

BEFORE THE INDEPENDENT HEARINGS PANEL

IN THE MATTER

of the Resource Management Act 1991 and the
Local Government (Auckland Transitional
Provisions) Act 2010

AND

IN THE MATTER

of the Proposed Auckland Unitary Plan (**PAUP**) and
Topic 020 Viewshafts (second round)

**LEGAL SUBMISSIONS ON BEHALF OF AUCKLAND COUNCIL
TOPIC 020 VIEWSHAFTS SECOND ROUND HEARING**

J6.3/APPENDIX 3.3 (VOLCANIC VIEWSHAFTS)

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Contents

1. INTRODUCTION	3
The Council's witnesses.....	3
2. THE PROCESS SO FAR.....	3
Procedural Minute 12	3
Interim Guidance.....	5
3. THE COUNCIL'S POSITION	7
4. THE RESULTS OF EXPERT CONFERENCING.....	9
Matters that have been agreed between the experts.....	9
Matters that remain at issue.....	10
5. THE COUNCIL'S POSITION ON THE ISSUES THAT REMAIN IN CONTENTION.....	14
Regional vs local significance	14
The regional significance of A13 and W03	20
Viewshaft A13	20
Viewshaft W03.....	21
An 8m maximum height control and non-complying status in HSAs	22
The relevance of the counter-factual	23
The "no adverse effects" threshold for locally significant viewshafts	24
Council's position on the issues that remain in contention	24
6. CONCLUSION	25
APPENDIX A (Amendments to the RPS policies (Chapter B4.3.2), the district policies (Chapter E6.2) and the rules (Chapter J6.3) as proposed by the Council).....	
APPENDIX B (Amendments to the RPS policies (Chapter B4.3.2), the district policies (Chapter E6.2) and the rules (Chapter J6.3) as proposed by Peter Reaburn)	
APPENDIX C (List of areas of agreement and disagreement on viewshaft classification as a result of expert caucusing).....	

MAY IT PLEASE THE PANEL

1. INTRODUCTION

- 1.1 These legal submissions for Auckland Council (**the Council**) address Chapter J6.3 and Appendix 3.3 (Volcanic Viewshafts) of the PAUP following the expert caucusing and mediation sessions directed by the Panel on 21 August 2015.
- 1.2 In these submissions we outline:
- (a) The process so far (section 2 of these legal submissions);
 - (b) The Council's position (section 3 of these legal submissions);
 - (c) The matters of agreement and disagreement following the expert conferencing (section 4 of these legal submissions); and
 - (d) The Council's position on the issues that still remain in contention (section 5 of these legal submissions).

The Council's witnesses

- 1.3 The Council will be calling evidence from three witnesses who also presented evidence at the first round hearing:
- (a) Stephen Brown who has prepared expert visual evidence in chief (**EiC**) dated 15 April 2016;
 - (b) Peter Nunns who has prepared expert economic rebuttal evidence (**Rebuttal**) dated 28 April 2016; and
 - (c) Peter Reaburn who has prepared planning EiC dated 18 April 2016 and Rebuttal dated 27 April 2016.

2. THE PROCESS SO FAR

Procedural Minute 12

- 2.1 During the first round of hearings for this topic, mediations took place on 6, 7 and 8 May 2015. In respect of volcanic viewshafts, discussions took place between Peter Reaburn (the Council's planning witness) and key submitters which led to a number of changes to the provisions being proposed.¹
- 2.2 Following mediation, memoranda were filed by Housing New Zealand Corporation (**HNZC**) and the Council. Those memoranda concerned HNZC's proposal to split Topic 020 into two tranches, the first concerning the objectives, policies and rules

¹

P Reaburn EiC dated 25 May 2015 (**first round**), para 6.1.

and the second concerning the identification of the viewshafts against those provisions. HNZN's reasons for that proposed split were:²

- (a) That the rolling over of the viewshafts objectives and policies from the legacy Regional Policy Statement (**RPS**) has been undertaken in isolation from the other objectives of the RPS such as compact urban form and consequentially development of intensification zoning;
- (b) That no specific assessment has been made of the potential costs the viewshafts will have on the more enabling policies being proposed within the PAUP zones; and
- (c) That there is a potential conflict between those objectives within the PAUP that seek to enable growth and intensification in areas where such growth or intensification would require breach of the viewshaft objectives.

2.3 HNZN's approach was to distinguish between those views that are "truly regionally significant" and those that are valued at a district level and then achieving a sustainable balance with the potential development costs.³ HNZN also sought that interim guidance be issued between the two tranches of hearings that it proposed.⁴

2.4 The Council supported the request for further time but noted that it was the Council's position that all of the viewshafts identified in the notified PAUP are of regional significance except for those nine that were proposed for deletion by the Council⁵. As we will go on to explain, the Council's position has not changed.

2.5 Further, the Council considered that it would not be helpful for the Panel to form a 'view' on the provisions ahead of considering the mapping of the viewshafts because the mapping must to an extent inform the consideration of the provisions and vice versa.

2.6 Procedural Minute 12 was issued on 20 May 2015 and directed that:

- (a) The hearing of Topic 020 scheduled for 29 June 2015 be focused on the relevant text (objectives, policies and rules) of the Proposed Plan in relation to viewshafts and any alternative text sought by submitters; and
- (b) The following six viewshafts which were identified as being representative of the main issues between HNZN and the Council be focused on in evidence:

E10 Mount Eden (Maungawhau)
 T01 Rangitoto (Te Rangi-i-Totongia-a-Tamatekapua)
 W12 Mt Wellington (Maungarei)
 A08 Mt Albert (Owairaka)

² HNZN memorandum regarding scheduling for viewshafts dated 6 May 2015, para 2.5.

³ Ibid, para 2.6.

⁴ Ibid, paras 2.9-10.

⁵ Resolution made by Unitary Plan Committee dated 15 April 2015.

- W26 Mt Hobson (Ohinerau), Mt Eden (Maungawhau) and One Tree Hill (Maungakiekie)
 E11 Mt Eden (Maungawhau)

2.7 We note that Procedural Minute 12 additionally directed that, as well as the agreed examples:

- (a) The Council and HNZN were to present a schedule of viewshafts, which identifies at least the following:
 - (i) Those that constitute the top rank of significance;
 - (ii) Those that the Council accepts no longer merit identification and protection in the PAUP;⁶
 - (iii) Those that HNZN regards as having the greatest impact on its property portfolio;
- (b) HNZN was to provide to the Council its assessment of the effect of the viewshafts on its property portfolio, measured in floor area;⁷ and
- (c) At the conclusion of the hearing, the Council and HNZN were to outline for the Panel, the next steps that ought to be taken in addressing the remaining issues in the Topic including:
 - (i) how any further assessment of proposed viewshafts beyond the examples agreed on for the first hearing would be handled, and that this may include expert conferencing or mediation;
 - (ii) whether the parties would be assisted by guidance from the Panel, either as to the text of the Plan or more generally as to issues arising from the hearing; and
 - (iii) what directions ought to be made for any resumed hearing of this topic.

Interim Guidance

2.8 Following the hearing, the Panel issued Interim Guidance on this topic dated 17 July 2015 (**Interim Guidance**) that acknowledged that the Council and HNZN were proposing two different methodologies for the identification and management of viewshafts. The Council proposed a single level of protection for regional volcanic viewshafts, whereas HNZN proposed a three-stage hierarchy of regional, district and local volcanic viewshafts. The Interim Guidance posed a number of questions regarding the identification of volcanic viewshafts and the extent of their protection.

⁶

These are identified in Mr Reaburn's EiC (first round) at para 9.9.

⁷

This was provided with HNZN's legal submissions dated 29 June 2015.

- 2.9 The Interim Guidance stated that, on the material currently before it, the Panel considered that not all views are equally significant or equally sensitive to development change and that it was not persuaded that all of the viewshafts identified in the PAUP are regionally significant or that any development that penetrates a viewshaft would be inappropriate.⁸
- 2.10 The Interim Guidance included directions that:
- (a) The Council, HNZN and any other submitters develop a methodology of view identification, protection and management based on regional, district and local viewshafts; and
 - (b) The parties liaise to agree a work programme and a timetable to prepare for a resumed hearing.
- 2.11 Following that Interim Guidance, the Council and HNZN both proposed different approaches for addressing the remaining issues in the topic reflecting their different methodologies for identification of the viewshafts, although both proposed expert conferencing and mediation.
- 2.12 HNZN along with a number of other submitters proposed that conferencing should include the process for consideration of alternatives in viewshaft selection and should recognise further factors such as economic development opportunity and management / development 'sensitivity analysis' (for example the degree to which particular views might be appropriately 'managed' as opposed to 'protected').⁹ It was (and remains) the Council's position that the viewshafts should be identified with reference to their values and not with reference to such 'sensitivity analysis'.¹⁰
- 2.13 The Panel subsequently directed that the remaining issues be addressed in accordance with the 'procedure for further assessment of viewshafts and Height Sensitive Areas' dated 21 August 2015 (**procedure**). The procedure required conferencing of the landscape, planning and economic experts and assessment of the following matters:
- (a) Identification, description and assessment of the public values of each view and HSA (and supply that information to all interested parties);
 - (b) Identification of criteria/methodology appropriate to view and HSA identification;
 - (c) General identification of views to volcanic cones that merit assessment (starting with the existing 87 viewshafts in the PAUP and any others specifically identified in submissions);
 - (d) Specification of the boundaries of the viewshaft and HSA needed to protect the identified public values of the view; and

⁸ Paragraph 4(h), Interim Guidance dated 17 July 2015.

⁹ Memorandum of Counsel for various submitters dated 30 July 2015, para 6.

¹⁰ Memorandum of Counsel for the Council dated 31 July 2015, para 2.

- (e) Assessment of the overall value of each viewshaft and HSA at regional, district or local level.
- 2.14 The procedure also required mediation on the extent of protection appropriate to the viewshaft or HSA in light of its values and significance and taking into account other relevant PAUP provisions (other overlays, zoning, development controls, designations etc). Mediation took place on 5 April 2016 and a number of submitters attended. All parties reserved their respective positions.
- 2.15 Finally, the Panel directed the output of the following items in its 21 August directions:
- (a) Consideration of the appropriateness of inclusion of the viewshaft and HSA in the PAUP informed by section 32 analysis, including all benefits and costs; and
 - (b) Review of the view, viewshaft or HSA where section 32 analysis indicates amendment, reassessment or deletion is required.

3. THE COUNCIL'S POSITION

- 3.1 At the first round of hearings, the Council's position was that:
- (a) 78 of the notified volcanic viewshafts and all of the notified HSAs are of regional significance and those nine volcanic viewshafts that were not identified as regionally significant are proposed for deletion;
 - (b) Intensification should not drive the identification of volcanic viewshafts and HSAs nor should it inform the consideration of proposals to intrude into them; and
 - (c) The proposed rule framework enables reasonable use of land.
- 3.2 The viewshafts are identified in accordance with Policy 13 of the PAUP Regional Policy Statement (**PAUP RPS**) which requires regionally significant viewshafts to and between the volcanic maunga identified as ONFs to be identified having regard to whether:
- (a) The view is conveyed from a significant public viewpoint;
 - (b) The view conveys a high-quality, intact view and a good impression of the volcanic maunga within a wider context; and
 - (c) The view will contribute to an overall appreciation of the Region's volcanic maunga.
- 3.3 It is for note that the Council's experts, Mr Brown and Mr Reaburn, have agreed some additions and amendments to this policy through caucusing.

- 3.4 It is also noted that the Council supported the amendment to the mapping of Viewshaft O10 as shown in the diagram in Attachment A to Mr Reaburn's supplementary statement of evidence dated 27 April 2016. The new coordinates are included in the provisions attached to these legal submissions in **Appendix B**. They were also attached to Mr Reaburn's EiC (second round) although we note a slight correction in that the earlier coordinates had mistakenly not been deleted from that version.
- 3.5 The rules supported by the Council included:
- (a) Buildings that penetrate the floor of a volcanic viewshaft require restricted discretionary activity consent up to a maximum height of 8m, beyond which they are non-complying (this is proposed to be introduced to enable a reasonable level of development, and is not included in the notified PAUP).
 - (b) An exception at Bucklands Beach due to the fact that this is an area which would generate a large number of consent applications, and to allow development up to 8m aligns with the decision on Plan Change 59 to the Manukau Section of the Auckland District Plan (which gave effect to Plan Change 8)¹¹;
 - (c) Buildings are a permitted activity within HSAs up to a maximum height of 8m and 9m for business and Special Purpose zones, beyond which they are a non-complying activity. An additional height control applies at the boundary of a volcanic feature and buildings that do not obstruct views to the maunga are permitted where compliance can be confirmed by a registered surveyor's report;
 - (d) Various network utilities, electricity generation facilities, broadcasting facilities and road networks are either permitted or restricted discretionary activities; and
 - (e) Public notification of non-complying activities and restricted discretionary activities are subject to the normal notification tests in the RMA.
- 3.6 The relevant provisions were attached to Mr Reaburn's rebuttal evidence for the first round hearing dated 10 July 2015.
- 3.7 The Council's position remains that all of the 78 viewshafts are regionally significant and should be protected as such. The rules that were put forward in Mr Reaburn's Rebuttal for the first round hearing represent the Council's position at this second round of hearings¹². Nothing has changed from the Council's perspective. However, the opinion of the Council's experts has changed in some respects. We will go onto outline the Council's experts' views that have been reached as a result of the

¹¹ P Reaburn EiC (first round), para 9.27.

¹² Subject to some minor amendments to the wording concerning HSAs that are introduced in the Attachment to Mr Reaburn's most recent Rebuttal dated 27 April 2016 (**second round**). These are attached to these legal submissions as **Appendix A**.

conferencing process. These differ from the Council's position with respect to the classification of three viewshafts as being of local significance, five further viewshafts being proposed for deletion, the introduction of bespoke height limits for Mt St John, Devonport HSAs and the following rules:

- (a) Inclusion, as an Appendix, "Volcanic Viewshafts and Height Sensitive Areas Statements", which is a document explaining the characteristics and values of each viewshaft and height sensitive area;
- (b) Amendments to the objectives, policies and rules to introduce a new locally significant viewshafts category; and
- (c) The amendments to the RPS policies (Chapter B4.3.2), the district policies (Chapter E6.2) and the rules (Chapter J6.3) that are recorded in the Attachment to Mr Reaburn's Rebuttal dated 27 April 2016.

- 3.8 The caucusing version of the provisions as updated by Mr Reaburn in response to submitter evidence is attached to these legal submissions as **Appendix B**. These are the provisions that Mr Reaburn supports.

4. THE RESULTS OF EXPERT CONFERENCING

Matters that have been agreed between the experts

- 4.1 The following matters have been agreed between the experts as a result of joint conferencing:
- (a) The "Volcanic Viewshafts and Height Sensitive Areas Statements" for each of the maunga. These record the attributes of the cone, the view and the origin point and address the Panel's directions at (a) of the Procedure. The 'sample' assessment table is included as the first page of each assessment and addresses the Panel's direction at (b) of the Procedure.
 - (b) That RPS Policy 13 should be amended to reflect the agreed criteria.
 - (c) That it is appropriate to have consistent factual descriptive information for each viewshaft recorded separately from any value judgement.¹³ That is an important point and should be considered with reference to the position put forward by HNZN at the first round of hearings. HNZN supported a selection process that included both qualitative and quantitative assessments. The qualitative assessment was to document the features of each view, such as the key values of each identified viewshaft, the significance of the origin point and the contribution of the view. The quantitative assessment was to determine the degree to which a viewshaft might impede future potential growth of the city in terms of built height, with the aim of providing an understanding of the relative impact, from a development perspective, of managing the view in perpetuity (the "sensitivity analysis"). Such types of

¹³

Joint Conferencing Statement, page 4.

layered assessment criteria are not supported by any of the experts who conferenced.

- (d) That permitted development in volcanic viewshafts and HSAs can have adverse effects on views of the maunga.¹⁴
 - (e) It was acknowledged that Maori interests were not represented at expert caucusing. The landscape and planning experts agree that it is important to seek comment from the Topic 020 submitters representing Maori interests on possible amendments that should be made to the “Volcanic Viewshafts and Height Sensitive Areas Statements” (Attachment B to the Joint Statement).¹⁵
 - (f) 50 of the viewshafts are agreed as being regionally significant. The nine viewshafts proposed by Council at the first hearing (A05, A06, E05, E15, K01, K02, R01, T07 and W07) as well as viewshafts A11, E04, E06, E19 and W06 should be deleted entirely. These are all listed in **Appendix C** to these legal submissions.
 - (g) Re-categorisation of viewshafts O10, T08 and W13 to local significance rather than regional. These are also listed in **Appendix C**.
 - (h) Bespoke height limits can be applied to the Mt St John and Devonport HSAs.
 - (i) Amendments to the objectives, policies and rules should be made to introduce the new locally significant viewshafts category. RDA status would apply to infringements of the viewshaft not otherwise allowed.
 - (j) Other clarifications to the rules such as the clarification that the rolling height method applies to the height of buildings for the purposes of the development controls (Rule J6.3.3.1) and amendments for clarification at Rule J6.3.3.2 regarding the method for demonstrating that buildings and structures will not impact on any of the identified views of the maunga.
- 4.2 The caucusing version of the provisions also recognises that viewshafts cross the CMA and should therefore be consistently provided for both inside and out of the CMA.¹⁶

Matters that remain at issue

- 4.3 Notwithstanding the agreements reached as to the contents of the Volcanic Viewshafts and Height Sensitive Areas Statements, disagreement remains as to the classification of a number of the viewshafts. Disagreement also remains as to the appropriate plan provisions.
- 4.4 The issues that remain outstanding as between the experts following the expert conferencing in relation to the identification of viewshafts are:

¹⁴ Joint Conferencing Statement, page 5.

¹⁵ Ibid, page 4.

¹⁶ Refer paragraph 2.15 of Council’s closing remarks dated 10 July 2015 (first round).

- (a) There are 18 viewshafts that Mr Brown considers are of regional significance and where the other landscape experts consider that they are of local significance; and
- (b) There are two viewshafts, A13 and W03, that are considered by Mr Brown to be of regional significance but the other experts consider they should be deleted.

4.5 The issues that remain outstanding as between the experts in relation to the provisions are:

- (a) Some submitters do not support the 8m maximum height control and/or the non-complying status for exceeding that height and consider that a more fine-grained analysis is required and that until that is undertaken, restricted discretionary activity status should be imposed for heights exceeding 9m;
- (b) HNZN's planning and economic experts have addressed what in their opinion is a residual issue that the counter-factual for development cost assessment has not considered the potential residential zoning pattern that would be in place were it not for HSA and viewshaft overlays and the zoning pattern that would be in place if HNZN's submissions on rezoning were to be accepted;¹⁷ and
- (c) Whether the "no adverse effects" threshold should be relaxed for locally significant viewshafts. Mr Reaburn proposes that Policy 18 would continue to apply to both regionally and locally significant viewshafts. The policy is:

Avoid new buildings or structures that penetrate the floor of the volcanic viewshafts identified in Appendix 3.3, except where it can be demonstrated that:

- they would have no adverse effect on the visual integrity of the volcanic maunga as seen from the identified viewing point or line; or
- such development is located and complies with an identified height sensitive area.

4.6 We note that the following issues raised by submitters remain with respect to the provisions:

- (a) That the rule framework be amended so as to allow applications for consent to be made as restricted discretionary or discretionary activities rather than non-complying activities; and
- (b) That the presumption for public notification be deleted.

4.7 Submitter evidence that has been filed in this second round hearing addresses the following specific viewshafts and HSAs:

¹⁷ A Linzey EIC for HNZN (second round) dated 20 April 2016, para 12 (c) and P Osborne EIC for HNZN (second round) dated 20 April 2016, section 4.0.

- (a) The deletion of part of viewshaft E11 which was also addressed in the first round hearing (Alastair Kay, Peter Keys and Alan Drake (Sarawia Street));
- (b) Support for the deletion of viewshaft E19 which has been proposed by the landscape experts (Department of Corrections);
- (c) The Devonport HSA where there is support and opposition for the position reached at caucusing with respect to the proposed increase in height limits for certain specified areas (Devonport Business Association and Wallace Flats Ltd / Devonport Heritage Incorporated);
- (d) Support for the deletion of the HSA at Mt St John and, in the alternative, amendment in accordance with the position reached at caucusing with respect to the proposed increase in height limits for certain specified areas (Elizabeth Knox Home and Hospital);
- (e) Review of the HSAs at Big King and Mt Wellington (and restricted discretionary status for development until that occurs) as well as the deletion of viewshafts W08, W09 and W24 (Fletcher Construction Developments and Tamaki Redevelopment Co);
- (f) The inclusion of new viewshafts at Stockade Hill and Parkhill Road as well as the retention of and addition to the Crawford Reserve, Selwyn, Minerva Terrace and Mangamangaroa Estuary viewshafts (Howick Ratepayers and Residents Association);
- (g) Opposition to the deletion of viewshafts A11, E04, W06, E19 and W06 and the reclassification of viewshafts O10 and W13, but support for the deletion of E06 (New Zealand Archaeological Association);
- (h) Support for the reclassification of H07 as locally significant (RSCJ Trust and Baradene College of the Sacred Heart);
- (i) Amendments to viewshafts B06 and T09 seeking that their floors be raised to enable more permitted development (Michael Harris (Bucklands Beach));
- (j) The deletion of viewshaft A13 (Tramlease Ltd and Viaduct Holdings Ltd); and
- (k) Providing for an exception to the HSA applying to 117 Coronation Road, Mangere Bridge (Coronation Road Holdings Limited and Rockfield Group Limited).

4.8 There are three aspects of the Panel's directions that have not been canvassed in the Joint Conferencing Statement. First, there has been no identification of views that merit assessment beyond the 87 notified viewshafts. Mr Brown acknowledges that it would be timely for a further review of "potential candidates" for inclusion in

Appendix 3.3.¹⁸ He also makes important points with respect to the likely significance of the views between the maunga. In particular:¹⁹

Much as the increased elevation of vantage points atop Auckland's major cones can help to highlight many of the details associated with other cones that are less apparent from 'lower down', it also raises the height of the backdrop behind most cones and diminishes their cone profile. This, combined with increased viewing distances, can serve to increase the visual absorption of some cones by their metropolitan landscape setting.

In his opinion, this implies that any new viewshafts involving cone to cone views would need to be subject to careful assessment.

- 4.9 Secondly, there has been no specification of the changes to the boundaries of the viewshafts and HSAs. Albeit that was raised by HNZN as one outcome that should be explored in this second round hearing²⁰, there is no disagreement between the experts who conferenced as to the boundaries and extent of the viewshafts and HSAs. We do note however that Ms de Lambert, in her evidence for Fletcher Construction Developments, now proposes an amendment to the extent of the HSA for Big King.²¹
- 4.10 Finally, although there is some planning comment in the Combined Analysis document, no findings have been reached in relation to the appropriateness of inclusion of the particular viewshafts and HSAs in the PAUP informed by section 32 analysis, including all benefits and costs and a proposal for amendment, reassessment and deletion. That is because of the agreement reached that identification should be undertaken separately from any cost/benefit analysis. Further, it is considered appropriate that this balancing exercise is undertaken by the decision-maker taking into account all evidence.
- 4.11 As the Environment Court put it in **Tram Lease Limited v Auckland Council**²², this is a judgement call balancing a range of competing factors. It is a value judgement, entrusted to the regional authority and local authority in respect of the various plans, and to the Court, on appeal²³
- 4.12 We now have the information relating to the costs and benefits, noting that was prepared without the detailed information as to the cultural significance of the viewshafts. The Council's view is that the viewshafts should continue to be protected as regionally significant viewshafts. It is submitted that this position is also supported by the evidence presented on behalf of the Tupuna Maunga O Tamaki Makaurau Authority which states that the visual connection with Auckland's Tupuna Maunga is fundamental to Mana Whenua.²⁴ It also states that the maunga are iconic to Maori because they represent an enduring symbolic connection between tangata whenua groups and distinctive landforms and in some cases these are the physical

¹⁸ S Brown EIC (second round), para 118.

¹⁹ Ibid, para 115.

²⁰ S Bray EIC dated 9 June 2015, para 4.17.

²¹ R de Lambert EIC (second round) dated 14 April 2016, paras 18-21, and figures 1-4.

²² [2015] NZRMA 343.

²³ Ibid, para [114](d).

²⁴ P Majurey EIC (second round) dated 21 April 2016, paras 1.1/10.4.

embodiment of tupuna.²⁵ This spiritual relationship has not been addressed but is relevant to all maunga and all viewshafts.

5. THE COUNCIL'S POSITION ON THE ISSUES THAT REMAIN IN CONTENTION

Regional vs local significance

- 5.1 The Council's position is that all of the 78 viewshafts proposed to be retained in the first round hearing are regionally significant. Mr Brown supports the retention of 71 viewshafts as regionally significant. 50 of those are agreed by the other experts but they assert that the 18 viewshafts below that are only of local significance. The difference in opinion can be summarised as follows (and it would assist to have Mr Brown's EiC Attachment 1 available to see each viewshaft):²⁶

A07 Mr Brown considers that this viewshaft affords an important introductory view of Mt Albert, where the other landscape experts consider that, although it is part of a sequence of views extending along Mt Albert Road, A07-A09, it is of local/more incidental value and not regionally significant in its own right.

A08 Mr Brown considers that this viewshaft is a key "lynch pin" in the sequence of views that starts near the Mt Albert shopping centre and ends close to Beagle Ave. It affirms the relationship between Mt Albert (the cone) and Mt Albert Rd – as a major conduit for Auckland's regional community and Mt Albert (the suburb). As with A07, the other experts consider that it is of local/more incidental value but not regionally significant in its own right.

E09 Mr Brown acknowledges that E09 is not as dramatic as some other views of Mt Eden but considers that it captures the important relationship between the cone and Auckland's earliest and perhaps most important civic park. Notwithstanding the regional audience or the fact that this park forms part of the tuff ring of neighbouring Pukekawa, the other landscape experts consider that the viewshaft has been compromised by built development and that viewers are either from Auckland Grammar School or recreational users of the park and that points to E09 being a locally significant viewshaft.

E12 Mr Brown considers this view of Mt Eden to be iconic and part of a chain of vantage points that expose the regional community to a series of volcanic cones and features, which reinforce the formative role of the city's volcanic network and the way in which it continues to structure the Auckland landscape. The other landscape experts consider that this is not specifically focused on or dominated by Mt Eden and that the view is likely to draw the eye to the foreground, that it is screened by roadside vegetation and dwellings and that the audience is transient. But Mr Brown also points out that:²⁷

²⁵ P Majurey EiC (second round), para 10.3.

²⁶ Refer Attachment D of the Joint Conferencing Statement (Volcanic Viewshaft Combined Analysis).

²⁷ S Brown EiC (second round), para 42.

- (a) Whakatakataka Bay and Hobson Bay provide a natural attractant for passing motorists, bus passengers, cyclists and pedestrians, and that these inevitably draw one's eye towards an enclosing land area and horizon that is dominated by both volcanic cones;
- (b) Ngapipi Rd carries a sizeable audience of commuters and other road users on a daily basis;
- (c) Both this and viewshaft H07 are open and relatively clear of impediments; and
- (d) Their duration is sufficiently long that both are identified as linear viewshafts ie. they do not start at a single point on Ngapipi Rd, but follow a stretch of the road corridor.

E20 Mr Brown states that this view of Mt Eden exposes its cultural and natural heritage characteristics and that road-side buildings, trees and other paraphernalia help to frame its profile and the resulting juxtaposition also helps to emphasise it as a key landmark. Other experts say that this is a fleeting view in a gap between buildings and vegetation but that the cone form is clearly prominent.

H07 Mr Brown considers that H07 combines iconic views to Mt Hobson, in conjunction with Mt Eden, with a linear viewpoint that highlights Mt Hobson's role as a key Auckland landmark. It is also part of a chain of vantage points that reinforce the formative role of the volcanic network. The other landscape experts say that that the view is not specifically focused on Mt Hobson and the eye is generally drawn to the foreground, it is dominated by vegetation and that the audience is local and transient. Mr Brown acknowledges that H07 reveals Mt Hobson in a more subtle fashion than the other views but points out that Mt Hobson is in fact much more clearly articulated and defined in three-dimensions.²⁸

M06 Mr Brown states that this view of Mangere Mountain as a highly prominent landmark demonstrates its role as both a volcanic feature and an important heritage site. The other experts simply say that the view is degraded by the foreground fence and that other viewshafts sufficiently capture this view. As Mr Brown notes, security fencing and other motorway paraphernalia is nearly always raised as an issue in relation to motorway views, yet they remain a massively important conduit for the Region's motoring public.²⁹

O01 Mr Brown considers that this elevated view clearly capturing One Tree Hill is important simply for that reason, but is even more significant because of its exposure of a wider array of cones and volcanic features to the regional community (Mt Wellington, Mt Hobson and the Orakei Basin). The other landscape experts say that trees obscure the view.

²⁸ S Brown EiC (second round), para 51.
²⁹ Ibid, para 58.

- O02 Viewshaft O02 is impaired by tree growth but Mr Brown states that, were it to be removed, this viewshaft would capture One Tree Hill, rising to dominate the western horizon. The other landscape experts argue that this view is of the Cornwall Park Norfolk Pine trees and is not aligned with the maunga.
- O05 Again, O05 is currently screened by trees, but Mr Brown states that this is still an important view that firmly links both the regional arterial road corridor and adjoining residential areas with One Tree Hill. Other experts consider that these trees are important and should be retained and replaced in the future.
- O06 Mr Brown states that the cone's main cone, obelisk and lava side ridge are well articulated and the road corridor's alignment on the cone helps to reinforce its visual presence and stature. As a result, in his opinion this remains an important view of the cone for traffic travelling towards the Southern Motorway, Greenlane and Cornwall Park. Other experts say that this is a local glimpse only and argue that there are other similar views that exist along this road.
- O09 Mr Brown states that O09 is the second in a sequence of views to One Tree Hill from Onehunga Mall and is notable for the way in which it consistently focuses on the cone and highlights the importance of the volcano as a key 'building block' that underpins the southern isthmus landscape. It is a key component of the sub-regional area's identity. Other experts say that it is not necessary.
- O12 Mr Brown states that One Tree Hill remains clearly apparent and identifiable as 'One Tree Hill' on the far horizon in this view. In conjunction with Mt Eden and Mt Wellington, then subsequently Mangere Mountain, it also conveys a sense of the true extent of Auckland's volcanic field and way in which it has helped to shape the main body of the Auckland isthmus and the margins of the Manukau Harbour. The other landscape experts say that the view could be obscured should a two storey house be erected at the intersection and that, at this busy intersection, the view is not the focus. Mr Brown considers that future development on the property closest to the Dominion Rd intersection could be configured to minimise such intervention.³⁰
- T03 Mr Brown states that this viewshaft highlights the proximity of Rangitoto to the City and its enduring role as the centrepiece in views from many parts of metropolitan Auckland. This key view from a critically important motorway corridor also captures the visual interplay/interaction of parts of the city with Rangitoto. It is both powerful and truly iconic. And yet the other landscape experts state that this view is local because it is focused more toward Northcote and Birkenhead. They say that the view to the right is peripheral and that the bridge median barriers, handrailings and southbound traffic are

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S Brown EIC (second round), para 76.

detractors.

- T09 Mr Brown states that, although view T09 shares some of the characteristics of T08, it offers a more expansive view of Rangitoto that reveals more of its signature profile and island landform. As a result, it makes a significant contribution to the character of the Buckland's Beach area. Further Bucklands Beach Rd is a significant thoroughfare. Over each summer, it affords an important vantage point for the thousands of beach-goers. The other experts state that this is a local view due to the orientation of the street toward Rangitoto and that many other such views exist and are generally protected by open space. Mr Brown states however that he has not identified any other views down major suburban or city roads that combine a regionally significant audience with the clarity of visual statement that emerges in relation to the T9 viewshaft. He says that, far from being common or 'typical', it is one of very few views that combine the prerequisite attributes of a regionally significant view to Rangitoto.³¹
- W05 Mr Brown states that W05 offers a close-up view of Mt Wellington, that dominates the outlook from Mt Wellington Highway close to its intersection with the Ellerslie Panmure Highway. It is the terminus for an important sequence of views to the cone (starting with W04). The other landscape experts argue that this view is not distinctive and from the right turning lane of the five lane highway is approaching a busy intersection, is partly obscured and that there are distractions. Mr Brown points out that W05 will outlive these temporary impediments.³²
- W09 Mr Brown states that W09 draws together Mt Wellington in a "most emphatic fashion", highlighting the way in which the identity of the Panmure town centre and the nearby cone are inextricably linked. The other landscape experts state that the significance of the view *could be reduced* by complying development on the northern side of Queens Road within the town centre retail strip, that this view has a local audience and is from a collector road and therefore not a regional audience. Mr Brown acknowledges these concerns, but notes that they primarily relate to just three retail frontages near the right-hand side of Mt Wellington and that in his opinion the future refurbishment and in-fill of the remaining street front would have a quite limited impact on form and visual presence of the cone even in the case of two-storey development.³³
- W24 Mr Brown states that this captures the clearly visible profile of Mt Wellington etched on the northern skyline – above the Tamaki River. The other experts argue that other there are detractors that compromise the foreground that lead to its local significance and that the audience is local. Mr Brown is not persuaded that the various detractors identified by the other experts significantly erode or undermine the view. He points out that

³¹ S Brown EIC (second round), para 87.

³² Ibid, para 99.

³³ Ibid, para 104.

this is a key traffic conduit.³⁴

- 5.2 It is submitted that Mr Brown's evidence alone provides a comprehensive analysis setting out the reasons in support of his position on the viewshafts that are in contention.³⁵ Other witnesses rely on their statements recorded in the Combined Analysis³⁶ except in the case of RSCJ Trust where Dennis Scott has prepared some further visual evidence in support of the locally significant classification of H07. It is submitted that the viewshaft selection assessments against the agreed criteria that have been undertaken by Mr Brown should be preferred.
- 5.3 Mr Brown points out that the key differences between him and the other landscape experts on the overall weighing up of the significance of each viewshaft largely pertain to:³⁷
- (a) The degree to which views of multiple cones capture the visual 'essence' of the wider volcanic field;
 - (b) The degree to which sequential views of one cone capture the visual 'essence' of that cone;
 - (c) The significance of the individual viewpoint or linear viewpoint; and
 - (d) The degree to which vegetation, transmission lines, road-side barriers and other elements close to each viewpoint affect, and in some cases degrade or erode the visual qualities of the cone.
- 5.4 The Environment Court has recently considered a number of these factors to be relevant in assessing the significance of viewshaft A13 to Mt Albert.³⁸ It has stated:
- (a) With respect to the degree to which views of multiple cones capture the visual 'essence' of the wider volcanic field, the view to Mt Albert represents a clear threshold or entry view across the harbour towards Auckland, with the volcanic field clearly in view. This included Mt Albert as the dominant initial element, but with partial views of Big King, One Tree Hill and Mt Eden.
 - (b) It also recognised that, in the context of travelling along the motorways, the view of the volcanic field changes, with several of the cones becoming more dominant as one moves from north to south, or south to north, west to east or east to west. It is that interchange of the volcanoes and their landmark quality that marks out these viewshafts as significant.³⁹
 - (c) With respect to the sequential views of the cone and the significance of the viewpoint, that the view persisted for some time driving on the motorway and although it was interrupted at various points, continued to be visible for

³⁴ S Brown EIC (second round), para 110.

³⁵ Joint caucusing statement, para 1.

³⁶ Attachment D to the Joint Conferencing Statement.

³⁷ S Brown EIC (second round), para 9.

³⁸ **Tram Lease Limited v Auckland Council** [2015] NZRMA 343

³⁹ Ibid at [90].

several minutes. The drive is for a significant part towards the view, i.e. it gets larger as one approaches the city.⁴⁰

- (d) It was not convinced by any arguments that the vegetation or the existing buildings on the natural feature, or the viewshaft itself, have no value. It said that it is the tension between the built environment on the lower shoulders of Mt Albert and the dominant (perhaps tonsured) features of the cone with the patches of colour through it which make the view so striking.⁴¹

5.5 Mr Brown has addressed the issue of vegetation in his EiC. His key points are that in his experience, trees have both waxed and waned as key components of Auckland's urban landscape and a corollary of intensification is likely to be the progressive replacement of trees and vegetation in general by development, vehicle circulation and manoeuvring areas, infrastructure and the open-space curtilage that more intensive forms of development demand.⁴² Other factors that will see tree removal occur are removal of general tree protection, pests and diseases and an aging tree population.⁴³

5.6 Importantly, Mr Brown explains that, although the views to Auckland's volcanic cones are often subject to the cycle of tree maturation, then decline or removal, the volcanic viewshafts have, since their introduction, been regarded as an inter-generational mechanism for the protection of views to the volcanoes and volcanic field.⁴⁴ Further, it should be noted that the experts have agreed to Rule J6.3.3.2.1 which provides that existing vegetation shall not be relevant to determining whether buildings and structures will not impact on any of the identified views of the maunga for the purposes of that rule.

5.7 For the remainder of the viewshafts that the Council proposes to retain as regionally significant but have been proposed by the experts, including Mr Brown, for reclassification as locally significant, we refer the Panel to the following pages of the Joint Conferencing Statement:

O10 Pages 24-25 of Attachment B Volcanic Viewshafts Assessment - One Tree Hill;

T08 Pages 17-18 of Attachment B Volcanic Viewshafts Assessment – Rangitoto; and

W13 Pages 28-29 of Attachment B Volcanic Viewshafts Assessment - Mt Wellington.

⁴⁰ **Tram Lease Limited v Auckland Council** [2015] NZRMA 343 at [89].

⁴¹ Ibid at [90].

⁴² S Brown EiC (second round), para 16.

⁴³ Ibid, para 17.

⁴⁴ Ibid, para 19.

The regional significance of A13 and W03

- 5.8 The Council's position is that both viewshafts A13 and W03 are of regional significance. That position is supported by Mr Brown. The remaining landscape experts who conferenced consider that these two viewshafts should be deleted.

Viewshaft A13

- 5.9 Mr Brown's position is that A13 acts as the point of introduction to successive views in which Mt Albert has a presence: its primary role is as part of a 'gateway' experience that leads into views of the Whau River, Waitemata Harbour and Waterview lagoon, as well as Mt Albert. He states that this is an important composite landscape experience and journey that contributes to the viewshaft's function as part of a "*western gateway to the isthmus and its cone field*."⁴⁵
- 5.10 The qualities of viewshaft A13 have recently been articulated by the Environment Court in the appeal of Tram Lease Limited against the Council's decisions on Plan Change 339 to the Isthmus legacy district plan. Although that decision was made in the context of the legacy RPS provisions, those provisions seek to achieve the same outcomes as the proposed PAUP RPS. For example, they include:
- (a) That the views of the volcanic cones that are listed in its appendix and indicated on its maps shall be protected, and intrusion into the defined viewshafts by buildings or structures shall be avoided, except where provided by specified building heights and height sensitive areas that underlie the viewshafts (Policy 6.4.19.4); and
 - (b) That urban intensification and High Density Centres and Corridors identified in its Schedule be undertaken consistent with Policy 6.4.19.1 (Policy 6.4.19.5).
- 5.11 We recorded in legal submissions made in the first round hearing, that there has been a change to the coordinates of viewshaft A13 as compared to the PC339 viewshaft. This actually allows greater development height beneath it (including on the property in Mt Albert owned by Tram Lease et al). Mr Brown supports the retention of the legacy plan coordinates as the change would significantly compromise the integrity of the viewshaft. The Council agrees with that assessment. However the Council acknowledges that lowering the floor of the viewshaft now does raise natural justice issues that the Panel would need to consider as there will be properties that were affected by the legacy plan coordinates but are not affected by the viewshaft as notified in the PAUP.⁴⁶
- 5.12 Notwithstanding this difference, it is submitted that the Court's conclusions are relevant and support a finding in these proceedings that viewshaft A13 is of regional significance. The Court stated:

⁴⁵ S Brown EiC (second round), para 27.

⁴⁶ Refer paragraphs 2.4-5 of the Closing remarks for the Council dated 10 July 2015.

- (a) As a matter of fact, Mt Albert is an Outstanding Natural Feature⁴⁷ and is self-evidently an important part and element of the volcanic field in Auckland.⁴⁸ That this is set out in the ARPS, and the Isthmus Plan identifies its geological significance amongst others, is no surprise. Mt Albert is self-evidently an important part and element of the volcanic field in Auckland;
- (b) As a matter of fact viewshaft A13 makes a considerable contribution to initial views of Auckland when travelling from the west. It acknowledged that it is within the context of One Tree Hill and Mt Eden which appear smaller in the distance, but is nevertheless an important part of the view;⁴⁹ and
- (d) As noted above, it represents a clear threshold or entry view across the harbour towards Auckland, with the volcanic field clearly in view.⁵⁰
- (e) As stated above, in the context of travelling along the motorways, the view of the volcanic field changes, with several of the cones becoming more dominant as one moves from north to south, or south to north, west to east or east to west. It is that interchange of the volcanoes and their landmark quality that marks out these viewshafts as significant.⁵¹

5.13 It is in this context that submitter experts continue to support the deletion of A13.

Viewshaft W03

- 5.14 Mr Brown describes this viewshaft as capturing the “slightly hunched” profile of Mt Wellington offering a clear view of its sculpted surface resulting from historic Maori terracing and defensive pits. It is “explicit” and “well articulated” to passing motorists, cyclists and pedestrians – including those waiting at the bus stop directly opposite the viewshaft’s origin point.⁵²
- 5.15 You will hear submitters’ experts state that housing redevelopment will encroach into this view to screen the cone. Mr Brown is of the opinion that there remains sufficient spatial latitude within adjoining residential properties for such redevelopment and the view of Mt Wellington to co-exist without compromising the core characteristics and qualities of viewshaft W03. That is because the cone’s profile is elevated well above the road corridor and the adjoining residential buildings. Further the sequential views and the significance of the highway are relevant.⁵³ Mr Brown states that:⁵⁴
 - (a) The collage of images presented by the sequential views to Mt Wellington in their totality leave an enduring impression about the close relationship between the road corridor and Mt Wellington;

⁴⁷ **Tram Lease Limited v Auckland Council** [2015] NZRMA 343 at [76].

⁴⁸ Ibid at [77].

⁴⁹ Ibid at [78].

⁵⁰ Ibid at [89].

⁵¹ Ibid at [90].

⁵² S Brown EIC (second round), para 89.

⁵³ Ibid, para 90.

⁵⁴ Ibid, paras 92-3.

- (b) By extension, this interaction helps to reinforce the cone's role as the visual centrepiece of the suburban landscape that includes Panmure, Mt Wellington, Ellerslie, Glen Innes, southern Remuera and surrounding parts of Auckland City; and
 - (c) The magnitude of daily traffic along the highway adds further weight to the importance of both the individual views and the sequence that they contribute to.
- 5.16 For the remainder of the viewshafts that the Council proposes to retain as regionally significant, but have been proposed by the experts, including Mr Brown, for deletion, we refer the Panel to the following pages of the Joint Conferencing Statement:
- A11 At pages 24-25 of Attachment B Volcanic Viewshafts Assessment - Mt Albert;
 - E04 At pages 10-11 of Attachment B Volcanic Viewshafts Assessment - Mt Eden;
 - E06 At pages 14-15 of Attachment B Volcanic Viewshafts Assessment - Mt Eden;
 - E19 At pages 42-43 of Attachment B Volcanic Viewshafts Assessment - Mt Eden; and
 - W06 At pages 14-15 of Attachment B Volcanic Viewshafts Assessment - Mt Wellington.

An 8m maximum height control and non-complying status in HSAs

- 5.17 It has been acknowledged by the experts who conferenced that even at 8m the effects of a building on views of the maunga can be adverse and that the policy is to provide for reasonable development. However, a number of submitters oppose the 8m maximum height for permitted development within HSAs and the non-complying activity status for development above 8m. Mr Reaburn acknowledges that there may be room for refinement if a finer-grained analysis were to be undertaken in assessing each HSA. He has agreed that this is appropriate in the case of the land owned by Elizabeth Knox Home and Hospital and in Devonport.
- 5.18 It is submitted that Mr Reaburn's reasoning is correct that, although it is not ideal for applicants to have to go through the non-complying consent process, this is more appropriate than reducing the activity status with the risk that inadequate attention is given to the potential for adverse effects. He points out that HSAs can be much more complex in respect of identifying adverse effects than is the case with viewshafts, where there is only a single origin point or line to consider. That is why greater certainty of non-complying activity status is more appropriate in meeting the objective.⁵⁵
- 5.19 It is submitted that the historic, archaeological and cultural integrity of these regionally significant volcanic features should not be put at risk simply because it is

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P Reaburn Rebuttal (second round), para 3.6.

acknowledged that some refinement to the HSAs might be able to occur but for which we have no evidence.

5.20 The Environment Court in **Tram Lease Limited** concluded that a 9m permitted height was appropriate for the HSA along New North Road (a business zone) and it is submitted that two of its reasons are particularly relevant to this process. The Court considered that it was relevant that:⁵⁶

- (a) The land has been capable of reasonable use within the 9m limit; and
- (b) The viewshaft itself, and the provisions applying to it, are the subject of a comprehensive review by the Council through the PAUP process. The Court, in adopting a cautious approach, would simply be preserving the position until a fuller consideration of the position can be given through the new statutory process.

5.21 It is submitted that the second point above is particularly relevant. In anticipating that the PAUP process would provide a comprehensive review of the HSAs, the Court found it appropriate to adopt a cautious approach. There has not been a comprehensive review of the HSAs with respect to their potential refinement except with respect to Mt St John and Devonport, although Mr Reaburn and Mr Brown both consider that such a review would be timely. It is submitted that the Panel should adopt the Court's reasoning and similarly take a cautious approach in preserving the position until fuller consideration of the appropriate refinement of the HSAs can be undertaken through a plan change process in the future.

The relevance of the counter-factual

5.22 Ms Linzey for HNZN has raised her concern that not all counter-factual situations have been considered for the assessment of costs and benefits and in particular that alternative residential zoning patterns need to be considered in order to understand the quantum of properties that are impacted by the viewshafts.

5.23 Mr Reaburn notes that no site-specific or area-specific details are given by Ms Linzey.⁵⁷ Further, his view is that zoning decisions include consideration of any relevant viewshaft or HSA overlay.⁵⁸ Zoning should respond to overlays and this approach is consistent with the Panel's Best Practice Approaches for Re-zoning dated 31 July 2015 that changes to zone boundaries be consistent with the maps in the plan that show Auckland-wide rules and overlays or constraints.

5.24 But there is a further issue with respect to the point made by HNZN that its counter-factual proposed zoning would see an increase in costs of the viewshafts. Quite simply, the issue of scope for all proposed changes has not been provided by HNZN. At the time of writing these submissions, no maps have been provided which demonstrate scope. It cannot therefore be assumed that all of HNZN's proposals are within scope. It also cannot be assumed that the relief sought by HNZN will be

⁵⁶ **Tram Lease Limited v Auckland Council** [2015] NZRMA 343 at [70].

⁵⁷ P Reaburn Rebuttal (second round), para 2.6.

⁵⁸ P Reaburn EiC (second round), para 5.49.

accepted by the Panel. The value therefore of the 'counter factual' is extremely limited.

The “no adverse effects” threshold for locally significant viewshafts

- 5.25 Submitters argue that the “no adverse effects” threshold for locally significant viewshafts should be relaxed. Locally significant viewshafts as a category are not supported by the Council. But if they were to be introduced, it is submitted that it would not be appropriate to relax this threshold as it is prescribed by proposed Policy 18 of the PAUP RPS which states:

Avoid new buildings or structures that penetrate the floor of the volcanic viewshafts identified in Appendix 3.3, except where it can be demonstrated that:

- they would have no adverse effect on the visual integrity of the volcanic maunga as seen from the identified viewing point or line; or
- such development is located and complies with an identified height sensitive area.

- 5.26 As Mr Reaburn points out, a lessening of the threshold will inevitably mean the viewshaft will lose its significance, even at a local level.⁵⁹ Further, if it is considered that the “no adverse effects” requirement creates a conflict with the restricted discretionary activity status then he considers that this conflict should be resolved by changing that status to non-complying. That is because, in his opinion, the restricted discretionary status is appropriate because of the greater potential in a locally significant viewshaft for there to be no adverse effects. It is not because adverse effects are acceptable.⁶⁰

Council’s position on the issues that remain in contention

- 5.27 By way of brief summary, we confirm the Council’s position on the issues raised by submitters in this second round of evidence that were already addressed in the previous hearing:
- (a) Mr Brown provided supplementary Rebuttal dated 3 July 2015 confirming that he does not support the removal of any part of viewshaft E11 in response to the evidence of Alastair Kay, Peter Keys and Alan Drake;
 - (b) Non-complying activity status is appropriate given the very real prospect that the activities that it applies to are likely to raise policy issues and issues of more than minor adverse effects;⁶¹ and
 - (c) The proposed provisions maintain the rule that non-complying activities will be publicly notified, and restricted discretionary activities are made subject to the normal notification tests in the RMA. Not having a deemed notification

⁵⁹ P Reaburn EiC (second round), para 5.28.

⁶⁰ P Reaburn Rebuttal (second round), para 4.3.

⁶¹ P Reaburn Rebuttal (first round), para 8.2.

rule will reduce certainty, including in relation to the expected outcome under the policy framework which is that there be no adverse effects.⁶²

6. CONCLUSION

- 6.1 It is submitted that there are now broadly two issues for the Panel. First, whether the viewshafts have correctly been identified as regionally significant in accordance with Policy 13 of the RPS and the criteria that have been agreed by the landscape experts. For 50 of the viewshafts the experts agree their regional significance. It is submitted that Mr Brown's comprehensive analysis of 20 of the remaining viewshafts should leave the Panel in no doubt as to their significance. The Council's position is that all of the viewshafts are regionally significant – they were rolled over from Plan Change 8 as such.
- 6.2 Secondly, there is the issue that was addressed at the first round of hearings: whether the level of protection for viewshafts proposed by the Council is appropriate. Although it is the provisions of the PAUP RPS that must be given effect to, Mr Reaburn considers that the balancing exercise between the protection of viewshafts and providing for intensification has been done before in conjunction with the Plan Change 8 process and the conclusion was that the viewshafts should be protected.⁶³ It is submitted that the recent settlement of that process should weigh heavily in favour of continued protection of these viewshafts and HSAs.
- 6.3 Further work has now been done to quantify, as far as is practicable, the costs of the viewshafts. Although that work is valuable, the extent to which that information is relevant to viewshaft protection is a policy matter. The Council's position is that urban intensification must be consistent with the protection of volcanic viewshafts and features.
- 6.4 It is submitted that the factors that should weigh more heavily than these costs are:
- (a) That, as Outstanding Natural Features, the maunga are to be protected from inappropriate subdivision, use and development as a matter of national importance. Whether the viewshafts are classified as being of regional or local significance, in protecting the maunga from inappropriate subdivision, use and development, it is essential also to protect the views to and between them. Those views contribute to people's appreciation of their qualities and to protect them is a matter of regional, if not national importance.⁶⁴
 - (b) Recognising and providing for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga is a matter of national importance in accordance with section 6(c).
 - (c) That the Auckland Plan is targeting World Heritage status of Auckland's volcanic field by 2020.⁶⁵ The "Heritage case for the nomination of the

⁶² P Reaburn EIC (first round), para 9.71 and Appendix C, page 17.

⁶³ Ibid, para 9.37-8.

⁶⁴ S Brown Rebuttal (first round), para 10.

⁶⁵ Auckland Plan, Strategic Direction 7 Targets, page 174.

Auckland Volcanic Landscape as a World Heritage property" is attached to Paul Majurey's evidence as Appendix F. The criteria under which that case is put forward are relevant:

- (iii) *to bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;*
- (v) *to be an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change;*
- (vii) *to contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance.*

6.5 The Environment Court has recently noted that it has frequently framed the test under section 32 as being which of the competing provisions better meets the purpose of the RMA.⁶⁶ Having regard to the factors above, it is submitted that the protection of the volcanic viewshafts as regionally significant views to Auckland's maunga and protecting them from the adverse effects of development must be preferred to weakening the provisions to give way to intensification. The latter option will see the viewshafts eroded and slowly disappear.

6.6 The protection of these viewshafts achieves the integrated management of the natural and physical resources of the region in accordance with the Council's functions (section 30(1)(a)). It is the manner in which it proposes to manage the actual or potential effects of the use, development, or protection of land which are of regional significance (section 30(1)(b)). Those objectives, policies and methods were canvassed in Topic 010 and the Council's position on them remains the same.

6.7 We reiterate our submission that the values that are associated with these views can only be appropriately provided for through the Council's proposed provisions and that any lesser standard will not ensure that these values are sustained for future generations.

J Hassall / M J Dickey / D A Riley

Counsel for Auckland Council

3 May 2016

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TKC Holdings Ltd v Western Bay of Plenty District Council [2015] NZEnvC 100 at [88].