

97 If it is not deleted I consider it will have significant impact on the enabled development capacity of properties contained within the view in the CCZ, MRZ and HRZ in particular.

98 I do not consider there to be a natural justice concern with deleting the viewshaft as its application in the PDP does not align with how it is known to work in the ODP. Users of the Plan, in my opinion, would not have anticipated it to be carried through as a viewshaft. If anything I consider it to be a natural justice error that it was carried through in the first place, with the effect of including it being much more significant than that of removing it.

VIEW-R2

99 *Request for comment on VIEW-R2, with regards to the fact that construction of new buildings and structures, and alterations and additions to existing buildings, within the extent of the Viewshaft Overlay in all zones except HRZ and MRZ is Restricted Discretionary where it does not meet VIEW-S1, but has no provision if an applicant does comply with VIEW-S1. This raises questions as to whether such activities are 'innominate' and therefore considered discretionary, or are presumed to be permitted.*

100 The lack of an equivalent rule for when proposed development does comply with VIEW-S1 and thus does not intrude into the Category 2 viewshafts is, in my view, because it is presumed to be permitted. As such I do not consider it to be innominate. It is definitely not intended to be a discretionary activity. This could be resolved with the addition of a permitted activity rule, whilst appreciating that there is no submission scope on this topic.

101 I note that Mr Winchester details in paragraphs 117 of his evidence that *“My view is that the permissive presumption with regard to land use would apply to permit a use that is not prohibited or regulated by a rule. In that respect, I consider that the rule does not expressly require a resource consent to be obtained for the use when compliance with Standard VIEW-S1 is achieved.”*

102 I agree with Mr Winchester’s conclusion that the rule does not require a resource consent to be obtained when compliance is achieved with VIEW-S1, and as a result it is not necessary to include a permitted activity rule as a consequence. However, if certainty is considered more desirable, the panel could consider making an out-of-scope clause 99 recommendation.

CROSS REFERENCING ZONE STANDARDS

103 *Request for comment on why VIEW-R2.1 and VIEW-R2.2 cross reference zone rules MRZ-S1, MRZ-S2, HRZ-S1 and HRZ-S2 rather than managing intrusions into the viewshafts under VIEW-S1 or some amendment thereof.*

104 The approach of the plan provisions is to cross-reference to other provisions (see the Earthworks and Subdivision Chapters). In my view, it was more appropriate to align with notified PDP maximum height limits within the respective zones rather than divert from these with a new height limit that did not have any evidence base or alternative justification behind it. Foreseeably this could be addressed in a new standard, but I thought this was unnecessary and it was best to be consistent with the plan-wide approach.

105 The General Approach chapter within Part 1 of the notified PDP explains this plan wide approach of cross-referencing to other sections.

KELBURN PROPERTIES

106 *Request for further analysis of the Kelburn properties within the Viewshaft Overlays for Viewshafts 13 – 15 to provide more certainty which, if any, of the proposed height limits for the HRZ would impinge on these Viewshafts. These heights are the 21m, 22m as recommended by the reporting officer for Hearing Stream 2, and the proposed 43m limit from Kāinga Ora.*

Development of a viewshaft viewer

- 107 The Wellington City Council GIS team provided 3D modelling work to show the different height limit scenarios for how various height limits in the MRZ, HRZ and potential rezoning of those zones would impact the views protected by Viewshafts 13, 14 and 15 (The viewshafts). Within each scenario, building models based on existing building coverage and models based on entire site coverage have been provided for comparison.
- 108 The application was developed to assist the Proposed District Plan Independent Hearings Panel to visualise the spatial extent of viewshafts 13, 14,15 and 18.
- 109 Screenshots of the WCC PDP Viewshafts and height control areas viewer have been provided within this response. However, the viewer is anticipated to be made available for public viewing within the Hearing Stream 3 page as soon as possible to enable the IHP, submitters and members of the public to see the modelling work themselves and to be able to use it as a tool to understand the implications of each height scenario.

Context to the modelling

- 110 The aim of the modelling was to provide the panel with updated information on the spatial extent of the Viewshafts and to determine the impacts on these viewshafts of different height scenarios proposed by Council and submitters. The main area of concern was the MRZ zoned land portion between Rawhiti Terrace and Salamanca Road. The ground level in this area is close to that of the starting location of the viewshafts, and as such it has a higher potential for building heights to breach the base of these viewshafts.
- 111 Another area that was of concern is the HRZ zoned area of Lower Kelburn, in and around Talavera Terrace. The ground level here is far lower than the starting location, but it has higher height limits enabled under the PDP as notified which poses a risk to the viewshafts. The same concerns exist in relation to Kāinga Ora's submission seeking increased heights within the HRZ. If this suggestion were accepted by the Panel I anticipate a high risk of intrusion.

Modelling methodology and height scenarios

- 112 The viewshafts were modelled as 2D planes representing the base of the viewshafts, with the side margins delineated by the descriptions provided in SCHED5 and cross referenced with satellite imagery. These 2D planes were projected across a 3D model of the city showing the topography of the landform and 3D footprint of existing buildings under different height control scenarios. The final model shows where existing buildings, or any sites developed to the maximum height under any given scenario would intrude into the current viewshafts. An example of the 2D model versus the 3D model is provided in Figures 6 and 7 below.

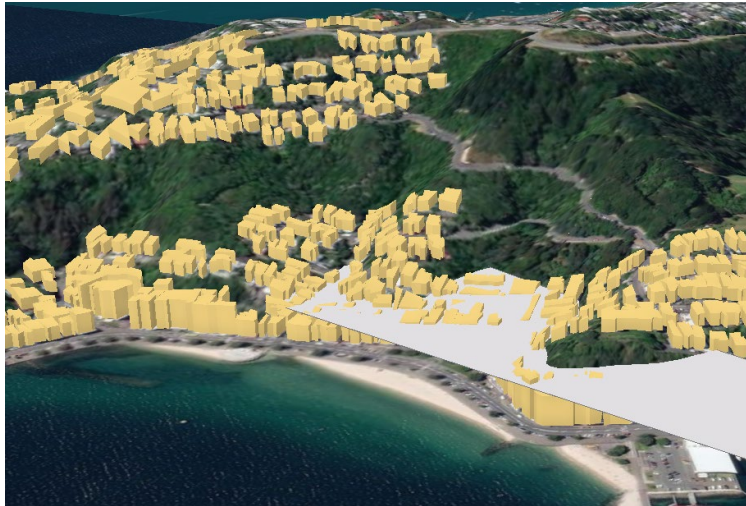


Figure 6 shows VS 15 base in 3D. The base intersects the top of the 38m Dorchester Apartments, 144 Oriental Parade, starting from the cable car viewing platform as outlined in SCHED5. This results in the base of the viewshaft cutting through Mount Victoria and Oriental Bay.

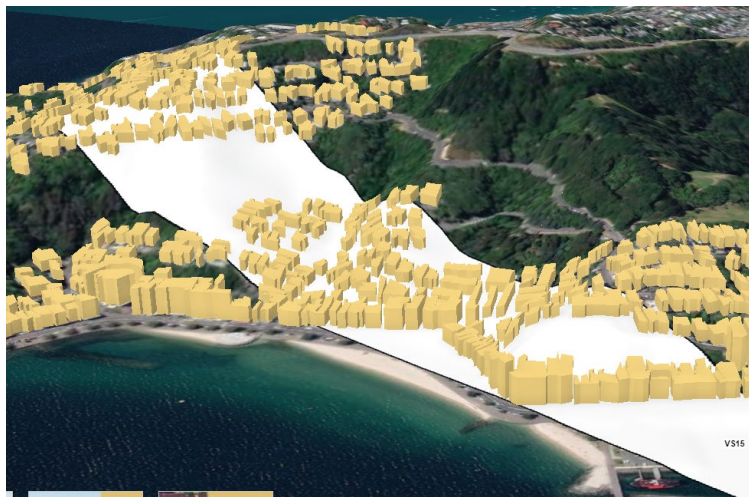


Figure 7 shows VS 15's overlay transposed over the topography of the area in 2D. This view more effectively shows the properties within the Viewshaft Overlay.

- 113 Five different height scenarios were modelled as per Minute 28 which canvassed heights applying to MRZ and HRZ sites under the Cable Car, including those in the notified PDP through to suggested height changes by Kāinga Ora.
- 114 For all five scenarios both the maximum heights within the sites' existing buildings site coverage have been modelled (shown in the

respective zones' PDP colour)⁷, and the worst-case scenario which is a model showing if the entire site was to be covered by a building (entire-site assumption, shown in blue). It is important to note that this “worst case scenario” does not account for any other building bulk and form PDP restrictions on the use of land, such as limits on site coverage or recession plane requirements.

115 These two models are able to be turned on and off in the view to be able to compare the different effects. I note that the CCZ heights have been modelled to show the effects of all sites within the Viewshafts. However, the main focus is in terms of potential intrusions from HRZ and MRZ sites. This includes sites in Kelburn but also in Oriental Bay and Mount Victoria.

116 The height scenarios are outlined in the table 2 below:

Height scenario	Description
Height scenario 1 Medium Density Residential Zone – 11m High Density Residential Zone – 21m	The notified PDP building height control limit 1 (MRZ-S1 and HRZ-S1 -11m) which meets the Medium Density Residential Standards minimum height requirement and HRZ building height control 2 (21m).
Height scenario 2 Medium Density Residential Zone – 14m High Density Residential Zone – 21m	The notified PDP MRZ height control 2 (14m) and HRZ building height control 2 (21m).
Height scenario 3 Medium Density Residential Zone – 14m High Density Residential Zone – 22m	The notified PDP MRZ height control 2 (14m) and an amended HRZ building height control 2 limit (22m) as recommended in the HRZ section 42A report.

⁷ Yellow for MRZ, orange for HRZ and purple for CCZ.

<p>Height scenario 4 All Residential Zones – 22m</p>	<p>This scenario is based on two assumptions. Firstly, that the HRZ height limit is increased to 22m as recommended in the HRZ S42a report. Secondly, that the walking catchment is extended to capture the properties below the cable car viewing platform changing the zoning of all properties to HRZ.</p>
<p>Height scenario 5 All Residential Areas – 43m</p>	<p>This scenario reflects on the Kāinga Ora’s submission suggestion to amend the height limit within 400m from the City Centre Zone to 43m.</p>

MODELLING RESULTS

Scenario 1: MRZ 11m, HRZ 21m

117 Under height scenario 1 with the existing building footprint model only (shown in yellow in Figure 8 below), an 11m height limit shows a slight intrusion into the right half of the base of VS13 (See Figure 9 below). No other Viewshafts have intrusions under this model assumption for this scenario’s heights. However, there is a very slight intrusion into VS14 and VS15, with no further intrusion into VS13, utilising the entire site assumption model (See Figure 9 below). Of note is that the entirety of this slight intrusion into VS14 overlaps with the cable car path heritage area, which is unlikely to ever be developed beyond its current state.

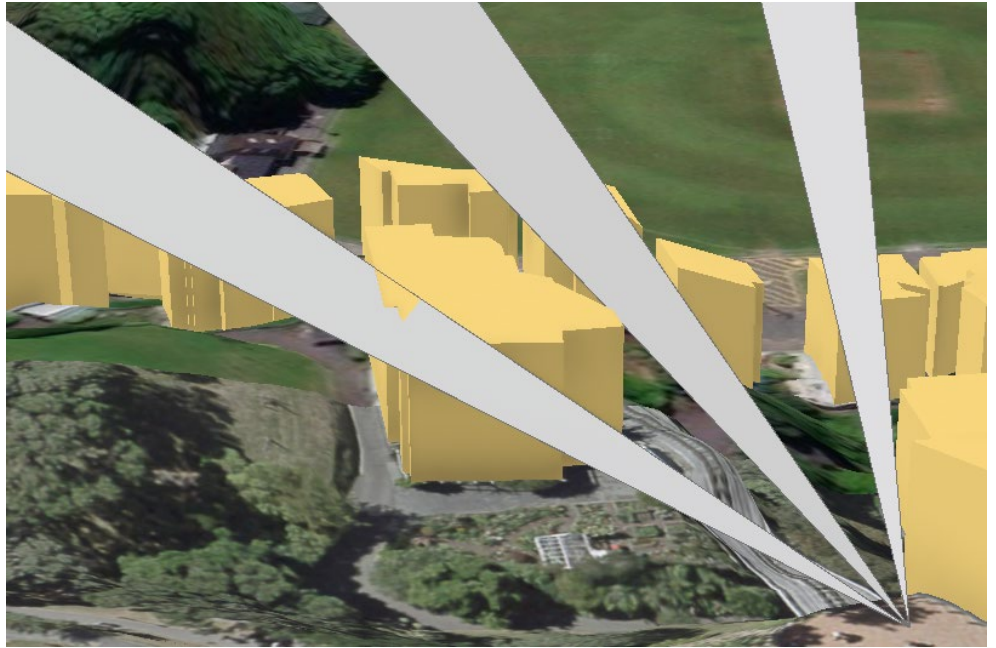


Figure 8: Scenario 1 height limits for the medium density residential zone, showing a minor intrusion into Viewshaft 13.

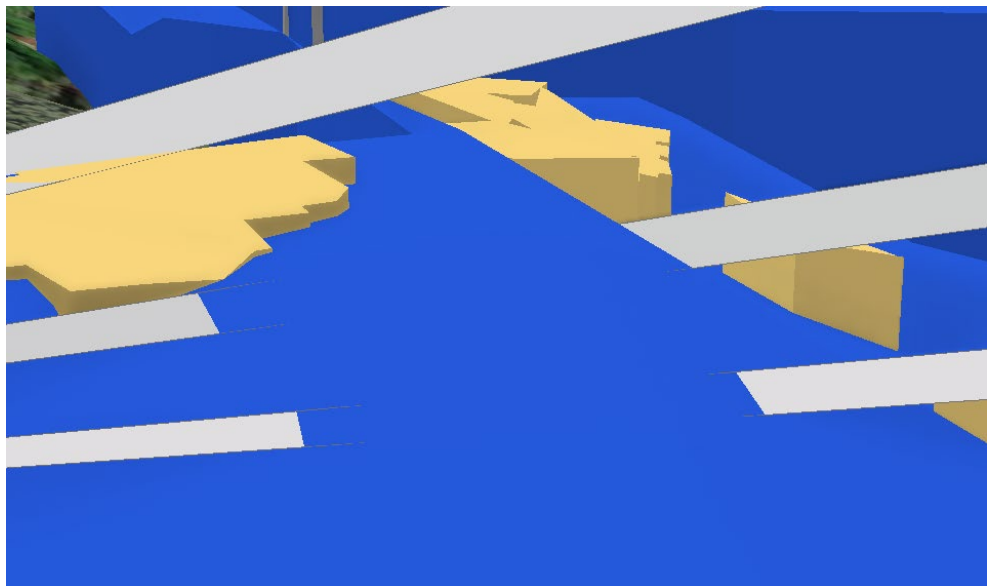


Figure 9: visualisation of the minor intrusion into Viewshafts 15 and 14 when assuming the entire building site is developed to maximum height under height scenario 1.

Scenario 2: MRZ 14m, HRZ 21m

118 Under height scenario 2 for the existing building footprints model, the intrusions are similar to height scenario 1. The intrusion into the right side of VS13 is more significant due to the increase in height to 14m in

the MRZ (See Figure 10). There is no change to VS14 and VS15 under this scenario for existing building footprints. For height scenario 2 across the entire site footprint model, there is a greater extent of intrusions into VS13–15, as well as an increase to the height of these intrusions to be more significant than that seen under height scenario 1 (See Figure 11).

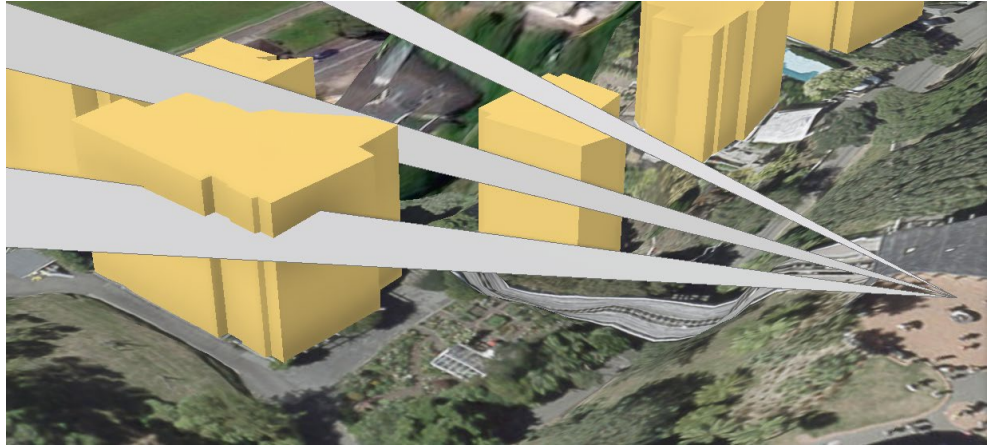


Figure 10: Showing the further intrusion into VS13 from a 14m height limit in the MRZ.

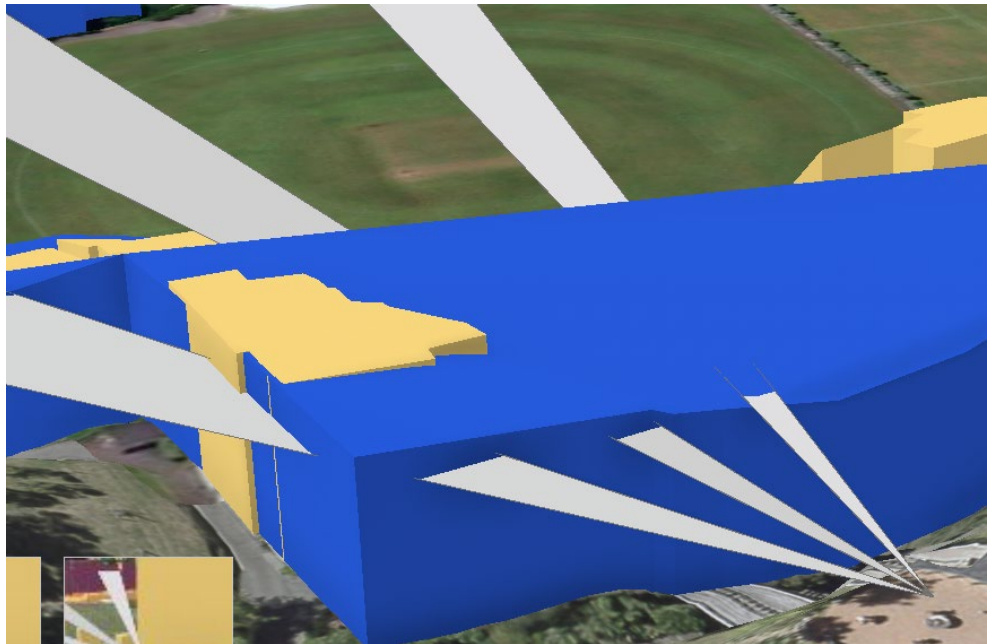


Figure 11: Front view of the MRZ height limit of 14m across the entire site footprint.

Scenario 3: MRZ 14m, HRZ 22m

119 Height scenario 3 for both the existing building footprint model and entire site footprint model results in the same outcome as height scenario 2 for the MRZ area below the cable car viewing platform because it has the same height limit applied for MRZ. The increase from 21m to 22m for the HRZ does not result in any intrusions for the HRZ.

Scenario 4: 22m across all of the sites

120 Height scenario 4 for the existing building footprint model shows that the intrusion into the right side of VS13 is very significant at 22m, with the intrusion from sites further down the hill in the MRZ zoned area covering almost the entire base of the viewshaft with varying heights of intrusion due to the slope of the land. There also begins to be an intrusion into VS14 at this height scenario, whilst VS15 still has no intrusions (See Figure 12). As with height scenario 3, there is no intrusion into the base of the 3 viewshafts from any areas zoned HRZ as notified.

121 For height scenario 4 with the entire site footprint model, the views are significantly blocked (See Figure 13).

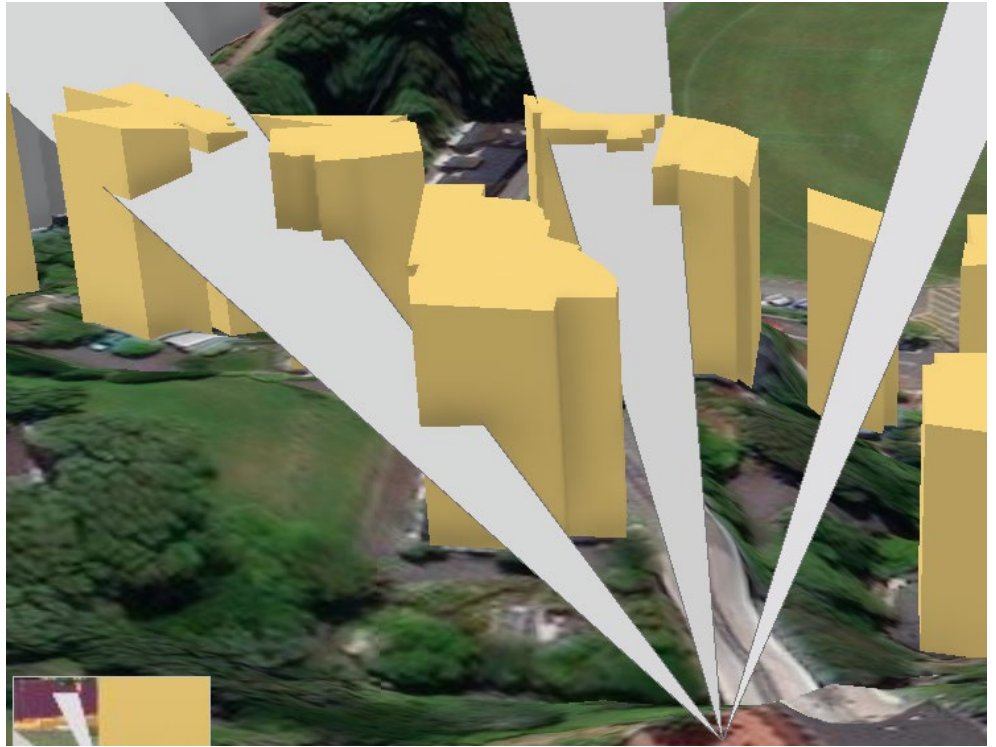


Figure 12: showing the intrusions from properties below the cable car view platform from a height of 22m in this zone.



Figure 13: showing the blocked views from the viewshafts with the entire site coverage built to 22m under height scenario 4.

Scenario 5: 43m across all residential areas

- 122 Height scenario 5 under the existing building footprint model shows both VS13 and VS14 being completely blocked (See Figure 14). VS15 has approximately a third of the right margin of the view blocked under height scenario 5 (See Figure 15). Height scenario 5 under the entire site footprint model shows that all 3 viewshafts are full intruded upon (See Figure 16 below).
- 123 The HRZ bordering the CCZ begins to intrude into VS13 and VS14 with a 43m height limit under both the existing building footprint view and entire site footprint view (See Figure 17).

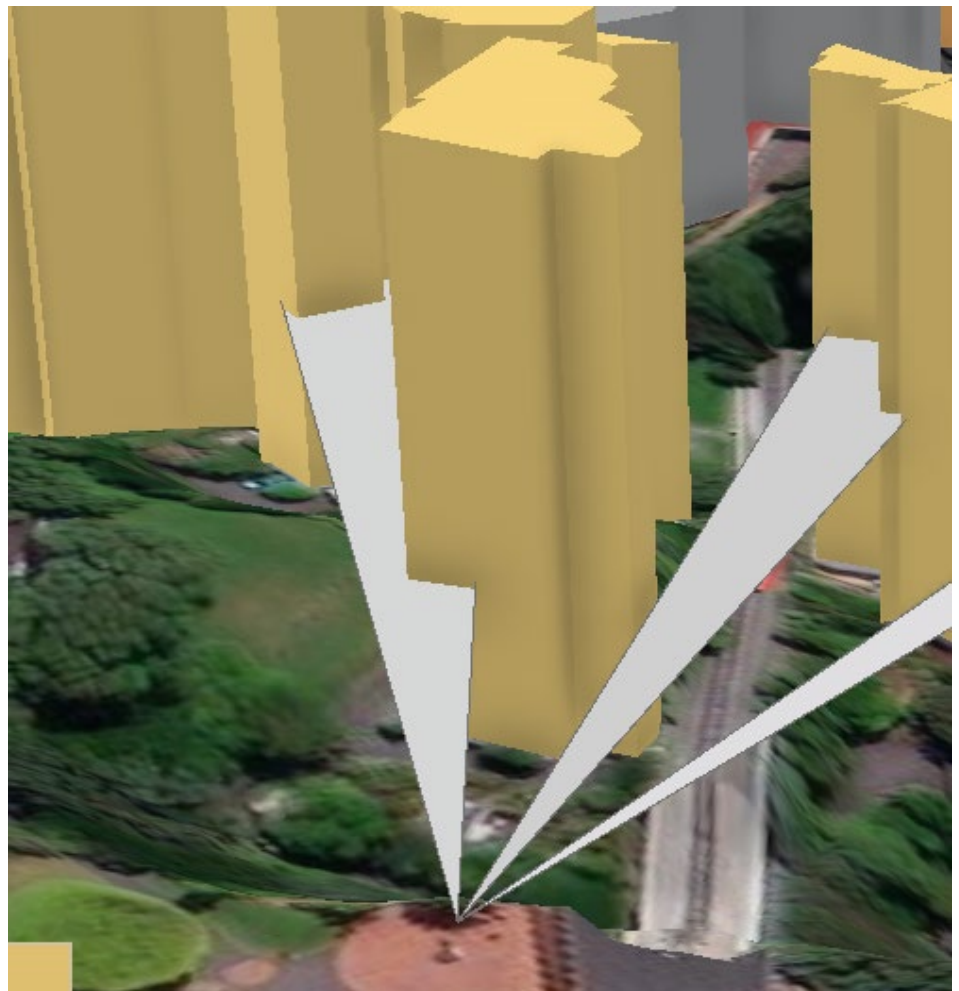


Figure 14: showing VS13 (Left) and VS14 (middle) being completely blocked by 43m height limit on the existing building footprint model for height scenario 5.



Figure 15: showing the impact of height scenario 5 with the existing building footprint model on VS15.

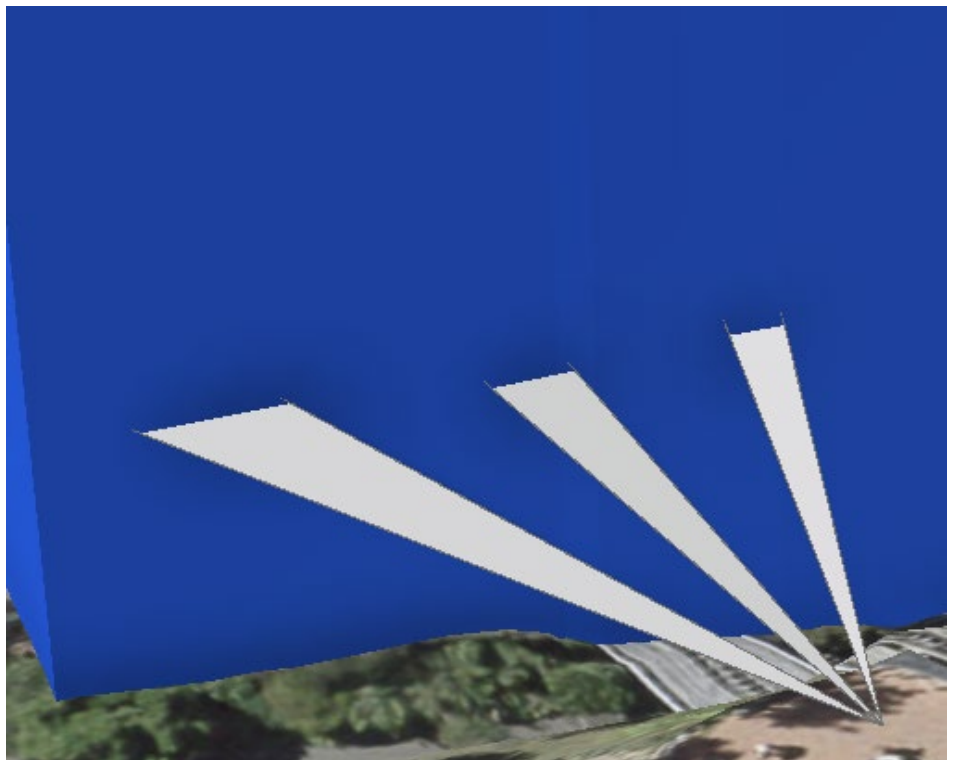


Figure 16: showing the impact on VS13-15 under height scenario 5 with the entire site coverage model.

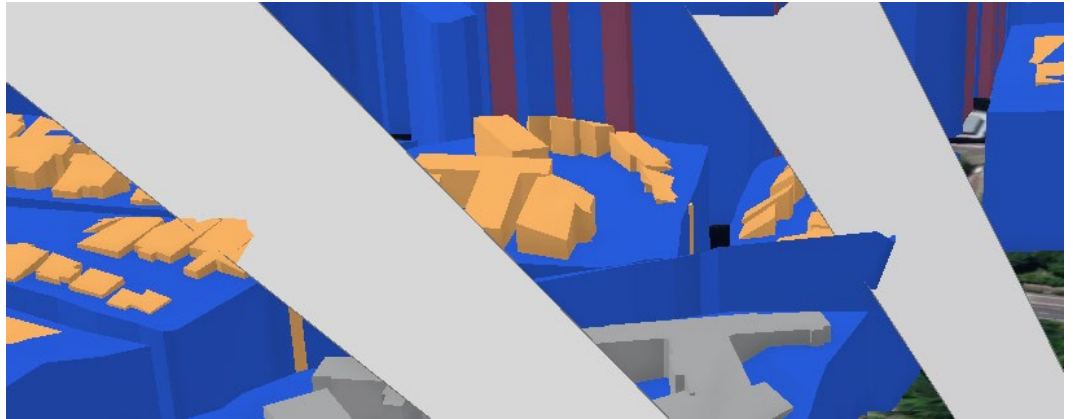


Figure 17: showing the degree to which the HRZ bordering the CCZ intrudes into VS13 and VS14 under height scenario 5 in both the existing site coverage and entire site coverage models.

SUMMARY OF THE IMPACTS OF EACH SCENARIO ON THE VIEWSHAFTS

124 A summary of the impacts of each scenario is provided in table 3 below:

Height scenario	Outcome
Height scenario 1 Medium Density Residential Zone – 11m High Density Residential Zone – 21m	The 21m height limit in HRZ has no intrusions. The 11m height limit provides a minor intrusion into Viewshaft 13 Viewshaft 14 and 15 remain unimpacted.
Height scenario 2 Medium Density Residential Zone – 14m High Density Residential Zone – 21m	The 21m height limit in HRZ has no intrusions. The 14m in the MRZ has moderately significant intrusions into Viewshaft 13 and 14 Viewshaft 15 remains unimpacted.
Height scenario 3 Medium Density Residential Zone – 14m High Density Residential Zone – 22m	The 22m height limit in HRZ has no intrusions. The 14m in the MRZ has moderately significant intrusions into Viewshaft 13 and 14 Viewshaft 15 remains unimpacted.
Height scenario 4 All Residential Zones – 22m	All 3 viewshafts are significantly compromised under this scenario.

<p>Height scenario 5 All Residential Areas – 43m</p>	<p>All 3 viewshafts are significantly compromised under this scenario.</p>
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CONSEQUENTIAL RECOMMENDATIONS

- 125 It is clear from the modelling outputs that all height scenarios result in some form of intrusion into one or more of the viewshafts, ranging from a small intrusion in scenario 1 to a significant intrusion in scenario 5. This modelling, in my opinion, provides the necessary evidence and rationale for managing potential intrusions from development within the MRZ, HRZ, TEDZ and WTBZ into VS13-15 through Viewshaft rule VIEW-R2 continues to apply to the MRZ, HRZ, TEDZ and WTBZ.
- 126 A key consideration regarding VIEW-R2 and the application of the Viewshaft Overlay relates to any proposed change in zoning underneath VS13-15, as this will have a flow on effect on what heights are enabled on these sites, and the potential level of intrusions into the viewshafts.
- 127 If the panel recommends retaining the zoning as proposed under the notified PDP, I recommend that the following height limits should be implemented:
- 127.1 For MRZ and Oriental Bay Height Precinct (MRZ-PREC-03) – MRZ-S1 (11m) for VS13-15 and MRZ-PREC03-S3 maximum height limits for VS13.
- 127.2 For HRZ – 21/22m for VS13-VS15.
- 128 Scenario one shows a very slight intrusion into the right margin at 11m. However, given the minor nature I consider an 11m height limit and enabling these properties to utilise the MDRS is appropriate. Likewise,

the HRZ properties at 21m or 22m are not showing as intruding into VS13-15.

129 I note that the same Viewshaft provisions treatment needs to be applied to the Oriental Bay Height Precinct (MRZ-PREC01) which sits underneath PDP-VS15. If these MRZ-PREC01-S3 maximum height limits, as included in the notified PDP, were to no longer apply (as sought by Kainga Ora's submission) and this area became HRZ because of the walking catchment of the CCZ then there is a risk that 22m would intrude upon PDP-VS15 to St Gerard's Monastery, noting this sits underneath the Monastery. Figures 18 and 19 below shows the current effect of the MRZ-PREC03 height limits with regard to PDP-VS15.

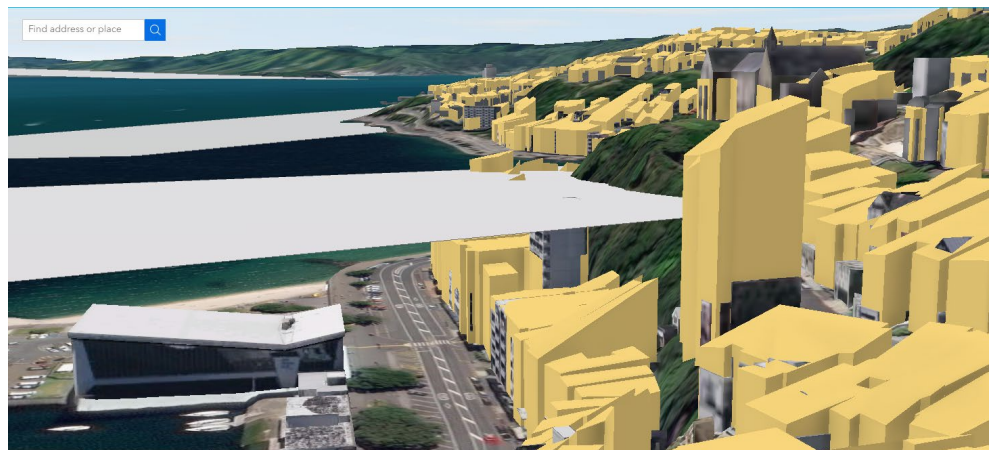


Figure 18: Showing Viewshaft Viewer modelling of MRZ-PREC03 maximum height limits under PDP-VS15 with monastery focal element in view.



Figure 19: Showing Viewshaft Viewer modelling of MRZ-PREC03 maximum height limits under PDP-VS15.

- 130 If this was to happen based on recommendations from the panel, I consider that HRZ-S1 for this area would be fine based on the current precinct maximum height limits ranging from 15.6-31.6m underneath the Monastery.
- 131 However, modelling would need to be done to ascertain whether a consistent maximum height limit of 22m under HRZ application in this area would intrude into PDP-VS15 and block the view of the Monastery. I note the Viewshaft viewer models the PDP notified MRZ-PREC03 heights only and not this HRZ scenario. There is scope under WCC 266.37 to apply the Viewshaft rules (VIEW-R2) to MRZ-PREC03 noting the submission focuses on 'properties under Viewshafts 13-15'. This submission does not restrict itself to just applying to Kelburn properties.
- 132 If the panel recommends that the whole residential area under the Cable Car was to be HRZ and that the MRZ-PREC03 Oriental Bay Height Precinct was to be removed and zoning replaced with HRZ (per the relief of Kainga Ora), I recommend that the area underneath the Cable Car be delineated into two spatial areas/specific control areas based on the notified PDP MRZ and HRZ margins and that Oriental Bay heights be restricted to 14m, with:
- 132.1 For the former Kelburn MRZ area and Oriental Bay Height Precinct (MRZ-PREC-03) – MRZ-S1 (11m) for VS13-15 and MRZ-PREC03-S3 maximum height limits for VS15.
- 132.2 For the former Kelburn HRZ area – 21/22m for VS13-15.
- 132.3 For the former Oriental Bay Height Precinct (MRZ-PREC-03) area – HRZ-S1 (14m) VS15.

- 133 My preference is the first option of retaining the current zoning, with any submission requests for rezoning rejected. I consider only these recommended metrics would retain the integrity of the viewshafts. The height limit scenario sought by Kainga Ora clearly does not preserve the integrity of the viewshafts.
- 134 I would recommend that those specific properties underneath the viewing point are still specifically restricted. It is clear any height above 11m (i.e. HRZ-S1 14m) would have a significant adverse effect on the viewshaft.

ANSWERS TO QUESTIONS POSED BY THE PANEL IN MINUTE 32

Viewshaft 1 and whether mapping amendments would be captured by clause 16

“Request for comment on the Panels impression that Viewshaft 1 is not mapped correctly, and if so, whether correction in the manner suggested by Mr Coop would qualify as a minor matter in terms of Clause 16 by reason of the absence of any effect on a third party”.

- 135 Viewshaft 1 as shown in the notified PDP ePlan is not mapped correctly. This was identified in my Viewshaft S42A report where three main errors were identified as detailed in my recommendation HS3-VIEW-Rec32.p.ii. The three main errors with PDP-VS1’s mapping which were recommended to be corrected were:

135.1 VS1’s starting point is incorrectly placed. It is placed on the corner of Bunny Street and Waterloo Quay, when it is actually supposed to be placed on the corner of Featherston Street and Bunny Street as per the location description for VS1 SCHED5.

135.2 VS1’s right margin is not a straight line, and changes angle half way through.

- 135.3 The end point does not encompass the focal and context elements of the viewshaft.
- 136 In recommendation HS3-VIEW-Rec32.p.ii I recommended the following amendments to PDP-VS1's viewshaft overlay mapped extent:
- 136.1 *Move the location point to the north-eastern corner of Featherston Street and Bunny Street and amend the margins to align with the description of the margins in SCHED5.*
- 136.2 Commence the left margin at a new location and extend it to the south side of the main façade of the Beehive.
- 136.3 Commence the right margin at a new location but retain the same termination point.
- 137 In my Viewshaft rebuttal evidence, as the Chair notes in Minute 32, I provided extensive discussion of the fact that the mapped Viewshafts did not, in some cases, extend to include the focal elements. I recommended a suite of changes to viewshafts to rectify this. However, in a technical omission, I failed to recommend that these extensions also needed to include context elements, as the intent of the viewshafts comprise both context elements and focal elements. My rebuttal evidence recommended extensions to focal elements but not context elements.
- 138 As such my rebuttal evidence did not recommend changes to VS1 and VS4's mapped extent because their focal elements were already mapped. However, I should have recommended that their context elements be included, namely Te Ahumairangi Hill (Tinakori Hill) and the Thorndon Residential Area. In paragraph 55 and Appendix 5 of my Viewshaft Right of Reply and paragraphs 86-94 of my HS4 Rebuttal Evidence I discuss the risk of VS1 and VS4's views of Te Ahumairangi being compromised if the viewshaft overlay is not extended to include

this context element. In my right of reply I recommend the overlay is extended to alleviate these concerns.

139 On reflection I do not agree with Mr Coop that a correction to the VS1 viewshaft overlay mapped extent would qualify as a minor matter in terms of Clause 16 by reason of the absence of any effect on any third party.

140 My recommendation as detailed in paragraph 14.15 of this memo notes that there is not scope for this change and so if this change is to be made, it will have to be because it is considered desirable by the Panel as an out-of-scope recommendation under Clause 99.

Date: 14 September 2023

Name: Anna Mariebel Sutherland Stevens

Position: Team Leader, District Planning Team

Wellington City Council

Appendix 1 – Recommended amendments to PDP Viewshaft Chapter provisions

Appendix 2 – Recommended amendments to PDP Schedule 5