

Decision following the hearing of an application for resource consent under the Resource Management Act 1991



Proposal: To construct a comprehensive mixed-use development at 75-79, 81-87 and 89-97 Tamaki Drive, 6-12 and 14 Patteson Avenue and 26, 28 and 30 Marau Crescent, Mission Bay ("the site").

The proposal involves the demolition of all existing buildings and the construction of two levels of basement and seven detached and semi-detached buildings above, ranging in height from four to eight storeys. These buildings are arranged around an internal, raised plaza space. The buildings provide for commercial units, residential dwellings and a cinema.

These resource consents are **REFUSED**. The reasons are set out below.

Application numbers	LUC60324989 (land use) and WAT60325010 (water) (BUN60324987)
Site address	75-79, 81-87 and 89-97 Tamaki Drive, 6-12 & 14 Patteson Avenue and 26, 28 & 30 Marau Crescent, Mission Bay
Applicant	Drive Holdings Limited ("Drive Holdings")
Hearing commenced	Tuesday 30 July, 2019, 9.30 a.m.
Independent Hearing Commissioners	Janine Bell (Chair) David Mead Michael Parsonson
Appearances	<u>For the Applicant:</u> Douglas Allan (Legal) Julie Goodyer (Legal) Haydn Staples (Applicant's Representative) Rob Guild (Architecture) Ken Giffney (Construction) James Whitlock (Noise) John Parlane (Traffic and Transportation) Tom Shand (Coastal Inundation and Sea Level Rise) Jon Rix (Flooding) Peter Dodd (Mitigation Measures regarding Flooding) Mark Thomas (Geotechnical) Shane Moore (Contamination) Peter Cenek (Wind) - evidence tabled Stuart George (Structural Engineering) Ian Munro (Urban Design) Rob Pryor (Visual and Landscape) Melean Absolum (Visual and Landscape)

	<p>John Lovett (Planning – Strategic Issues and RDA Criteria) Peter Neeve (Planning – Statutory Assessment)</p> <p><u>Orakei Local Board:</u> Troy Churton Colin Davies David Wong</p> <p><u>For the Submitters</u> Mr Russell Greenwood (32A Atkin Avenue) Tamba Carleton represented by: <ul style="list-style-type: none"> ○ Russell Bartlett QC (legal counsel) Mike and Kathy Davies Bruce Harland s 9(2)(a) Dr Kenneth Palmer s 9(2)(a) Peter Moses s 9(2)(a) Lorna Stansfield s 9(2)(a) Noel Thompson s 9(2)(a) Erika Whittome s 9(2)(a) Susan Riddell s 9(2)(a) Peter Riddell s 9(2)(a) John and Susan Hole Michael Joseph (s 9(2)(a) Richard Oddy s 9(2)(a) Elizabeth Sampson (s 9(2)(a) Jennifer Duder s 9(2)(a) Colin Defreyne (s 9(2)(a) David Crown s 9(2)(a) John McCallum s 9(2)(a) Juliet Yates MNZM s 9(2)(a) Margaret King (s 9(2)(a) Kenneth Norton Simon and Bridget Tompkins Nigel Hewitson s 9(2)(a) Richard Steel (s 9(2)(a) Andrea Young s 9(2)(a) June Turner Support Mission Bay Incorporated represented by <ul style="list-style-type: none"> ○ Alan Webb (legal counsel) ○ Don Stock (Society member) ○ Stephen Brown (Landscape Architect) ○ Brian Putt (Planner) Karen Mason s 9(2)(a) Jeff Meltzer s 9(2)(a) Bev Goodwin s 9(2)(a)</p>
--	--

	<p>Mission Bay Kohimarama Residents' Association represented by:</p> <ul style="list-style-type: none"> ○ Gill Chappell (legal counsel) ○ Don Stock ○ David Wren (Planner) <p>Rob Everitt Anna Nathan s 9(2)(a) St Heliers and Glendowie Residents' Association represented by Michael Walsh John Wardle (s 9(2)(a) Ivan Martinovich s 9(2)(a) Rebecca Jerram (s 9(2)(a)</p> <p><u>For the Council</u> Quentin Budd, Principal Project Lead Ben Cunningham, Reporting Planner Yu-Ning Liu, Principal Urban Design Peter Kensington, Landscape Architect Terry Church, Transportation Specialist Jin Lee, Development Engineer Larissa Rew, Hearings Advisor</p>
Hearing adjourned	Wednesday 7 August 2019
Commissioners' site visits	22 July 2019 and 13 August 2019
Hearing closed	26 August 2019

Introduction

1. This decision is made on behalf of the Auckland Council ("the Council") by Independent Hearing Commissioners, Janine Bell, David Mead and Michael Parsonson appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("the RMA").
2. This decision contains the findings from our deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
3. The application was publicly notified on 12 September 2018. A total of 699 submissions have been received, 626 in opposition to the application, 3 neutral and 70 supporting the application.

Summary of proposal and activity status

Proposal

4. The proposal involves the demolition of all existing buildings on site. Excavation will be undertaken to create a two-level basement to provide car and bicycle parking, building services plant, lift and stairs access, vehicle access ramps and storage areas.

The proposed ground level spaces - at approximately the level of the existing ground level – are to contain an internal parking area surrounded by commercial units on Tamaki Drive and Patteson Avenue, residential dwellings on Marau Crescent and further building services plant rooms in the south-eastern area of the site.

5. Level 1 is to contain a podium on top of the ground level parking area, the north area of the podium is public (during opening hours) and the southern portion of the podium is private. In the centre of the podium is a building that is proposed to contain a 5-screen cinema complex building (Building 7) with space for 322-400 seats. Surrounding the podium and cinema building are to be Buildings 1 to 6:
 - Buildings 1 and 2 are to be commercial at ground floor and Level 1 with residential levels above. Building 1 contains a total of eight storeys, building 2 contains six storeys.
 - Building 3 is to be commercial at ground level with residential levels above, with a total of five storeys.
 - Buildings 4 and 5 are to be exclusively residential. Building 4 has five storeys and Building 5 has four storeys
 - Building 6 is to be commercial at ground floor with residential levels above, with six storeys and one portion extending to seven storeys.
6. Combined, the buildings are to contain 100 individual dwellings, of which 27 are to be one bedroom, 48 contain two bedrooms and 25 contain three bedrooms. The commercial areas of the development are to cover a total gross floor area of 2920m². A total of 265 car parks are proposed at grade and in the two basement levels.
7. The proposal includes the removal and replacement planting of trees located in the road reserve. The development is to be comprehensively landscaped. Verandahs are to be provided along the Tamaki Drive and Patteson Avenue frontages, some of which are within the site and some overhanging the footpath. The verandah on the north-western corner of the site overhanging the footpath is also proposed to be used as an alfresco dining area, similar to the existing situation. Roof-top building services plant is to be located on Buildings 4 and 7.

Reasons for Consent

8. The proposal requires resource consent for the following reasons, as taken from the section 42A report:

Land use consents (s9) – LUC60324989

Auckland Unitary Plan (Operative in Part)

District

Business – Local Centre

- A cinema is a discretionary activity under Standard H11.4.1(A12).
- Retail greater than 450m² gross floor area per tenancy is a restricted discretionary activity under Rule H11.4.1 (A21). The food and beverage retail tenancy at podium level on the corner of Tamaki Drive and Patteson Avenue will be approximately 462m² (including approximately 95m² of toilets and kitchen) plus an additional 145 m² of outdoor dining on the balcony. The area size of any additional dining on the plaza adjacent to this tenancy has not yet been determined.
- To construct new buildings is a restricted discretionary activity under standard H11.4.1 (A44).
- The proposal involves activities and development that fail to meet the following standards and are a restricted discretionary activity under rule C1.9(2):
 - i. The total height standard H11.6.1 (2) and occupiable building height standard H11.6.1 (2) are infringed as set out in the table below:

Building	Exceedance of 16m maximum Occupiable Height	Exceedance of 18m maximum Occupiable Height
1	11.657m	10.207m
2	5.138m	4.475m
3	1.030m	380mm
4	maximum exceedance of 656mm	complies (except for roof top structures)
5	complies	complies
6	between 150mm to 7.588m	maximum exceedance of 6.424m
7	maximum exceedance of 1.0m	complies (except for roof top structures)

- ii Rooftop equipment on Building 4 and Building 7 (cinema building) complies with the maximum height limit of 18m, however this equipment occupies more than 15% of the area of the roof to the storey immediately below these structures (Building 4 approximately 42% of the roof area is occupied and Building 7 approximately 37% is occupied).
- lii The proposal includes three dwellings along Marau Crescent, located on the ground floor of the building. This is a restricted discretionary activity under standard H11.6.3(1).

District Land Disturbance

- To undertake earthworks over an area of approximately 6400m² involving a volume of approximately 35,000m³. Earthworks greater than 2,500m² and/or 2,500m³, in a

business zone, is a restricted discretionary activity under rules E.12.4.1 (A6) and (A10) respectively.

Trees in Roads

- To remove 3 street trees in Marau Crescent and 2 street trees and a palm in Patteson Avenue that are greater than 4m in height or greater than 400mm in girth is a restricted discretionary activity under rule E17.4.1 (A10).

Noise and Vibration

- The proposal does not comply with the permitted construction noise activity standards in Tables E25.6.27.1 & E25.6.27.1.2 which is a restricted discretionary activity under Rule E25.4.1 (A2). The activity may also exceed the noise limits in Table E25.6.7.1 for activity noise generated from activities in the development, as received in the Business – Local Centre zone from 10pm until 7am the following day. In particular:
 - i. Proposed construction noise up to 85 dB L_{Aeq} , which is 15 dB L_{Aeq} above the relevant standard.
 - ii. Proposed activity/operational noise up to 70 dB L_{Aeq} , which is 10 dB L_{Aeq} above the relevant standard.

Transport

- A restricted discretionary activity consent is required for the following:
 - Table E27.6.1.1 New development thresholds rule (T1), Residential Dwellings where 100 or more dwellings are proposed and (T8A), Retail activities (non-drive through), where more than 1,667m² gross floor area (GFA) is proposed;
 - Table E27.6.4.4.1 Gradient of Vehicle Access Rule (T159) which requires that vehicle access serving all activities to have a gradient no steeper than 1 in 6 (16.7 per cent). The proposed internal curved ramp from the ground floor parking to the basement has a maximum gradient of 1 in 5 at the inside radius.

Natural hazards and flooding

- To construct below ground parking or parking areas in the 1 per cent annual exceedance probability (AEP) floodplain is a restricted discretionary activity under rule E36.4.1(A26).
- To construct other land drainage works, stormwater management devices or flood mitigation works in the 1 per cent annual exceedance probability (AEP) floodplain is a restricted discretionary activity under rule E36.4.1(A33).

- To construct other new structures and buildings in the 1 per cent annual exceedance probability (AEP) floodplain is a restricted discretionary activity under rule E36.4.1(A37).
- The use of new buildings to accommodate more vulnerable activities, and changes of use to accommodate more vulnerable activities within existing buildings located in the 1 per cent annual exceedance probability (AEP) floodplain is a restricted discretionary activity under rule E36.4.1(A38).
- The relocate and upgrade wastewater and stormwater infrastructure is a restricted discretionary activity under rule E36.4.1(A56).

Notes:

1. *The Finished floor levels of habitable rooms are above the inundation level of the coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise area.*
2. *The application originally sought consent to construct a building or structure on land located in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area is a restricted discretionary activity under rule E36.4.1(A9). During the hearing all parties agreed this standard did not apply.*

Temporary Activities

- The proposal fails to comply with the construction activity noise rules and will have a construction period of 3 - 4 years and is a restricted discretionary activity under Rule E40.4.1(A24)

NES for Assessing and Managing Contaminants in Soil to Protect Human Health (“NES CS”)

- Land use consent for disturbance of a piece of land involving approximately 35,000m³ over 6,400m², where a detailed site investigation confirms the soil contamination for heavy metals, poly-cyclic aromatic hydrocarbon (PAH) and total petroleum hydrocarbon (TPH) compounds is within the soil contaminant standard (controlled activity under regulation 9(1)).

Regional

Water permits (s14) – WAT60325010

Groundwater

- Rule E7.4.1(A20) Dewatering or groundwater level control associated with a groundwater diversion authorised as a restricted discretionary activity under the Unitary Plan, not meeting permitted activity standards or is not otherwise listed, is a restricted discretionary activity.

- Rule E7.4.1(A28) Diversion of groundwater caused by any excavation, (including trench) or tunnel that does not meet the permitted activity standards or not otherwise listed is a restricted discretionary activity.

Note: The proposal does not meet all the relevant permitted activity standards in E7.6.1.6 or E7.6.1.10. The proposal, however, satisfies the Restricted Discretionary standards in E7.6.3.3.

9. Overall the proposal has been considered as a **discretionary activity**.

Relevant statutory provisions considered

10. In accordance with section 104 of the RMA, we have had regard to the relevant statutory provisions including the relevant sections of Part 2 and sections 104 and 104B and 108.
11. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant policy statements and plan provisions of the following documents:
 - National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES CS);
 - National Policy Statement on Urban Development Capacity (NPS UDC);
 - New Zealand Coastal Policy Statement (NZCPS);
 - Hauraki Gulf Marine Park Act (HGMPA);
 - Auckland Unitary Plan Operative in Part (AUP (OP)).
12. In accordance with section 104(1)(c) of the RMA, we have had regard to the relevant policy statements and plan provisions of the following documents:
 - Tamaki Drive Masterplan.

Comments from the Orakei Local Board

13. In accordance with section 15(2) of the Local Government Act Auckland Council Act 2009, Messrs Churton, Davis and Wong outlined the Local Board's concerns with the proposal. They highlighted that the AUP (OP) offered far more generous development opportunities for the site in comparison with the legacy district plan. The Board's strong view was that it could only support the redevelopment of such a significant site if all aspects of the proposal complied with the relevant AUP (OP) standards.
14. Overall the Local Board believed there were positive effects to be generated by the proposal including increased local economic opportunities for employment, rejuvenated local amenity and quality apartment accommodation, however they considered that the adverse effects from various infringements were so significant and negative as to not warrant granting consent.

15. They advised that the Board was very concerned that four of the seven buildings did comply with the “already more generous” height standard. They were concerned that granting consent to this development would not only be inconsistent with the policies and objectives of the Unitary Plan but enable creep or cumulative development to distort the policies and objectives of the zone in this unique coastal location.
16. They advised that if the Panel did grant consent, the proposal could still be stepped in height within the 18m height standard and that it was unnecessary for the proposal to exceed the permitted 18m height to achieve a gateway development or to meet the objectives of the Unitary Plan. They considered the proposal far exceeded ‘local scale’ and could be reduced in height to appropriately meet the Unitary Plan requirement of local scale commercial and residential development.

Summary of evidence heard

17. The evidence in this case includes the application, the supporting documentation, the Section 92 response, the Council officer’s report, the applicant’s evidence to the hearing and the submissions received. This information is all part of the public record and is not repeated. In accordance with s103B, the Council’s planning officer’s report and the statements of evidence prepared by expert witnesses, appearing on behalf of the applicant and the submitters, were circulated prior to the hearing. The statements of evidence were taken as read with the witnesses provided with the opportunity to highlight the main points raised in their expert evidence and to respond to questions from the Commissioners. The following is a summary of the evidence presented at the hearing.

Applicant

18. **Mr Douglas Allan**, legal counsel, appeared on behalf of the applicant. In his opening submissions, he outlined the proposal, the site and its context, the design philosophy for the development, the matters requiring resource consent and the basis of the assessment. He went on to make some general observations about the site, the changes that had occurred to the planning strategy applied to the Auckland urban area as a result of the Council’s adoption of the AUP(OP). He also took Commissioners through the statutory framework and regulatory context including identifying the relevant National Planning instrument and the relevant AUP(OP) considerations.
19. He noted that the site was the largest and most strategically located in the Mission Bay centre; being a local centre he described as having a district or sub-regional function in terms of entertainment food and beverage. It was a site “ripe for redevelopment”, and was underdeveloped in terms of the planning outcomes now sought by the Council. The AUP(OP) envisaged a transformation of Auckland and this included Mission Bay. He emphasised that historic approach of maintaining existing amenity, embodied by the constrained height limits that were placed on the site in the legacy district plan. The AUP(OP) enables much larger and higher buildings and provides for proposals that exceed the zone height standards to be assessed as a restricted discretionary activity.

20. Mr Allan noted that the Council's s42A report recommended that consent be granted to the application, subject to the imposition of conditions. He advised that the applicant was recommending changes to several of the conditions. These changes, along with brief comments providing the rationale for the changes, were incorporated into the conditions attached to Mr Neeve's evidence.
21. Mr Allan also outlined some further proposed conditions arising from the evidence exchanged on behalf of Auckland Planning Limited. The Auckland Planning Limited submission was concerned with the effects of the proposal on the property at 99 Tamaki Drive that adjoins the application site on its eastern boundary, particularly effects during demolition, excavation and construction. Proposed changes to conditions related to the inclusion of conditions to provide copies of all building condition surveys to the owners and tenants of 99 Tamaki Drive and to require a demolition methodology to be submitted to Auckland Council for certification prior to the commencement of these works. Mr Allan suggested that the proposed demolition methodology should minimise risk to footings of the building at 99 Tamaki Drive. The submission also sought that there be consultation between the consent holder and owners and tenants at 99 Tamaki Drive to produce agreed times when work is likely to be disruptive to 99 Tamaki Drive. This was acceptable to the applicant.
22. In relation to the issues raised by Mr Simonds, the Council's Senior Specialist – Coastal and Water Allocation, having reviewed the applicant's geotechnical and groundwater evidence, Mr Allan advised the changes suggested in Mr Neeve's schedule of conditions, to condition 13 dealing with bulk earthworks and conditions 23-25 dealing with monitoring frequencies were no longer sought.
23. Mr Allan also suggested that proposed Condition 1 "be pared down to those [documents] that define the terms of the application and that any particular tasks, techniques or outcomes identified in the supplementary documents, that are considered by the Council to be critical to the grant and implementation of the consent, to be explicitly identified in conditions"¹
24. Mr Allan concluded by reminding Commissioners that the AUP(OP) anticipates significant change for Mission Bay, and that this application would allow this to occur "in an imaginative and innovative way that recognises and responds sensitively to its context"². He asked that consent be granted subject to the conditions attached to Mr Neeves' evidence, (with the additions and deletions outlining in his legal submissions).
25. **Mr Haydn Staples** is a Company Director of Drive Holdings Limited. In his statement of evidence, he outlined his long personal connection to the Mission Bay area and the Company's vision for the site and development. Over the last 35 years, the Company has been assembling and acquiring the land. He outlined the Company's past work to obtain a comprehensive and integrated planning framework for the site under the Auckland District Plan (Isthmus section). He noted that the Unitary Plan anticipates an appreciably different built outcome for Mission Bay from the former District Plan, notably

¹ Douglas Allan, Opening legal submissions, paragraph 6.6 (c)

² Ibid, paragraph 7.6

it increases significantly the standard zone height to 16m + 2m. Mr Staples considered that this proposal is a response to the Unitary Plan provisions. He intended to “implement a community and lifestyle-based project, designed for the local environment, as anticipated by the new Unitary Plan. The Project will retain the Mission Bay Cinema, will bring a substantial residential component to the waterfront, and will provide restaurants, food operators, local shops and local facilities.”³

26. He considered the design of the project, reflected the development opportunities of the Unitary Plan, while taking a sensitive approach to the surrounding sites, in particular the residential activities on the southern side of Marau Crescent.
27. **Mr Robert Guild**, a registered architect, is the architectural project director for the proposal. He advised he had been intimately involved in the development and design of the project. He outlined the applicant’s brief and desire for a design that is attractive, accessible and understandable by the public, using well-built structures that would be attractive, durable, with interesting materials and architectural details. The site should be visually permeable so there would be a degree of interaction between occupants of the buildings and the public, via decks, verandahs and windows. Design features relate to the other features and elements in the surrounding area.
28. While there was an original base scheme based on the Local Centre zone rules, the design team identified a number of perceived shortcomings with that scheme and concluded that the project warranted a better approach that achieved the intent of the AUP(OP) policies. In particular was whether the allowable floor area and building volume could be massed on the site to take better advantage of the opportunities of the site and provide a better outcome along the site’s interfaces, notably to the south and east where it was less desirable to have commercial activity and positive benefits from less height than enabled by the AUP(OP). The design team confined the alternative design approach to an overall scale that they felt could reasonably be achieved under the zone rules.
29. Mr Guild briefly set out his design approach to the site which he described as the ‘mediated’ approach whereby a number of references from existing built form are taken and together incorporated into the larger building’s design. He outlined a number of characteristics that the team felt were aesthetically relevant to Mission Bay. He considered that “the bespoke aesthetic style that had been arrived at for the project is an appropriate and authentic architectural response to Mission Bay and is preferable to the more generic style that is currently common, including across Auckland”⁴. In his opinion the buildings successfully reflected and responded to the qualities and environment of Mission Bay. “The buildings are of a quality and visual richness that justifies the projects proposed scale and will positively contribute to the quality of the streets and open spaces. We have designed the project carefully and with regard to reaching the best outcome possible for the site in light of the Unitary Plan provisions.”⁵

³ Statement of Evidence Haydn Staples, paragraph 6.1, page 6.

⁴ Statement of Evidence Robert Guild, page 18, paragraph 3.15.

⁵ Ibid, page 21, paragraph 3.17.

30. To identify the optimal bulk and mass, he noted that the scale of the proposal was in accordance with the zone's development controls and that a key benefit of the proposed bulk and mass distribution was it allowed a reduction in scale along Marau Crescent, in comparison to a building built to the zone height limit. It also allowed gaps and breaks between buildings, and the internalisation of the cinema. He advised he understood that the Council's Urban Designer, Ms Liu agreed with the design strategy to redistribute the bulk.
31. Mr Guild went on to discuss a number of key elements of the design approach. In terms of building height and form he explained that structures along the Marau Crescent frontage were relatively low to ensure a suitable interface with residential development to the south. Taller and larger structures had been placed along the Patteson Avenue and Tamaki Drive frontages. In the case of Patteson Avenue, the upper floors were setback from the road to reduce their visibility and to avoid a sense of dominance. In the case of Tamaki Drive, heights increased from the eastern edge of site towards the focal point, enabling the site to address both Tamaki Drive and the park beyond providing definition of the southern edge to the public open space. A respectful residential interface to the adjoining residential zoned sites to the east.
32. In his opinion the corner of Tamaki Drive and Patteson Avenue is the natural centre of the Mission Bay centre and the busiest location. He advised that from an architectural perspective, it is desirable to identify such important locations and the most obvious way was through additional height and that is the approach adopted for this project. The additional height creating a focal point that reflects the functional role of the location. At the Tamaki Drive/Patteson Avenue corner, the proposal involves 7 storeys at the street frontage with an eighth floor, penthouse apartment, set back from the frontage.
33. Matters considered in arriving at the height of Tamaki Drive/Patteson Avenue corner included wanting the focal point to be sufficiently taller than the permitted 16m plus 2m height limit to ensure it emphasised the intersection adequately. The highest point is to be approximately 28m at the focal point, albeit that the eighth floor is set back from the road frontage (i.e. 1.5 times the standard 18m height). Mr Guild advised that the ratio appeared "an appropriate one as it clearly delineated the focal point but did not result in it being out of scale with the buildings on the balance of the site"⁶. He indicated that a significantly taller building had been considered but it was concluded it would be out of scale with the Ronaki Road escarpment to the south and the vegetation to the north. He advised that given the form of development that was arrived at that it seemed logical to have a measured and rhythmic stepping up of height to the north from Marau Crescent and similar stepping up along Tamaki Drive. The buildings at the southern and eastern ends were close to what was enabled by the Unitary Plan. The Team also wanted to ensure the building respected and was not out of scale with Bastion Point, the highest point being one storey lower than the open space on Bastion Place.

⁶ Ibid, page 24, paragraph 4.8(a)

34. Mr Guild spent some time taking the Commissioners through the treatment of the facades, the materials and colours that were proposed for each part of the development. He also outlined the consultation undertaken with Ngati Whatua and Ngati Paoa.
35. In relation to the Council's s42A report he advised he was largely in agreement with the conclusions reached by the Council's Urban Design Specialist, Ms Liu, although there were a number of issues with the points raised in the assessment. He disagreed with Ms Liu's recommended condition to reverse the downstairs bedrooms and upper living rooms of the terraced housing facing Marau Crescent. He felt that owners of these units should have the flexibility to choose how to use their dwellings.
36. He disagreed with Ms Liu's view that the eighth storey of Building 1 was "architecturally unresolved". Ms Liu was concerned over the lack of articulation and proposed rectilinear form of this storey that was visually discordant with levels below. Mr Guild outlined that several design options had been investigated for this floor, that the design team felt the most appropriate approach was to create a glass pavilion with the aim of allowing this storey to visually recede into the background as well as physically recede by setting the façade back from the floors below. The focal point was effectively achieved with seven storeys, with the eighth storey being apparent when viewed from further away.
37. Ms Liu also had concerns with the southern façade of Building 6 and its porthole windows. Mr Guild explained the intention was to create a soft transition between the style of Building 5 and Building 6, with the porthole windows employed as a solution to achieve this transition, reflect local vernacular, create a bit of fun and provide visual interest. He noted that the main façade of Building 6 is on Patteson Avenue, with the focus of the views from the apartments to the west rather than the south.
38. **Ken Giffney** is a qualified and experienced civil engineer who has been advising the project on the bulk earthworks, sediment control, street works, stormwater, wastewater, water supply and off-site flooding. His evidence outlined the extent and process for undertaking the bulk earthworks required to construct the basement levels. Based on his calculations of excavation and load out rates of 400m³ per day, the bulk earthworks would take 90 days which when combined with the perimeter piling and other related construction activities would take a total of 16 weeks. He estimated this would equate to 4,800 truck loads spread over 96 days or 50 truck movements per day (5 per hour over a 10-hour day). A preliminary sediment control plan had been included in the application. In his opinion the sediment and erosion control measures described would provide the required level of environmental protection. The proposed street works to reconfigure the on-street parking and vehicle crossings would be subject to the Council and Auckland Transport's Engineering Plan Approval (EPA) process.
39. Likewise, the stormwater discharge, waste water disposal and water supply works are all subject to an EPA with the Council or Watercare. From his analysis in the application, the calculated stormwater discharge, waste water disposal and water supply demand quantities and capacity assessments would comply with all relevant rules and standards.
40. With respect to on site flooding he advised that his analysis had determined that the potential displacement of flood water caused by the proposed buildings would increase

the water level of the surrounding 1% Annual Exceedance Probability flood plain by less than 3.4 millimetres which he advised was negligible. In his opinion the potential effects of this increase will be indiscernible.

41. **Mr James Whitlock** an experienced acoustic specialist prepared the Construction Noise and Vibration report for the development and the draft Construction Noise and Vibration Management Plan (CNVMP). His colleague, Ms Joanne Valentine prepared the Operational Noise report that assessed the noise from the proposed activities, roof-mounted plant and equipment.
42. The CNVMP sets out the framework for mitigation and management of the predicted noise and vibration issues outlined in the applicant's Construction Report. Acoustic barriers, consultation and sequencing of works will be key mitigation measures for the apartment at 32 Marau Crescent and other dwellings in Marau Crescent and Ronaki Road.
43. Post construction, operational noise on-site would arise from the retail activities on Tamaki Drive and Patteson Avenue, such as patrons' conversations in outdoor areas and noise spill from patrons and music inside, movie soundtracks from the cinema buildings, carparking and vehicle movements and mechanical plant and equipment. Ms Valentine's report advised that the acoustic assessment indicated that apart from the mechanical plant and equipment, the other noise sources would be able to comply with the relevant noise standards.
44. The mechanical service designs and equipment selection had yet to be finalised, so the noise levels predictions had not been made. Mr Whitlock evidence advised that in his experience there is always a way of controlling noise from mechanical plant and equipment, using mitigation techniques. In relation to the apartments, the acoustic specialists advised that mechanical ventilation is provided to all apartments to allow windows and doors to remain closed. There were also recommendations in relation to glazing in bedrooms and other noise sensitive spaces.
45. **Mr John Parlane**, a qualified and experienced traffic engineer had been commissioned to prepare the Integrated Transport Assessment report for the application and the supplementary Traffic Response report that responded to the Council's s92 request for further information. Mr Parlane advised that the project complies with the AUP(OP) parking, access and loading requirements, subject to some minor variance on a ramp gradient, and did comply with the Australian and New Zealand parking standard.
46. From his modelling of the traffic effects on typical days, he advised that the results showed that the expected level of traffic could be accommodated within the existing road network without creating adverse traffic congestion or safety effects. He acknowledged that there were days in Mission Bay when the beach generates very high levels of people and when Tamaki Drive is used by very high levels of traffic. At these times there can be significant queues of cars along Tamaki Drive and large numbers of pedestrians and cyclists. Mr Parlane advised that the existing road network was not designed to accommodate all this activity and still have free flowing traffic. While the proposed development would provide additional reasons for people to visit Mission Bay, he

considered it unreasonable “to try and provide road capacity at those times to meet those peak demands”⁷.

47. Mr Parlane’s statement of rebuttal evidence responded to the statements of evidence of Mr Farrant and Mr Culpan received on behalf of Auckland Planning Limited. Mr Farrant had raised concerns about the ability to use the Tamaki Drive frontage for loading during construction and the safety risks for cyclists, pedestrians and business patrons. Mr Parlane considered these concerns unfounded as the proposal would have controlled access to the site during the earthworks phase which could be located safely “almost anywhere along the Tamaki Drive frontage.”⁸ During construction of the basement carpark and building there would be a managed loading area, with pedestrian protection provided by an overhead gantry and vehicles movements subject to direction by traffic management controllers.
48. In response to Mr Farrant’s concerns about the reduction in pedestrian use in the area during the 5 years of construction, Mr Parlane agreed that the removal of the shops and food and beverage activities would impact on the number of people walking along the footpath, he also considered that Sal’s Pizza and Ben and Jerry’s would benefit from the removal of competing premises.
49. Mr Farrant was concerned that the development would increase peak hour congestion and result in major traffic delays. Mr Parlane advised he did not expect the proposed development to create major delays even if there was an increase in traffic on Tamaki Drive. He advised that the traffic along Tamaki Drive had remained at similar levels for many years and varied more month by month rather than year by year.
50. Mr Farrant had also suggested that the project could be constructed using only Patteson Avenue and Marau Crescent as access points. Mr Parlane disagreed, he felt the use of the three frontages would be an advantage during construction and avoid adverse effects on Marau Crescent which, in his opinion, was the most sensitive area from a traffic perspective being narrower with residential neighbours who would be potentially affected by traffic and noise.
51. In response to Mr Culpan’s statement of evidence and the matters he raised in relation to the proposed construction loading arrangements for the site, Mr Parlane advised that an onsite meeting and walk around the area had occurred with members of Auckland Transport’s Corridor Access team. As a result of this meeting, agreement had been reached that loading should be minimised on Marau Crescent and Patteson Avenue should be used as the primary access point, with Tamaki Drive used as necessary. He advised Commissioners that he supported the proposed conditions put forward by Mr Church, the Council’s traffic consultant, and considered these to be appropriate and adequate to avoid, remedy or mitigate adverse traffic effects associated with construction.
52. **Dr Thomas Shand**, an experienced and qualified engineer, specialising in coastal engineering, outlined how he had been involved with the project since 2015 including

⁷ Summary and Rebuttal Evidence John Parlane, paragraph 2.4, page 2.

⁸ Ibid, page 2, paragraph 3.3,

advising on the design of floor levels for the project to avoid coastal inundation. He advised that the existing ground levels for the seaward (Tamaki Drive) boundary of the site were around RL2.7m⁹ rising to RL3.5m at the southwestern boundary and that present day mean high water spring (MHWS) tidal level is RL1.46m and the highest astronomical tide is RL1.9m. The 10- and 100-year return period (10% and 1% annual exceedance probability (AEP)) extreme coastal inundation levels (including astronomical tide and storm surges) are RL2.0 and RL2.45m.

53. He referred Commissioners to the AUP(OP) guidance for minimum habitable flood levels and its recommendations that finished floor levels be above the 1% AEP coastal storm inundation level plus 1m of sea level rise (SLR). He advised that Auckland Council guidance also recommends the addition of 0.5m freeboard to allow for vehicle generated waves, wave run up and model uncertainty. This would require a minimum finished floor level of RL3.9m. The proposed podium and habitable floor levels of the proposal were well above this level, being at RL7.2m. He advised the habitable floor levels in Marau Crescent were also complying.
54. Dr Shand advised that the AUP(OP) included no specific rules or guidance for non-habitable floors, however all floors and invert levels were above the current 1% AEP coastal inundation level but below the future 1% AEP coastal inundation levels with more than 0.25m sea level rise and therefore would require appropriate risk mitigation during these events. He advised Mr Dodd's evidence addressed the risk and mitigation for future scenarios, including flood management and future adaption of the building.
55. The approach taken in the application is generally one of the adaptive risk management. Higher risk, habitable floors are accommodated by setting levels above future inundation levels while lower risks, non-habitable floors are designed to accommodate present day coastal hazard but can be adapted in the future to accommodate changes as they occur. This adaptive management approach is recommended within the MfE (2017) guidance as a way of dealing with uncertainty in the magnitude and rate of sea level rise. He supported the application being subject to the proposed conditions to review the flood risk in 2050 or following a flood event which exceeds RL2.7m, whichever occurs first. This review is to consider the likelihood and consequences based on the best information available at the time.
56. **Mr Jonathon Rix**, a geo-environmental engineering scientist specialising in stormwater, flooding and coastal assessment had been engaged to advise on catchment flood hazards at Mission Bay. He had worked with Dr Shand to prepare the summary report, included in the application that updated the extreme water levels for future timeframes and design floor levels. He outlined that the valley floor and flat areas behind the beach are subject to flooding, categorised by the Auckland Council's model as a "minor" hazard.
57. Mr Rix outlined that the extreme flood levels were based on the contributions of catchment flooding and coastal flooding. The catchment flooding assessment allows for

⁹ RL being equivalent to the Auckland Vertical Datum 1946.

increased rainfall intensity due to climate change and two sea level rise projections of 0.5m and 1m.

58. The coastal flooding assessment had considered the contribution of the astronomical tide, storm surge, wave setup and sea level rise projections of 0.5m and 1m. The annual likelihood of a flood level being exceeded was determined from the higher of either the catchment flood level or the coastal water level. He estimated that the 1% AEP flood level along Tamaki Drive and Patteson Avenue were likely to be determined by the catchment flood levels for the next 20-40 years. Due to the higher elevation of Marau Crescent the 1% AEP flood levels are likely to be determined by the catchment flood levels for the next 50-100 years. After this time the coastal water levels are more likely to determine the 1% AEP flood level. The range in estimates were based on the different Representative Concentration Pathway values for climate futures assuming a constant rate of change. He advised that based on the “current understanding of climate change and uncertainty, the earliest that the 1% AEP flood levels may need to be reconsidered is 2040, and later if we don’t track along the highest emission scenario (RCP 8.5+) considered by the Intergovernmental Panel on Climate Change”¹⁰.
59. Mr Rix advised that the minimum habitable floor levels recommended in the summary report had considered the uncertainty and effects of climate change. The proposed habitable floor levels were 3.95m RL. This level being:
- (a) 1.25m above the existing 1% AEP flood level,
 - (b) 500mm above the future 1% AEP coastal inundation level with 1m sea level rise.
 - (c) Above the water levels predicted by the RCP8.5+ scenario.
60. While the AUP(OP), has no specific rules for non-habitable floor levels, he advised that non-habitable floors that could be raised in the future were proposed at a minimum level consistent with the existing 1% AEP flood level. This would be 2.7m RL along Tamaki Drive and Patteson Avenue and 3.0m along Marau Crescent. The basement carpark levels were below the present 1% AEP coastal inundation level but the invert level at the entrance would be set at the 1% AEP level. The car park entrance invert level is below the future 1% AEP flood level and appropriate risk mitigation such as early warning systems, flood gates and pedestrian evacuation may be required unless the invert level can be raised in future.
61. **Peter Dodd**, a qualified and experienced civil engineer provided evidence on the appropriate engineering response to the increase in flooding/inundation risk that is expected to occur over time as a consequence of climate change and sea level rise. He advised that while the issue of inundation of new buildings was relatively new to Auckland it is addressed in the AUP(OP). He outlined that an “adaptive pathway” approach had been adopted “which allows for decisions to be made while uncertainty may exist (such as the extent and timing of sea level rise).”¹¹

¹⁰ Statement of Evidence Jonathan Rix, page 7, paragraph 4.10.

¹¹ Statement of Evidence Peter Dodd, page 1, Summary paragraph 3.

62. The proposed building is not currently subject to coastal flooding, but overtime, may be subject to flooding and a worst case level of RL 3.45m had been adopted (1% AEP inundation + 1 m sea level rise) for the protective measures taken with the building. The primary mitigation proposed is the building design and construction materials that can accommodate inundation without significant damage. Flexibility has been maintained in the Tamaki Drive frontage design to allow changes to be made to the building including raising the ground floor level. Other options were available, and the review process would allow for current information to be considered when assessing risks and new products may become available. He considered there would be a reasonable warning period (12 to 36 hours) and a flood/inundation management plan was proposed to accompany the building consent. This would minimise the effects on the building and prevent loss of life.
63. As noted in Mr Dodd's statement of rebuttal evidence, the basement car parking levels would be below the existing 1% AEP flood level of RL 2.70m, and significantly below the RL 3.45m coastal storm design level. He stressed that a significant amount of work had been carried out to clarify the mitigation measures and the adaptive pathway methodology. Since the application was lodged the entry to the carpark had been raised to RL 3.0m on Patteson Avenue and RL 3.3m on Marau Crescent. The roller doors off these two entrances would have solid lower portions to RL 3.45m and will be able to be sealed during a flood event. The retail areas fronting Patteson Ave and Tamaki Drive have been designed so their floor levels can be raised in the future, if deemed necessary.
64. Mr Dodd confirmed his support the construction of the building in this location with the flooding and inundation mitigation measures proposed.
65. **Mr Mark Thomas**, a senior geotechnical engineer, prepared the geotechnical assessment report and updates for the project. The application proposes the basement be excavated up to 6.5 m depth below the existing ground level of the site. His evidence outlined that a geotechnical model had been developed to assess the effects on groundwater and ground deformations that would likely result from construction and excavation of the basement. He outlined the methodology and likely impacts on the neighbouring sites. Ground level movements at the closest neighbouring buildings, 99 Tamaki Drive and 32 Marau Crescent, were expected to be 5 to 10mm. Mr Thomas advised that ground movements of this magnitude presented negligible risk of damage to these structures. He also advised that the design and sequencing of the basement construction included measures to control groundwater seepage into the excavation and prevent collapse of surrounding buildings. A draft monitoring and contingency plan for geotechnical and groundwater effects had been prepared with recommended limits and reporting requirements.
66. Mr Thomas' statement of rebuttal evidence responded to the evidence of Mr Culpan and Mr Farrant on behalf of the Auckland Planning Group and Mr Simonds the Auckland Council' geotechnical reviewer. He confirmed the advice given earlier in Mr Allan's opening legal submissions that he agreed with the requests to amend the recommended conditions.

67. **Mr Shane Moore**, a senior environmental scientist, specialising in contaminated land advised he had reviewed the ground contamination and site management plans prepared by his colleagues. A number of activities with the potential to cause ground contamination on the site had historically been undertaken on the site, these included vehicle servicing, an oil storage tank, laboratory and/or chemist shop and fill had been placed to form the carpark. Soil and groundwater sample analysis had shown the presence of metals and mid to heavy end hydrocarbons principally in shallow fill and soils. While these exceeded the expected background levels, they met the relevant acceptance criteria for the protection of human health. He considered as long as the earthwork controls were maintained, supplemented with appropriate disposal of spoil/wastes and contingency measures for unexpected contamination then the works can be managed so there are less than minor effects on human health and the environment. He agreed with the recommended conditions.
68. **Mr Stuart George**, a qualified and experienced structural engineer has previously been involved in similarly designed projects in Auckland with deep basements. He had prepared part of the s92 response that described the process undertaken to identify and mitigate the risks. He advised the description of the secant piled retaining wall has been successfully constructed on several large projects including the Central Railway Station. He was satisfied that the building's basement could readily be designed and constructed without disturbance to the surrounding property. He had also read Mr Culpan's evidence and like Mr Thomas concurred with the requests to amend the recommended conditions in relation to the provision of condition surveys and Council's certification of the demolition methodology.
69. **Mr Ian Munro**, an experienced urban designer, outlined he has been involved in the project since 2016. In his opinion the project would represent a substantial change to Mission Bay but was in line with the scale and intensification identified in the Unitary Plan. The key urban design strategy had been to 'tune down' the residentially predominant Marau Crescent elevation and 'tune up' the Tamaki Drive frontage based on its role as the centre's main road and the presence of the large Mission Bay reserve and beach.
70. The Unitary Plan has set in place a framework that in-built form terms enable the transformation of Mission Bay. He acknowledged that the proposal was very different to the existing scale and character of the existing buildings in the Mission Bay commercial area. In Mr Munro's opinion, when assessed against the zonal objectives and policies, the proposal and its over height elements would be in keeping with and not antagonistic to the character of the area. The development would also "successfully achieve the 'focal point' quality described in the Local Centre zone policy relative to the Mixed Use zone that applies to most of the Tamaki Drive frontage."¹² The visual impacts of the buildings on Selwyn Reserve and the beach would be mitigated by the existing tall vegetation in the reserve. He also considered the overall scale and intensity of activity proposed was appropriate and the amount of development consistent with a

¹² Statement of Evidence Ian Munro, page 10, paragraph 5.4

compliant Unitary Plan scheme. The built form proposed would be more visually interesting than a more generic or uniform wall around the site's perimeter.

71. In responding to the Council officer's report, Mr Munro advised he was largely in agreement with the conclusions reached by the Council's urban designer Ms Liu. He opposed Ms Liu's recommendation to swap the downstairs bedrooms and upper level living rooms for the terraced houses facing Marau Crescent. He considered while the change could be achieved, there was no urban design or Unitary Plan justification for such a change. He also discounted Ms Liu's assessment of the shading effects on 9 Patteson Avenue; in his opinion this would be an early morning effect that was neither inappropriate nor problematic given the extent of site to site shadowing provided for in the Unitary Plan Local Centre and Mixed Use zones.
72. With respect to the eighth floor of Building 1, while Mr Munro agreed with Ms Liu that a number of the design approaches could have been appropriate for the structure including integrating that part of the design more obviously with the shapes and forms of the building beneath it, he remained of the opinion that the proposed proposal was appropriate. It had been designed deliberately to be different from the building beneath to help visually separate it as a smaller or more discrete part of the overall design. While he did not see a design change for this part of the proposal was necessary, if Commissioners were to identify this should occur, he would not oppose it.
73. Mr Munro concluded by advising Commissioners that the project could be granted consent on urban design grounds, subject to the Council officer's conditions with the exception of condition 72a that sought the rearrangement of the ground floor bedroom and first floor living room on Marau Crescent.
74. **Mr Rob Pryor**, a registered landscape architect prepared the landscape and visual and urban design assessments for the project. He characterised the site and context for the project as having "the capacity to visually absorb the landscape and visual effects of the proposal"¹³ and considered that the project had the potential to invigorate the site and update the local centre environment.
75. Mr Pryor considered that as the site was located in a heavily modified area, the project would have a very low adverse landscape effect. He also considered that the area held very low natural character values and did not anticipate any adverse effects on them as a result of the project.
76. Mr Pryor assessed and discussed visual amenity effects within a number of 'Visual Catchment Areas'. He considered visual effects to the Streetscape – West catchment to be moderate, and appropriate in light of its location and context. He considered there would be moderate to high visibility of the proposal for the surrounding Streetscape – East catchment, but that this would be within character of the commercial and residential setting.

¹³ Statement of Evidence of Robert Pryor, paragraph 1.1.

77. With reference to the surrounding Streetscape – South catchment area, Mr Pryor stated that “There is a distinction between the **visibility** of a proposal and any **visual effects** it may create”¹⁴. He considered that there was little adverse change to character or visual amenity for this area.
78. Mr Pryor considered that there would be low to moderate visual effects to the Selwyn Domain, beachfront and coastal edge, but that these would be “entirely in keeping with the prevailing and future planned urban settlement pattern.”¹⁵
79. He considered that for the residential areas to the south and east there would be significant visual changes, which he characterised as “similar potential adverse visual effects to a building envelope that meets the zone standards in the Local Centre zone”¹⁶.
80. Mr Pryor considered that visual effects to the wider urban environment, and to the wider coastal environment would be negligible to low. He summarised the visual effects of the proposal as being moderate to high for proximate viewpoints, although he considered that the building design and appearance would mitigate these to an acceptable level. He considered that effects on more distant views would vary between negligible to low, and that the project would become a focal point for the Mission Bay centre¹⁷.
81. Mr Pryor acknowledged that the section 42A report suggested the height and bulk of the proposal may need to be amended to reduce adverse visual effects. Mr Pryor stated that his position was that the positive visual effects to properties on Marau Crescent and a number of properties on Ronaki Road were appropriately balanced against the adverse visual effects to the 6 Ronaki Road from the proposal. He went on to provide assessments for Marau Crescent and Ronaki Road properties.
82. In Mr Pryor’s assessment the overall shading effect of the proposal was generally consistent with effects which would result from a scheme complying with the relevant AUP(OP) controls. He described the effects of the proposal as limited to a very small impact on part of the residential area to the west on Patteson Avenue, to the south on Marau Crescent and to the east at 23 Marau Crescent.
83. Mr Pryor also addressed the techniques used in compiling photomontages for the proposal. He pointed out that “the key difference between views taken from a fixed point with a 50mm lens and a 17mm lens is the field of view.” He noted that the Section 42A report agreed that the photomontages supplied were in line with the NZILA Best Practice Guidelines¹⁸.
84. In his rebuttal evidence, Mr Pryor responded to the evidence of Mr Brown on behalf of Support Mission Bay Incorporated. He disagreed that photomontages were not supplied¹⁹ for specific viewpoints and identified the location of these (viewpoints 3-5, 7-

¹⁴ Ibid, paragraph 4.34

¹⁵ Ibid, paragraph 4.50

¹⁶ Ibid, paragraph 4.63

¹⁷ Ibid, paragraph 4.81

¹⁸ Ibid, paragraphs 6.22-6.36

¹⁹ Ibid, paragraph 2.1, 2.13

8, 10, 12-13) in the bundle of evidence and disagreed that additional images were necessary for the approach from Tamaki Drive to the intersection with Patteson Avenue, or for the viewpoint at the eastern end of Selwyn Reserve. With regard to the latter he considered that viewpoint 16 was the most appropriate²⁰.

85. Mr Pryor concluded that he considered the visual and landscape effects of the project would be entirely acceptable within the context of the existing and planned future urban environment. His assessment was that the proposal could be “visually accommodated within the landscape without adversely affecting the visual amenity, character, aesthetic value and integrity of the surrounding Mission Bay environment.”²¹
86. **Ms Melean Absolum**, a registered landscape architect also provided visual and landscape evidence. She had not been involved in the design phase or preparation of the current application rather she had been involved in the applicant’s previous planning processes in 1999. She outlined the changes to the planning context since that time.
87. She clarified what she considered to be the relevant matters relating to height limits in the Local Centre zone, and highlighted in particular visual dominance and scale, design flexibility, and additional height as being relevant issues. Ms Absolum emphasised that “there is clearly nothing in the Unitary Plan to protect sea views from the residential sites on the coastal escarpments”²². With regard to additional height, Ms Absolum acknowledged that no provision for centre specific height increases exist for Mission Bay but considered that the restricted discretionary activity status for over-height buildings enabled such applications to be considered and assessed against the relevant matters.
88. Ms Absolum considered that the proposal would not cause ‘visual dominance effects’ to the north or east of the site, based on design elements and the existing context for the proposal and indicated that the relative height of the building as seen from the top of the escarpment would be reduced by the landform. She considered that the 28m high part of the building on the corner of Tamaki Drive and Patteson Avenue was an appropriate design response which celebrated the corner and avoided visual dominance effects.
89. With regard to Marau Crescent, Ms Absolum considered that the potential for visual dominance had been reduced by the design and as a result was appropriately managed. She considered that the proposal did not contravene the policies of Chapter H11 Local Centre Zone from a landscape perspective and noted her agreement with the overall conclusions of the council’s reporting planner with respect to landscape matters.
90. In conclusion, Ms Absolum considered that the AUP(OP) provided for development potential within the centre of Mission Bay, including buildings significantly taller than existing. She was satisfied that the proposal would achieve the objectives of the Local Centre zone from a landscape perspective.
91. She also supplied a statement of rebuttal evidence, which responded to the evidence of Mr Stephen Brown on behalf of Support Mission Bay Inc. Ms Absolum disagreed with

²⁰ Ibid, paragraph 2.2, 2.3

²¹ Ibid, paragraph 1.11

²² Statement of Evidence of Melean Absolum, page 10, paragraph 8.4

Mr Brown with regard to anticipated adverse amenity effects of the proposal and maintained her position as stated in her evidence.

92. **Mr Peter Neeve and Mr John Lovett** both qualified planners provided planning evidence on the proposal. Mr Neeve's evidence addressed the Assessment of Environmental Effects he had prepared for the application and his assessment of s104(1) of the Act, while Mr Lovett's evidence focused on the more strategic context and provided an assessment of the restricted discretionary criteria relevant to the proposal.
93. Mr Neeve advised he agreed with the assessment and conclusions of Mr Lovett with regard to the effects of height and dominance and stated that he adopted the consideration and conclusions of Mr Lovett with regard to the restricted discretionary activity criteria for each consent issue.
94. With regard to potential adverse effects of the proposal, Mr Neeve considered that construction and earthworks effects could be appropriately managed through the implementation of management plans proposed for the development. He considered that traffic and pedestrian circulation and safety and a range of visual amenity effects had been appropriately addressed in the proposal's design.
95. He noted that recommended conditions included in the section 42A report were generally acceptable and attached a set of amended proposed conditions for the development to his evidence.
96. Mr Neeve commented on the objectives and policies which he considered relevant to the proposal²³, with a broader overview of the objectives and policies included in appendix 4 of the statement of evidence.
97. With respect to the AUP(OP) Regional Policy Statement (RPS), Mr Neeve considered that the project "is consistent with the principles of developing a high-quality, compact urban environment in a planned location"²⁴. He noted that discussions with Ngāti Whātua Ōrākei and Ngāti Paoa were ongoing regarding the project design and values of mana whenua. Mr Neeve pointed out that the proposal design recognised the risk from natural hazards and had located less vulnerable activities such as retail activities and parking on the ground floor and basements of the proposal. He considered that the draft hazard mitigation plan provided an appropriate response to potential natural hazards.
98. Mr Neeve commented in particular on objectives of the Local Centre zone. He considered that, with the exception of Residential – Single House zoned properties, "the planning outcome for Mission Bay requires the transformation of the present built environment, including the site, enabling a significant upscaling of buildings and more intensive development of land generally"²⁵. He noted that the scale of the proposed development increased as it moved away from residential zones and considered that

²³ Statement of evidence of Peter Neeve, paragraph 1.12.

²⁴ Ibid, paragraph 11.20

²⁵ Ibid, paragraph 11.35

the eastern and southern buildings provided for a compatible interface with neighbouring residential zones.

99. He highlighted the increase in dwellings within the centre and concluded that he considered “the Project will achieve a quality of built environment that will be an attractive place to live in, visit and work in that responds appropriately to the context and characteristics of the Site and the surrounding environment.”²⁶
100. Mr Neeve considered that the proposal was consistent with the Auckland Plan 2050. With regard to the Hauraki Gulf Marine Park Act, he considered that construction management methods would appropriately address the level of runoff and contaminants entering marine waters.
101. In response to the requirements of Part 2 of the RMA, Mr Neeve considered that the proposal was an efficient use of the site, which would enhance the commercial facilities and residential accommodation of Mission Bay and contribute to the social and economic wellbeing of the community. He considered that effects of construction would be satisfactorily mitigated by the measures proposed in the technical reports supplied with the application, and that “any adverse effects of the proposal are considered to be acceptable from a resource management perspective.”²⁷
102. He considered that the building design, construction and operational measures could appropriately minimise and manage risks from natural hazards²⁸ Mr Neeve concluded that he considered that the proposal was consistent with Part 2 of the Act.
103. In conjunction with Mr Lovett, Mr Neeve provided the following factors that he considered to specifically support the development of the site in the manner proposed:
 - i. Site size, shape and location
 - ii. Single ownership
 - iii. Proximity to other complementary local centres (Eastridge and St Heliers),
 - iv. Food and beverage and tourism emphasis
 - v. The cinema
 - vi. Proximity to the CBD and good public transport connections
 - vii. Proximity to the Business - Mixed Use zone
104. **Mr John Lovett** advised he had been involved in the project since October 2018. His evidence focused on some of the more fundamental planning factors and addressed in some detail the range of restricted discretionary activities for which consent was required. He considered the overall mix of residential and commercial uses, the

²⁶ Ibid, paragraph 11.45

²⁷ Ibid, paragraph 13.7

²⁸ Ibid, paragraph 13.9

functional integration of the components, response to the site circumstances and planning context.

105. In relation to the height exceedance he outlined the approach taken to the roof plant where instead of each of the “buildings” above the podium having their own plant that the design strategy had been to have clean/clear roof lines. He considered this approach meant the effects of roof plant were less adverse.
106. In relation to the zone’s “double barrelled” 16m occupiable and 18m maximum general height control that seeks to encourage a 2m roof form into new developments, he considered that if Commissioners were comfortable with the alternative design approach adopted by this proposal, then it became irrelevant as to whether the 2m roof form space was occupiable or not as it made no difference in terms of effects. Therefore, the height infringement should be assessed against the 18m height component.
107. In his opinion it was very significant that exceedances of general height were a restricted discretionary activity. He compared this with the approach to exceeding the volcanic sightlines controls which is classed a non-complying activity and automatically notified. In his view the exceedance of the general height control could be seen as a “lesser form of breach to exceedance of other standards”²⁹.
108. Mr Lovett advised that the exceedance of height was a key matter requiring resource consent consideration and the applicant’s team had undertaken considerable work to address the assessment criteria and the effects throughout the design and planning process for the project. Part of the planning justification for the additional height was the redistribution of building bulk on the site.
109. Mr Lovett provided Commissioners with an “unbundled” assessment of the various restricted discretionary activity elements of the proposal against the relevant assessment in criteria set out in Rule H11.8.2. This approach was based on the only full discretionary element being the cinema which arguably is an existing use and which has existing effects and benefits that were appreciated by the community. This disaggregated approach included the elements of height, new buildings, residential at the ground floor, activities within 30m of a residential zone and retail greater than 400m². He also highlighted there were a number of other, more specialist matters that require restricted discretionary activity assessment - groundwater, land disturbance, traffic, construction, flooding and inundation. These matters had been addressed by the various specialist engaged by the applicant.
110. From Mr Lovett’s application of the zonal restricted discretionary activity assessment criteria, he considered there was some clear anticipation of growth and change identified in the planning and design outcomes. From his assessment, he considered the proposal met all the AUP(OP) intentions and concerns as set out in the restricted discretionary activity assessment criteria. In his opinion, many of these applicable assessment criteria were policies and reinforced the proposal’s consistency with the intent of the AUP(OP)

²⁹ Statement of Evidence John Lovett, page 16, paragraph 4.25

and indicated a “planning justification for the approach to redistribute the bulk to achieve good urban design and planning outcomes within the redevelopment of this particular site”.³⁰

111. Mr Lovett also tabled a supplementary statement of evidence in which he responded to the questions asked by Commissioners on the opening day of the hearing and responded to comments in the planning evidence of Messrs Wren and Putt, lodged on behalf of submitters.
112. In response to the Commissioner’s questions on the hierarchy of centres and the extent to which this should inform the decision related to the appropriate height in Mission Bay, Mr Lovett advised that in his opinion the hierarchy of centres didn’t represent or impose a hierarchy with respect to height. In Mission Bay, the height standard is appropriate to the centre as a whole, but site-specific increases could be appropriate.
113. In responding to Mr Wren’s evidence that the application required an assessment of objectives and policies, Mr Lovett considered this had been undertaken in his evidence. He agreed with Mr Wren that Rule C1.9 in the General Chapter was relevant and while not specifically referenced in his evidence, these matters matched those listed in H11.8.1. He also advised that he disagreed with Mr Wren’s view that the absence of a Height Variation Control at Mission Bay did not mean the local centre was not suitable for intensification. In his opinion, “the Local Centre height limits are applied to new buildings and they are set at a height that anticipates an acceptable level of adverse effects throughout the zone and did not necessarily represent a maximum acceptable height level on every site.”³¹
114. In conclusion, he acknowledged that while some residential properties would be disadvantaged by loss of views, the AUP (OP) emphasis was on adjacent amenity values and an overall consideration of amenity effects, both positive and negative. In his opinion, the proposal would have an overall positive amenity outcome for Mission Bay and the wider city and should be granted consent.
115. **Peter Cenek.** We were also provided with a statement of evidence prepared by Mr Peter Cenek a qualified mechanical engineer with experience in conducting and managing wind engineering related research and commercial projects. He had peer reviewed the Wind Assessment report prepared by his colleague Paul Carpenter. The assessment considered the potential of the project to affect wind conditions on the surrounding streets and footpaths with reference to the AUP (OP) wind assessment provisions. While the proposal was assessed to cause some increase in wind speeds around it, full compliance with the rule was likely because of the wind ameliorating features incorporated in the design.

³⁰ Ibid, Page 45, paragraph 12.5

³¹ Supplementary Statement of Evidence John Lovett, paragraph 4.3(b)

Submitters

Mr Russell Greenwood s 9(2)(a)

116. **Mr Russell Greenwood** outlined the need to be aware of the three basic responses that people have to their spatial context. These were that people often respond positively to spaces and structures that have always existed. Secondly, they often recognise the 'WOW' factor and thirdly, in Mission Bay, they respond to their built, planted and beach/water environment with feelings of intimacy. These features were part of the "accidental magic of the place".³² He considered the new development threatened this intimacy, that the mass would detract from the area and that the complicated mixing of public and private space seemed to him confusing.
117. Mr Greenwood was also concerned that there would be a reduction in the retail, eating and entertainment space by around 1,000m² that would further erode rather than enhance activity. From his analysis of the submissions received to the application, the main issue was the appearance, with over 90% of submissions upset by the bulk and height issue. He rejected the applicant's approach seeking to trade-off the over height parts of the building with the other parts that would be below the height requirement.
118. Mr Greenwood took issue with the "demotion of the legacy issues in relation to the intensified site"³³. He was concerned that taken too far this approach would mean the loss of "identity, place, where we come from and who we are"³⁴ Finally, he was critical of the projects lack of green building elements.

Tamba Carleton

119. **Mr Russell Bartlett QC** appeared for **Ms Tamba Carleton**. In his legal submissions he advised the panel that he had read and supported the comprehensive opening legal submissions of Mr Allan. He addressed two primary issues being the restricted discretionary activity status and the focus on change arising from the National Policy Statement on Urban Development Capacity 2016 and the AUP (OP).
120. In relation to the activity status, he advised the Commissioners that in his view that there is no presumption in the RMA and the planning instruments against granting approval where a development does not comply with the permitted activity standards. In his submission, the permitted height standard for the zone is simply that and no assessment is required when development complies with the standard. The permitted activity standards were not sacrosanct and that a substantial portion of the RMA is devoted to the classification of activities and the means by which the permitted activity standards are able to be exceeded.
121. Mr Bartlett took issue with the planning advice given by Mr Putt and Mr Wren on behalf of Support Mission Bay Incorporated and the Mission Bay Kohimarama Residents' Association respectively. He advised Commissioners that Mr Putt's evidence which

³² Russell Greenwood's Statement, paragraph 5

³³ Ibid, Last paragraph

³⁴ Ibid, paragraph 10

stated that the development should be kept within the height limit to maintain the integrity of the relationship between the zone and adjacent residential and business zones, appeared to have been guided by the Town and Country Planning Act. This advice was a formula for not granting any resource consent applications involving height and if taken would result in Commissioners making a fundamental error. Likewise, in relation to Mr Wren's evidence that building height is an important component of the policy framework that distinguishes one zone from another, he considered that this would mean Mr Wren would not support departure from the permitted activity standard where that would take you to the permitted height standard in another zone. Mr Bartlett considered this would equate to imposing a prohibited activity status.

122. Mr Bartlett was also critical of the AUP(OP)'s purported restrictions on discretion. So comprehensive were the restrictions that he considered it hard to discern in practical effects between applying them and the general discretion that would apply to a fully discretionary activity. He also advised that the advice in the Council officer's report that the application was a fully discretionary activity, as the cinema activity overlapped with the proposed height and other matters was incorrect. The cinema was an existing use that was being rebuilt and it was hard to see how it would lose this status.
123. On the matter of change, Mr Bartlett highlighted the NPS UDC, this policy statement provides clear and binding direction as to how the RMA is to be applied. The focus of the NPS UDC is ensuring local authorities both:
 - *"enable urban environments to grow and change in response to the changing needs of communities, and future generations; and*
 - *provide enough space for their populations to happily live and work. This can be both through allowing development to go "up" by intensifying existing urban areas, and "out" by releasing land in greenfield areas."*³⁵
124. Mr Bartlett considered the NPS emphasis on change is mirrored by the AUP(OP)'s directive to focus on anticipated planning outcomes for an area. He advised that "decision makers must avoid the trap of confusing amenity with nostalgia."³⁶
125. He concluded that Auckland was gradually coming to terms with the radical changes promoted and enabled by the AUP(OP), with the strong support of the NPS UDC. Future generations who enjoy living in or visiting Auckland's maritime suburbs would experience an environment quite different from what their parents and grandparents have experienced, and that development of the type proposed would maintain Auckland's distinct character while responding to the statutory imperatives of change.
126. **Ms Carleton** also addressed the hearing and confirmed that while she was a senior research analyst with the CBRE research team, her submission, lodged in support of the application, and evidence was being made in a personal capacity. She made the submission in support of the development as she considers it will benefit Auckland. The existing buildings on the site were old and tired and no longer fit for purpose and she

³⁵ Legal Submissions, R.E Bartlett QC, paragraph 19

³⁶ Ibid, paragraph 22.

considered Mission Bay as a prime place for residential intensification, being less than 6 kms from the CBD, supported by public and active transport investments. She considered the proposal would benefit the Mission Bay Centre generally.

127. Ms Carleton also commented on a number of matters that arose at the Mission Bay Kohimarama Residents' Association meeting held on 4 October 2018. She considered the meeting didn't understand how the AUP(OP) applied to Mission Bay. She understood that the AUP(OP) intends to accommodate Auckland's growth by both enabling growth on the periphery and intensification in existing urban areas, particularly around centres. The site is zoned Local Centre, which enables five storey development, but while the Association considered developments that exceeded the height should be turned down, her understanding was that development proposals of this nature would be assessed on a case by case basis and on its merits. In Ms Carleton's view the isthmus location and characteristics of the site meant an eight-storey corner building with the other buildings 4-7 storey were appropriate and should be allowed.
128. She also responded to other issues raised at the meeting regarding a perceived lack of car parking and the impacts on the surrounding on street parking; that the building was too tall given the natural amphitheatre landscape found at Mission Bay; and the design and appearance of the proposed development. In her view car parking wouldn't be an issue as the site was well served by public and active transport; that the natural amphitheatre would support the development accommodating the additional height without it appearing out of scale with the rising landforms. In relation to the meeting's reaction to the proposed design and appearance of the development, she felt the images used at the meeting misrepresented the proposal.
129. Ms Carleton concluded that Auckland had to accommodate growth; that the proposal looked nice and was suitable for the site. She requested that the resource consent for the development be granted in its entirety.

Mike and Kathy Davies (s 9(2)(a))

130. **Ms Kathy Davies**, with the aid of a power point presentation addressed Commissioners on behalf of herself and her husband, Mike. She outlined that they had lived in the area for over 30 years, having owned and lived in numerous streets in the Mission Bay area and currently reside in Codrington Crescent. As a result, she believed they understood and appreciated the amenity value that living in Mission Bay offers and why it was a highly valued suburb.
131. Ms Davies outlined that they sought a proposal that would redevelop the centre in accordance with the objectives of the local centre zone, comply with the AUP(OP) height and bulk rules, with a design that would fit in with the area and enhance the residential amenity. She also raised concerns about the precedent effect of the development which she considered would destroy the amenity of the area and the integrity of the AUP(OP).
132. Ms Davies' assessment of the proposal was it failed to meet the local convenience needs, provided less retail than currently existed on site and that while expansion was

appropriate for the area, this proposal did not provide any greater benefits to the community nor did it enhance the quality of the area.

133. She was concerned that 6 out of the 7 buildings did not meet the 16m zone height standard and there were no benefits to the local community arising from the residential activity in the over height parts of these structures. She rejected the suggestion in Mr Lovett's evidence that Mission Bay residents would drive to other local centres for their convenience needs and considered this was counter to the intention of the AUP(OP).
134. With respect to the proposed height and bulk of the development, Ms Davies stressed that the proposal was contrary to the Local Centre objectives particularly the need for scale and form to manage adverse effects on residential amenity, and the purpose of the building height standard which included managing visual dominance effects. She also highlighted that while the AUP(OP) included a Height Variation Control (HVC) to provide variations to the standard zone height, no HVC applied to this centre. Ms Davies provided a photographic mockup showing the impact if all buildings in the Mission Bay Local Centre zone were built to the height of the proposed building. She was concerned at the precedent effect of the proposal not just for Mission Bay but every zone in Auckland.
135. Ms Davies also outlined her safety concerns for both people and property arising from flooding. Her evidence included diagrams of the overland flow path and the areas within the coastal inundation 1% AEP, along with photographs of flooding taken in the area during storm events in December 2005, April 2014 and 2018. She was concerned that both basement levels of the development were located below sea level and would be subject to flooding and that these occurrences would occur more often as a result of climate change and the intensification of activity upstream. She considered that the applicant's options for mitigation of flood hazards did not meet the AUP(OP) natural hazards and flooding objectives (Chapter E36).
136. Ms Davies concluded by requesting Commissioners completely refuse the application on the basis that there were too many changes required.

Bruce Harland s 9(2)(a)

137. Mr Bruce Harland has lived in Mission Bay for the past 23 years. While a town planner and urban designer, he appeared at the hearing in his capacity as a local resident. He supported the thrust of the AUP(OP) to increase density and activity in the Mission Bay area and to see its transformation into a bustling seaside community and visitor destination. He, however, felt it "unfortunate that a comprehensive 'local framework or spatial plan' had not been undertaken by Council in conjunction with the community to guide and articulate a clear vision for the evolution and development of Mission Bay."³⁷ In the absence of such a plan, he advised that the community has to rely on the relatively blunt nature of the AUP(OP) to provide the framework for the development of the centre and surrounding area.

³⁷ Submission of Bruce Harland (1 August 2019), paragraph 3.

138. In relation to the proposed height of the development, he advised that the maximum height rules are not 'black and white', 'hard and fast' limits that must be adhered to at all times and there was a need for design flexibility around the rules to accommodate innovative designs or site-specific constraints. In this case, however, the increase in height is substantial and results in an increase in height and scale of development that clearly undermines the community's expectations set by the AUP(OP).
139. He considered that if the community had understood that the AUP(OP) zoning in Mission Bay would result in 6, 7 and 8 level developments, then there would have been strong submissions to ensure a special precinct or overlay should apply to avoid such outcomes.
140. Mr Harland concluded that confidence in the AUP(OP) would be seriously compromised by allowing a development so far beyond the 4 levels of the development anticipated in the Local Centre zone and would mark a significant precedent for other developments in the area and other local centres.

Tim Jerram s 9(2)(a)

141. **Mr Tim Jerram** and his wife have been residents of Kohimarama for 47 years and have an interest in a property at Marau Crescent West, Mission Bay. He described the flooding he had observed on Tamaki Drive, and referred to the NIWA study on the frequency of coastal storm inundation and United Nations IPCC research³⁸ modelling sea level rise for New Zealand. He expressed a particular concern at the hazard to buildings in the Mission Bay area, and especially the two basement levels below sea level included in the development. He questioned the realism of attempts to mitigate the flooding hazard through design, and future responsibility of council for consenting structures with knowledge of future inundation risk. He stated that he is opposed to the construction of any new building on the proposed site.
142. Mr Jerram considered that the height and bulk of the proposed development would reduce amenity for visitors and residents and result in adverse visual effects at different vantage points around the Bay. He noted that the proposed design had no regard to the history of Mission Bay, heritage buildings in the vicinity, or in particular, the Melanesian Mission House. Mr Jerram considered that the Mission House and Art Déco buildings could provide inspiration for an amended design to reflect the heritage of Mission Bay.
143. Mr Jerram stated that the proposed heights at the Tamaki Drive and Patteson Ave elevations were inappropriate for Mission Bay. He concluded that he was opposed to the building design in its current form, and any increase in height beyond what is allowed under the AUP(OP).

Dr Kenneth Palmer s 9(2)(a)

144. Dr Kenneth Palmer, retired Associate Professor at the Auckland Law School and resident of Orakei for more than 50 years, spoke to his submission. He advised he was a long-time member of the Tamaki Drive Protection Society and had attended the

³⁸ Intergovernmental Panel on Climate Change

meeting of the Residents' Society held to discuss the proposal. He was aware of the nature of the local opposition to the application.

145. Dr Palmer, however, agreed with the Council officer's report. He considered there was ability under RMA to grant consent to the application. He reminded Commissioners of the relevance of the NPS UDC to their consideration of the application. He highlighted the submission lodged by Generation Zero to the AUP(OP) to allow for intensification, a voice that was not being heard in the debate on this proposal.
146. He noted that s104(2) enabled the application of the "permitted baseline" which in this case meant the height and bulk permitted by the new rules must be accepted, and the focus for the consent must be on the excess in height and bulk that is proposed. This meant from a visual amenity perspective 18m height would need to be accepted.
147. Dr Palmer felt the majority of submissions in opposition failed to acknowledge the positive effects of the proposal. He highlighted to Commissioners the importance of s104(1) (ab), a 2017 amendment to the RMA, that required consideration of any measure proposed or agreed to by an applicant for the purpose of ensuring positive effects on the environment to offset or compensate any adverse effects. He did not consider the application would create a precedent and there was no entitlement to others to gain other similar consents, if the application was approved.
148. In terms of the height issue, he considered it an exaggeration to suggest that the development was eight storeys. In relation to concerns about the cinema, Dr Palmer advised Commissioners that the operation of this facility should be a condition of consent, to be secured by a development agreement with the Council to recognise the positive compensation for the extra building levels. Dr Palmer considered that future generations would thank the developer.
149. In relation to the flooding issue, Dr Palmer advised Commissioners that under s71 of the Building Act, the Council must refuse building consent if land or buildings are subject to natural hazards. However, if buildings are approved under s72, then the fact that the building is subject to hazards would be noted on the Record of Title and the Council would not be liable for any future civil liability.

Peter Moses (s 9(2)(a))

150. **Mr Peter Moses** contends that the design of the proposal was problematic, and while not opposed to intensification at Mission Bay, he considered that the height, scale and bulk of the proposal was contrary to the objectives and policies of the AUP(OP).
151. Mr Moses considered that the application was based on a false comparison between a hypothetical 'baseline', using assumptions of bulk, scale and mass, and the proposed design. He considered that there was a fundamental problem with the application, and that "in this instance there is a no basis for any reliance on a 'permitted baseline' approach"³⁹.

³⁹ Synopsis of submissions by Peter Moses (1 August 2019), paragraph 6

152. Mr Moses questioned the need for the excess height of the proposed design and inferred that this was to make the project more profitable. He referred to *NZ Rail Ltd v Marlborough DC* [1994] RMA 70 (HC) to illustrate that the financial viability of a proposal is not a relevant matter for decision-makers to consider. He later emphasised this point in terms of the weighting that the s42A assessment placed on the financial viability of the proposal and noted that this “is not an economic effect to be given weight in the assessment under s104 of the Act”⁴⁰.
153. He went on to identify other issues with the s42A report, identifying an error in the number of additional dwellings to be constructed by the proposal including the number of existing dwellings on the site.
154. Mr Moses noted that the s42A report did not give adequate consideration or response to the Council’s urban design specialist Ms Liu, to the concerns addressed by submitters, and the Local Board with regard to the excess height. He considered that the visual impact of the proposed development on an entire neighbourhood ought to be given some weight, and that this impact was far greater than what would be anticipated from a development which complied with the height limits of the AUP(OP).
155. Mr Moses considered that the s42A report provided insufficient consideration of submitters concerns that the excess height of the proposal would ‘set a precedent’ for future proposals in the area to also exceed the height limitations of the AUP(OP).
156. Mr Moses contended that Commissioners are not able to rely on the s42A report, and concluded by requesting that the application be declined, on the basis of its excessive height and scale.

Lorna Stansfield s 9(2)(a)

157. **Mrs Lorna Stansfield** advised Commissioners that she bought her home in Marau Crescent some 40 years ago and later built another home on the rear of the section which is accessed from 12a Ronaki Road. Her family had originally been attracted to the area by the “wonderful views” and the low rise building on the waterfront and the beach. She had been a member of the Mission Bay Improvement Society and involved in fund raising and a large number of local community projects.
158. Mrs Stansfield had been a party to the appeal to the proposed rezoning of the site made by the same developer back in the late 1990s which was the subject of an Environmental Court decision that reduced the height limits sought by the developer.
159. She observed that the applicant did not request increased height limits during the Proposed Auckland Unitary Plan hearings, but now sought to build beyond the permitted limits in the AUP(OP). She considered that approval of the application would undermine the integrity of the AUP(OP) and sought that the application be rejected.

⁴⁰ Ibid, paragraph 46.

Noel Thompson s 9(2)(a)

160. **Mr Noel Thompson** advised that he was opposed to the proposal and highlighted three points in his written submission. He expressed opposition to the proposal based on its inconsistency with what is envisaged in the AUP(OP). He noted that the height limits in council rules are a maximum, not a minimum starting point. He considered that the proposal is unsympathetic to the heritage values of Mission Bay, and that if approved, it would set a precedent for other development within the Mission Bay Local Centre zone, and other local centres around Auckland.
161. Mr Thompson emphasised the character and features of the Mission Bay area forming an amphitheatre between Bastion Point and Pipimea Head. He considered that “high rise buildings fronting this special area”⁴¹ would detract from the ambience of the area. Mr Thompson also noted that the amount of floor area available for hospitality and retail in the proposed development is less than what is currently available and questioned whether this integrated with the central purpose of a ‘Local Centre’.
162. Mr Thompson expressed his concern about the visual dominance of the proposed structure, and that the design was not in keeping with the heritage qualities of the Bay. He considered that the height limitations provided for in the AUP(OP) were adequate to meet the needs of residents and visitors, and that the character of the Bay needed to be preserved.

Erika Whittome s 9(2)(a)

163. Ms Erika Whittome skyped into the hearing. She advised that she had travelled widely and considered that what attracted visitors to a place was a liveable city, with easy access and activities. Her principal concerns with the proposed development were height, amenity effects and the impact on heritage and eco values. She considered it was possible to preserve heritage values while still allowing redevelopment and identified Paris, Napier and Miami as examples of nice cities that had retained their art deco architecture.
164. Ms Whittome saw no justification for the additional height sought above the AUP(OP) height limit. She was concerned that the proposed development was not respectful of the character of the area and how visible it would be when viewed from the North Shore, the Harbour and Bastion Point. Consistent with other submitters, she was also concerned about the integrity of the AUP(OP) and the precedent effect that could be set. Like Napier and Ocean Drive in Miami Beach, she considered in Mission Bay should preserve its art deco architecture, particularly the Mission Bay cinema and the De Fontein buildings. Any redevelopment should be within the existing height rules of the AUP(OP) and retain the facades of the existing buildings.
165. Other issues of concern with the proposed development was its lack of amenities for the local area and no convenience services that would force those living in the development to travel to other centres. She was also concerned at the lack of eco features within the

⁴¹ Written statement of Noel Thompson (1 August 2019), page 2.

design – no solar panels, air ducts and natural air conditioning, heat exchanges or climate control. She considered the building should incorporate the 5-star Green rating like other new buildings in the Wynyard Quarter.

Phil Wheeler s 9(2)(a)

166. **Megan Wheeler** appeared on behalf of her husband, Phil Wheeler. She outlined that Mission Bay didn't need excessively tall and bulky buildings. She raised five key points:
- i. The proposal failed to comply with the parameters of the AUP(OP) particularly height which should be observed;
 - ii. The development didn't respect the beach or the Bastion Point headland landscapes, it would be a dominant block;
 - iii. The design failed to respect the heritage of the location;
 - iv. The development lacked social contribution; and
 - v. Lastly, if approved the development would set a strong precedent and have implications for other areas.
167. Mrs Wheeler concluded that she considered the AUP(OP) should be upheld.

Susan Riddell s 9(2)(a)

168. **Mrs Susan Riddell** advised that she had been a resident in the area for 40 years. Her preference was for the redevelopment of the site to more reflect of a Pacifica rather than 'Gold Coast' form. She considered the scale of proposal would result in adverse amenity effects on the surrounding area, in particular she considered the development would dwarf Bastion Point. She emphasised she was not against new development, but it needed to be in accordance with the planning framework. Redevelopment needed to be more commercially orientated. In response to Commissioners' questions she highlighted Noosa as a preferred development form in terms of scale and the diverse range of shops and local convenience activities.

Peter Riddell s 9(2)(a)

169. **Mr Peter Riddell** also addressed Commissioners, like Susan Riddell, he had been a resident for over 40 years. He highlighted to Commissioners his concerns with the Council's s42A report. He did not consider the reduction in height along Marau Crescent justified the heights sought by the applicant along Tamaki Drive. With respect to views and amenity, he advised Commissioners to reject the Council officer's view that residents had no rights to views, that views were a fundamental part of amenity.
170. Mr Riddell was also concerned that the proposed development would result in a reduction in total commercial activity provided on site. He also considered that approval should not be given to the apartments located above the permitted height limit.

171. In relation to flooding and coastal inundation, he was concerned the buildings were located in the flood plain and this in combination with sea level rise and climate change would result in an increase in the frequency of flooding incidents, combined with surges from the harbour over the sea wall, on Tamaki Drive. He considered there would be little warning to enable protection of the basement areas. He didn't believe any convincing material had been produced, the predictions of such events were in his view unreliable which ultimately would lead to increase costs to ratepayers to protect the development.

John and Susan Hole

172. **Mr John Hole** a retired Judge provided evidence on the application of the plan rules and the approach taken by the applicant. He considered that the applicant's evidence and the evidence of the council planner attempted to justify a 'significant departure' from the AUP(OP) provisions, and that this was not necessary.
173. Mr Hole stated that the wording of the height restriction in standard H11.6.1 is expressed in mandatory terms and "imposes an absolute prohibition against its infringement except in those very constrained circumstances set out in the Unitary Plan"⁴². Mr Hole asked *whether discretion should* be exercised to grant the application in light of the infringement of the height restriction. He considered that no valid reason has been provided to justify the infringement. While Mr Hole considered that there were possible reasons that could be inferred from the evidence presented, such as creation of additional residential apartments and provision of a focal point, he concluded that none of these were valid reasons to exercise discretion in granting the application.
174. Mr Hole also considered *how discretion could* be exercised to grant the application. He referred to s104 of the Act, and to Rule C1.9(1) of the AUP(OP) and emphasised that discretionary criteria must always be assessed in relation the mandatory standard. He noted that the wording of criteria H11.8.1(d) refers to effects on the amenity of *neighbouring* sites, which could be taken to include the properties in Marau Crescent. He concluded that the mandatory standard carried more weight than discretionary criteria, and that there was not sufficient evidence to exercise discretion in favour of the applicant.
175. Mr Hole concluded that were the application granted, that this would set a precedent for future cases, for the interpretation of the AUP(OP) which disregarded height rules. He also noted that this outcome would create a breach of faith in the people who worked to see the height standard included in the AUP(OP), and residents who relied on it.

Michael Joseph s 9(2)(a)

176. **Mr Michael Joseph**, a resident of Mission Bay for 20 years, outlined his additional response to the application by Drive Holdings Ltd.

⁴² Submission of John and Susan Hole, paragraph 10.

177. Mr Joseph questioned the assumption in the application that the cinema would continue to operate. He noted his agreement with the submission of Dr Kenneth Palmer that a development side agreement and title covenant should be imposed to ensure the entertainment complex was provided. He also clarified that this would also be a better method to achieve the mix of retail and community activities in the development that he sought protection for in his submission.⁴³
178. Mr Joseph retained his stated position with regard to traffic and parking. He observed that there was no reference in the applicant's evidence on the relevance of Auckland Transport consultation on parking management to loading and unloading of trucks on site. He also noted that there seems to be further process in relation to Auckland Transport's consultation on speed limits and pedestrian crossings within Mission Bay.
179. In response to evidence on behalf of the applicant regarding flooding and inundation risk, Mr Joseph requested that council take steps to ensure that it does not retain any liability for future flood-proofing or remediation. He suggested that obvious notice of flood risk is provided to potential owner/occupiers beyond conditions of resource consent.
180. Mr Joseph expressed concern about the preservation of carparking and pedestrian access during the construction period, which he considered to be significant. He noted the wording of draft earthworks condition 45 contained in Mr Neeve's evidence, specifically "no obstruction of access to public footpaths, public services/utilities or public reserves..." and that in evidence presented by Mr Ken Giffney on behalf of the applicant, there appeared to be some question about whether the applicant could comply with them.
181. Mr Joseph questioned the design of canopies proposed along Tamaki Drive, and Patteson Avenue frontages and how these would enhance "pedestrian movement, safety and convenience"⁴⁴ compared with the existing verandas.

Richard Oddy s 9(2)(a)

182. **Mr Richard Oddy**, a resident of St Heliers for 18 years, outlined his objections to the proposed development. He noted that the proposed height is over 50% higher than what is included in the AUP(OP) and highlighted that 650 objections were made, compared with 70 [submissions] in favour of the proposal. He considered that the proposed building height, including the building being taller than the waterfront pohutukawas was unacceptable.
183. Mr Oddy is employed as a tour guide and referred to visitor's interest in the heritage of the area. He expressed his concern at the potential loss of heritage buildings. He noted that if the proposal were approved, in the future similar buildings may result along Tamaki Drive.

⁴³ Personal statement by Michael Joseph (2 August 2019), paragraph 7-8.

⁴⁴ Ibid, paragraph 20.

Jennifer Duder s 9(2)(a)

184. **Ms Jennifer Duder** outlined that she and her family lived in the area for 10 years. While accepting of new development in the area she supported the Mission Bay Kohimarama Residents Association (MBKRA) position on the application. She was concerned at the Council officer's recommendation to approve the application which she considered ignored the AUP(OP) hierarchy of centres, the objectives and policies of the Local Centre zone and the zone height standard. She felt the height would spoil the amenity and special character of the area.
185. Ms Duder outlined for Commissioners the engagement and discussions that the MBKRA had had with Auckland Council during the AUP process. That there had been an acceptance of the zoning applied to the centre. The Council officer's recommendation to approval the proposal had led to an erosion of trust by the community and would set a precedent for other developments.

Colin Defreyne s 9(2)(a)

186. **Mr Colin Defreyne** advised he was a proud resident of Mission Bay having lived in the area for over twenty years and taken an interest in the local community and local board matters. His objection was to the height and bulk of the proposed building. He advised he participated in kayak fishing on the Hauraki Gulf and that the views from the Gulf were quite magnificent. He described the different focal points of Bastion Point, Mission Bay and the Norfolk Pines. The proposed height and bulk of the building could impair the amenity value of Mission Bay. Development should be in character and guided by the AUP(OP). Developers needed to listen to the voice of the people and develop within the mandate of the AUP(OP).

David Crown s 9(2)(a)

187. **Mr David Crown** advised Commissioners that he was not against development. He had been in Mission Bay for 37 years and considered the area the "jewel in the crown" for residents, tourist and the rest of New Zealand. In his view, Mission Bay was a unique waterfront suburb and he didn't consider Local Centre zoning was appropriate for area. While the area needed continued development, he considered it wrong to replace the two storey De Fontein building with an eight storey building. He supported the four stories provided for in the AUP(OP), that he considered managed the visual dominance.

John McCallum s 9(2)(a)

188. **Mr John McCallum** spoke to his written submission in opposition to the proposed development. He noted the difference between the allowable height for habitable space in the AUP(OP), and the height of the proposed design, and observed that the AUP(OP) limitations should apply unless circumstances justified a departure and the departure does not cause a significant adverse impact on the surrounding community. Mr McCallum considered that the proposed design would dominate the 'small cove' of Mission Bay, overpowering the beach, reserve and village storefronts. He noted that the proposed design would reduce the amount of retail and hospitality area available

and questioned whether the continued operation of the Berkeley Theatre would occur. Mr McCallum considered that the proposed development would comprise a substantial adverse impact on the surrounding community. He expressed concern that approval of the proposal would establish a precedent for making the AUP(OP) guidelines irrelevant and may encourage similar developments.

189. Mr McCallum commented on recent storm events which affected Tamaki Drive and Mission Bay and noted that “the Development Plan accepts the likelihood that there is a risk of the development being flooded.”⁴⁵ He commented on the damage anticipated in the Hazard Mitigation Report, and observed that while the report concluded that residential activities were above the inundation and flood levels, they would not be unaffected by such events. He considered that there would be pressure on council to provide costly flood defence in the future, if flood events caused repeated damage to property in the development, and that council should “take all possible steps to avoid incurring future liability for flood protection or mitigation for this Development.”⁴⁶
190. Mr McCallum also observed that approving the proposal would appear to be counter to the council’s statements with regard to its declaration of a climate emergency in June. He concluded by reiterating his request that the application be declined.

Juliet Yates MNZM s 9(2)(a)

191. **Ms Juliet Yates** outlined her extensive work for the local community over the last since 1973. She is a member of the Tamaki Drive Protection Society, but made her statement as a personal submission, not representative of the society. She is a former councillor for Auckland City Council, independent commissioner and planning tutor at the School of Architecture and Planning. She is a resident of St Heliers for nearly 80 years.
192. The proposal should be declined because of its effects on the amenity values of the waterfront environment. She observed that Mission Bay is different from other local centres in Auckland as the businesses are all on one side of Tamaki Drive. She outlined the history of strategies, guidelines and societies⁴⁷ which sought to protect and preserve characteristics and values of the area.
193. She commented on the applicant’s evidence and considered that there were inconsistencies in the extent of and effect on local amenity. She referred to the recommendations of the Urban Design Panel, which provided support “subject to fundamental changes”⁴⁸. She considered that the proposal would provide no public good, but only private benefit at the cost of public amenity.
194. Ms Yates considered the role of the proposed development as a landmark for the area and suggested that the existing Norfolk Pines at the reserve already acted as landmarks.

⁴⁵ Supporting submission by John N McCallum (2 August 2019), page 3.

⁴⁶ Ibid, page 6.

⁴⁷ Statement of Juliet Yates (1 August 2019), pages 3-4 (referred to Tamaki Drive Scenic Way, Auckland City Council Design Guideline 1992, Eastern Bays Coastal Management Strategy 1999, Tamaki Drive Protection Society Inc, Tamaki Drive Masterplan 2013, The Auckland Plan 2050, Heritage Sites of Significance and Public Artworks in the Orakei Local Board Area, 2018, Delving into the Past of Auckland’s Eastern Suburbs)

⁴⁸ Ibid, page 7

The decision on the application should not disregard the amenity values of Mission Bay and Tamaki Drive.

195. She referred to the work of local writers to express the feelings of the people of Mission Bay about the area, and attached a survey of Mission Bay restaurants, cafes and take-away businesses. At the end of her presentation, Ms Yates read out a statement on behalf of Margaret King.

Margaret King s 9(2)(a)

196. Ms King's statement expressed her opposition to the proposal. She considered that granting the application would undermine the credibility and integrity of the AUP(OP), and that the AUP(OP) height limits should stand.
197. Ms King's statement highlighted the importance of the foreshore and Mission Bay to Aucklanders. Her statement expressed her support for Ms Yates' arguments on these points.
198. In her statement, Ms King expressed disappointment with the applicants' lack of engagement with the local community, particularly with the Tamaki Drive Masterplan. She considered this document was central to planning decisions regarding Tamaki Drive especially the proposed development site; "the importance of its built form can only be understood within the context of where it is located."⁴⁹

Kenneth Norton s 9(2)(a)

199. **Mr Kenneth Norton** spoke to his submission. He advised he supported the AUP(OP) height standard, which he saw as a compromise agreed between the residents and the developer that saw additional height compared to the legacy plan. He was very concerned about the proposed height and the integrity of the AUP(OP) and the "dangerous" precedent set for other areas such as Kohimarama.

Simon and Bridget Tompkins s 9(2)(a)

200. **Mrs Bridget Tompkins** spoke on behalf of herself and her husband who have resided in Mission Bay for 37 years. She referred to the applicant's description of Mission Bay as a "relaxed waterside community"⁵⁰ and emphasised the values of this quality to residents, Aucklanders and visitors to the area.
201. Mrs Tompkins accepted that intensification in Auckland, and redevelopment in Mission Bay was necessary, but expressed concern at the height and bulk of the proposed development. She highlighted the 73% difference between the height limit in the AUP(OP) and the height of the proposed development and expressed concern that if the exemption from the height standard were granted, it may set a precedent for future development in the area.

⁴⁹ Statement of Margaret King presented by Juliet Yates (30 July 2019).

⁵⁰ Submission on behalf of Bridget and Simon Tompkins, page 1.

202. Mrs Tompkins questioned elements of the evidence presented by the council planner, Mr Cunningham. She considered that it was important to note that the four to twelve story developments referred to in Mr Cunningham's evidence were not in a prominent position in the centre of the Mission Bay 'amphitheatre' but were set against a cliff face. With few exceptions, Mrs Tompkins also observed that those apartment buildings do not protrude above the cliff.
203. She noted that one of the reasons given by the council planner for his support for the proposed development was the existing four to twelve story developments. She expressed concern that approving the proposal may set a precedent for future development, despite the council planner's statement that the approval of a resource consent does not set a precedent.
204. Mrs Tompkins stated that rather than acting as a focal point for the area, the outlook towards the development would degrade the amenity enjoyed by residents. She considered that this would be an extreme reduction of amenity for residents of Marau Crescent and Ronaki Road.
205. She concluded by stating that she did not consider that the applicant had made a case for the exemption from the height rules and requested that the application be declined.

Nigel Hewitson s 9(2)(a)

206. **Mr Nigel Hewitson** in his oral submission expressed frustration that the Council's pre-application dealings and the Auckland Urban Design Panel sessions had failed to get the applicant to change the proposal. While he recognised that developers seek to maximise their returns, the community should be able to rely on the AUP(OP) for certainty and that development should be in keeping with the Plan.
207. The AUP(OP) provided a clear hierarchy of height limits from Metropolitan centres through to local centres with provision for a height variation control. In his view the proposed development fitted more with what the AUP(OP) envisaged for a town centre. Mr Hewitson felt Mission Bay didn't provide for the local needs, there was no supermarket or library. Residents need to travel further afield to Eastridge, for a supermarket, St Heliers for the library, or go to Glen Innes or further afield. In his view Mission Bay was only half a centre.
208. In terms of height, he considered 16m a clear directive supported by the same height in the Business Mixed Use zone and an 11m height in the Residential Mixed Housing Urban zone. There were few buildings in Mission Bay of 4 storeys and under the provisions of the AUP(OP) sites would fill out. He considered an 8 storey building would be overbearing and described the likely impact of the development when viewed from Bastion Point, where the building on the corner of Tamaki Drive and Patteson Ave would be twice the size of the existing building at 32 Marau Crescent. He felt sure that the outcome of this hearing would proceed to the Environment Court.

Richard Steel s 9(2)(a)

209. **Mr Richard Steel** a retired civil engineer provided evidence on the risk of harm from coastal hazards. He contended that the proposed development did not comply with the requirements of NZCPS policy 25 (a) and (b).
210. Mr Steel referred to a legal opinion produced by Mr Tegg on the position of the NZCPS, and MfE Guidance as to the directive nature of the word “avoid”. He considered that these examples were applicable to the proposed development, and that “the requirement inherent in Policy 25 is to show that the risks of economic, social and environmental harm are not increased as a consequence of the proposed development.”⁵¹ He also considered that the proposal was inconsistent with RPS Objective B10.2.1 and Policy B10.2.2.
211. Mr Steel noted the mitigation and minimisation measures to address risks of harm from natural hazards but considered that these were not sufficient to meet the requirement of NZCPS Policy 25, or the relevant RPS policies. He noted that both council officer’s report, and Mr Dodd’s evidence identify “residual risk”, or risk that remained after mitigation. He considered that the application had not demonstrated sufficiently that it would not “increase the risk of social, environmental and economic harm”⁵² and that a comparative assessment of the risks of social, economic and environmental harm between a base line scenario and the proposed development would be required before a conclusion could be reached.
212. He concluded by questioning how the Council’s planner could recommend granting consent to the application, given the status of the NZCPS within the hierarchy of planning legislation and the Council’s responsibilities. He considered Commissioners did not have sufficient evidence that the risk of harm was not increased to be able to grant consent.

Andrea Young s 9(2)(a)

213. Ms Jeanette Heilbronn appeared on behalf of **Ms Andrea Young**. She commenced her statement by disagreeing with the applicant that there exists significant medium rise apartment development on Tamaki Drive. She considered that the few high-rise buildings nest into the cliffs around Kohimarama, and that the proposed development would “completely destroy the iconic buildings which give it (the centre) character and that it is at odds with the existing architecture.”⁵³
214. Ms Young considered that there was no good reason for the extra stories, which were not in keeping with the environment. She considered that the residential portion of the proposed development was greater than the commercial part and did not provide any social or economic benefit to the community.

⁵¹ Hearing statement by Richard Steel, Page 3.

⁵² Ibid, Page 5.

⁵³ Statement of Andrea Young.

215. Ms Young also raised issues that the curved glass façade of the building may cause sunstrike for motorists at different times of day, and that there would be a loss of car parking spaces for the area.
216. In conclusion, she questioned whether the development was an improvement and suggested that it would dominate the waterfront and change the character and charm of the beach.

June Turner

217. **Ms June Turner** outlined that she has been a resident of Mission Bay for 6 years. She did not present specific submissions but has an interest in property development, and the Mission Bay area.
218. She outlined three areas of concern with the proposal. Her first concern was that the proposal would set a precedent for future developments to exceed height standards. She noted that if this were the case where a Business Local Centre Zone borders a Residential Zone, such as in the proposal, this would be even harder to deny where a Business Local Centre Zone borders a Business Mixed Use Zone, such as Ms Turner's own property.
219. She also expressed disappointment with the quality of the design, which she found to be old fashioned and lacking excitement. She raised alternatives for the location of the cinema and suggested a roof-top restaurant within the design, which could provide an interesting view, and provide a 'reasonable trade-off' for locals.
220. Ms Turner also expressed specific concerns with access and amenity for future residents of the proposed development and considered that fresh plans could improve the proposal. She considered that the shared access from street level did not provide adequate shelter for residents and noted that there would be no sense of community across the six separate buildings. Ms Turner noted that there was no collection area for rubbish near the ground floor parking and the majority of the restaurants.
221. Ms Turner questioned whether the 5.9m wide entranceway from Patteson Avenue was adequate for truck movements and guest parking, and she also queried whether the 13 lifts and only two egresses to street level could cause an issue for fire services. She also raised the issue of cost to maintain the lifts in the complex.

Support Mission Bay Incorporated (SMB)

222. **Mr Alan Webb** presented legal submissions for Support Mission Bay Incorporated (SMB). The members of SMB are residents of Mission Bay who live 'behind' the proposed development. Mr Webb highlighted that unlike the Mission Bay - Kohimarama Residents Association Incorporated, SMB had a more specific, urban design focus. He advised that SMB opposed the proposal and requested that Commissioners give weight to the provisions [of the AUP(OP)] including the objectives, policies and standards of the Local Centre zone.

223. Mr Webb outlined that SMB members currently enjoy the amenity and outlook from their properties. They acknowledged that changes are progressing for Mission Bay but disagreed with the suggestion of the applicant's counsel that development can occur at the expense of amenity of adjacent neighbourhood zones. SMB also disagreed that a restricted discretionary activity status meant that breaches of the height standards were anticipated within that zone. He advised that SMB's opposition to the proposal fell into two broad categories, firstly, concern about amenity effects to the members of SMB, and secondly the wider urban design and landscape concerns related to the design and form of the buildings.
224. **Mr Don Stock** a member of SMB and resident of Mission Bay for 7 years, provided evidence on behalf of SMB members. He advised that SMB comprised 53 members "predominantly drawn from the northern side of Ronaki Road and the southern side of Marau Crescent"⁵⁴
225. Mr Stock disagreed with the applicant that views were not protected under the RMA, and considered that views are part of outlook, and outlook is protected where a proposal infringes the permitted building envelope. He contended that the extent of the proposal beyond the permitted envelope resulted in greater loss of amenity for his own property, and other properties owned by members of SMB.
226. Mr Stock noted that the visual assessment supplied by the applicant implied a single floor plate at 13.5m for his property, while Mr Stock stated that his split-level property had 5 floor plates between 14.09 and 19.6m.
227. Mr Stock considered that there were similar inconsistencies in the way that visual impacts had been assessed for properties at 12B Ronaki Road, 27 Marau Crescent and 14 Ronaki Road, and that the applicant had omitted to address adverse effects of the proposal on several neighbouring properties.
228. Mr Stock emphasised the scale of the proposal, being 73% taller than the occupiable height control provided for in the AUP(OP). He considered that the height limitations for the zone were in balance and proportion with the height of existing pohutukawa trees, and that the proposal would have a detrimental effect on the amenity of the broader Mission Bay environment.
229. Mr Stock noted that the proposal would not add any additional commercial floor space to the area. He noted that the proposed movie theatre could be accommodated in a building complying with the height controls. He considered that the design of the public area included in the proposal would be windy and unpleasant under common conditions and would not provide any public amenity.
230. Mr Stock also queried whether the granting of the proposal would impact on the integrity of the AUP(OP), by creating a precedent for other over-height developments in the future. He disagreed with arguments made during the hearing to support the proposal

⁵⁴ Supplementary statement of Don Stock (6 August 2019) paragraph 1.2

in terms of the applicant's approach to the redistribution of bulk, and the creation of a focal point within the local centre.

231. He disputed the evidence of Mr Pryor with regard to visual effects, he considered that there were more residents affected than acknowledged by Mr Pryor and did not consider that the trade-off between negative and positive visual effects in Mr Pryor's evidence was quantifiably demonstrated, or accurate.
232. Mr Stock noted that the rules and controls in the AUP(OP) provide the framework for Auckland's future growth, and that no evidence had been supplied to show it was necessary to infringe the AUP(OP) in order to give effect to the National Policy Statement on Urban Development Capacity.
233. **Mr Stephen Brown** a qualified landscape architect presented evidence on behalf of SMB on urban design, landscape and amenity effects. He clarified his position in response to evidence presented earlier in the hearing and summarised his findings in terms of the effects on the proposal.
234. In response to the evidence of Mr Pryor and Mr Munro, Mr Brown stated that 17 mm lens photographs do not comply with the requirements of NZILA's Best Practice Guide on Photo Simulations. He referred to concern expressed regarding distortion of images, quoting Judge Newhook at a prior hearing⁵⁵ "there emerged some accord that the 50mm approach...allowed images relatively free of distortion, but that somewhere in the range of 65 to 80mm will be found a truer-to-life representation for more distant views."
235. Mr Brown concluded that "a fuller array of photo simulations should have been provided, addressing more close-up views of the proposed complex, even if this required the stitching together of complying photos"⁵⁶.
236. Mr Brown disagreed that his evidence disregarded the framework and context of the AUP(OP) "as both Mr Pryor and Ms Absolum had suggested"⁵⁷, and highlighted elements of his evidence which addressed this context. Mr Brown considered that paragraphs 72-80 of his evidence addressed the positive inter-zone relationships at the edges of the proposal and Marau Crescent, and apartments at 103 Tamaki Drive and the Garden Court Flats. He stated that paragraph 97 of his evidence considered the effects of buildings 1-3 of the proposed development in context of the level of development anticipated by the AUP(OP).
237. Mr Brown also clarified that paragraph 95 of his evidence did not mention the Business Mixed Use Zone, as it is already buffered by the Local Centre Zone on the western side of Marau Crescent.
238. Mr Brown considered that the proposal would impede the views from multiple properties, beyond 6 Ronaki Road, and supplied modified photos from 6, 12A, 12B, 14, 16 and 18

⁵⁵ Summary statement of Stephen Brown (6 August 2019), Page 1. [Decision A 152/2006]

⁵⁶ Ibid, Page 2.

⁵⁷ Ibid, Page 4.

Ronaki Road for the benefit of the panel. He reaffirmed his assessment as included in in his evidence.

239. Mr Brown disagreed with the evidence of Mr Pryor that “even complying development would block views to Bastion Point and Whenua Rangatira from Selwyn Avenue”⁵⁸, and contended that “complying development on the application site (up to 21m RL) would still sit below the level of the Bastion Point ridge”.
240. Mr Brown agreed with the statements of Mr Munro in response to Commissioner Mead that the AUP(OP) is not definitive on the issue of planning and design outcomes for the Local Centre Zone. He suggested that indicators within the AUP(OP) could assist, such as the application of the Height Variation Control in locations other than the Mission Bay Local Centre Zone and the principles expressed in the Chapter H11 objectives and policies of the AUP(OP).
241. Mr Brown considered that the assessments of Mr Pryor and Mr Munro appeared to dismiss amenity effects on the local community and referred to comments of Justice Whata in the *Ennor v Auckland Council* decision (CIV-2018-404 [2018] NZHC 2598); ““Views”, among other things, inform amenity values. Furthermore, it is reasonable for neighbours to assume that effects on their views will be considered if the proposed development infringes bulk and location standards.”⁵⁹
242. Mr Brown re-stated some of his key findings from his evidence, where he considered that the proposal would have a significant adverse impact on the character and values of Mission Bay, that there was no real potential to mitigate those effects and that the proposed development failed to meet the ‘test’ in Policy H11.3(5) which requires; *large-scale development to be of a design quality that is commensurate with the prominence and visual effects of the development*.
243. In conclusion, Mr Brown considered that the proposal was inappropriate because of its landscape and amenity effects and considered that it was inconsistent with the relevant provisions of the AUP(OP).
244. **Mr Brian Putt** a qualified town planner, spoke to his written statement of evidence prepared on behalf of SMB. He considered that the proposed development produced adverse effects to properties in the adjacent residential zones which could not be avoided, remedied, or mitigated. He further considered that the proposal had not addressed key AUP(OP) policies for height infringements and was contrary to policies H11.3(8) and H11.3(13)(c).
245. Mr Putt disagreed with the position taken by Mr Lovett, the applicant’s planner, that a restricted discretionary activity provides a lesser test than discretionary or non-complying. He also commented on the applicant’s design strategy to redistribute building bulk across the site, and the assumption that the over height parts of the proposal were compensated by those parts of the proposal which were below the height

⁵⁸ Ibid, paragraph 9

⁵⁹ Ibid, paragraph 13

limit. He considered this approach was unacceptable and resulted in adverse amenity effects which could not be addressed

246. Mr Putt considered that the applicant had incorrectly addressed adjacent 'properties' rather than adjacent 'zones' and concluded that the proposal failed the test of sustainable management under the RMA and could not be granted.

Karen Mason s 9(2)(a)

Ms Karen Mason highlighted the significant opposition to the proposed development in its current form, noting that the AUP(OP) allowed for four storey development in this vicinity which would fit comfortably in the area. She considered it unacceptable that the Council officers had ignored the AUP(OP) and its objectives and were recommending approval of the development. The proposed height of the building was not in accordance with the AUP(OP). She stated that "To continue with this massively opposed application was a total misuse of ratepayers' money and nothing short of fiscal misfeasance of the public purse".⁶⁰

Jeff Meltzer (46C Rawhitiroa Road)

247. **Mr Jeff Meltzer** advised he was presenting his submission as a concerned resident and ratepayer of Mission Bay/Kohimarama and Auckland. In his written submission, he questioned why the community was being asked to deal with this application after having worked through the Auckland Unitary Plan process. In his opinion the applicant was having a "second bite". If there were to be breaches to the height standard, then these should be minimal.
248. Mr Meltzer was concerned that the application breached the integrity of the AUP(OP), which had been through a thorough, extensive and robust process. He considered the current application made a "complete mockery" of the AUP(OP) and urged Commissioners to stand up for the AUP(OP) that "allows for a maximum occupiable height and all applications should be within this maximum"⁶¹.

Bev Goodwin s 9(2)(a)

249. **Ms Bev Goodwin** considered the development would have a detrimental impact on Mission Bay. She tabled a photoshopped image that she had prepared to demonstrate the physical reality the buildings would have on the Tamaki Drive and Patteson Avenue corner. She believed the new buildings would cause shading problems, remove sea views and alter what was an iconic landscape. She was also concerned about the impacts on the area arising from the 5 years of construction.

⁶⁰ Statement of K B Mason.

⁶¹ Statement of Jeff Meltzer

Mission Bay Kohimarama Residents' Association

250. **Ms Gill Chappell** presented legal submissions for Mission Bay - Kohimarama Residents' Association (MBKRA). She outlined the interests of MBKRA, which has a membership of more than 650 and which is opposed to the proposal.
251. Ms Chappell provided context for the interpretation and application of Chapter C of the AUP(OP) and reiterated the position of Mr Wren, MBKRA's planning witness, that the consents for the proposal should be bundled. Regardless of bundling of the consents, Ms Chappell also asserted that the Council had broad discretion under rule C1.8(1) of the AUP(OP) which refers to all relevant overlay, zone, Auckland-wide and precinct objectives and standards which apply, and under rule C1.9 which includes the purpose of, and any objectives or policies relevant to the infringed standard.
252. Ms Chappell outlined the hierarchy of plan provisions as set out in Chapter A1.3 of the AUP(OP), and set out the centre's hierarchy of Metropolitan Centres, City Centres and Town Centres, "reinforced by a cascading of height limits for future development within each zone"⁶².
253. Regarding the issue of height, Ms Chappell asserted that the anticipated future built environment must take a real-world approach. She considered that existing residential developments are unlikely to change in the medium to long term, and that even future developments of four to five storeys "would be dominated by an 8 storey (28m) building"⁶³.
254. In response to the applicant's argument's for additional height, Ms Chappell questioned whether the maximum height should be assumed to be 18m, or 16m as she noted that the additional 2m was to not to be used for occupiable space.
255. Ms Chappell also considered other effects of the proposal and noted a number of examples in case law where the implications of consenting a development that breached standards in a plan were considered in light of whether this would have an effect on that plan's integrity. She referred Commissioners to a number of cases where the recency of the plan gave greater weight to plan integrity considerations⁶⁴.
256. Ms Chappell considered that views were relevant matters to the effects of height, and that amenity values more broadly must be assessed. She referred to the written evidence of Mr Putt and Mr Brown with regard to the application of height controls in the proposal, she considered that the 'unders and overs' approach to mitigation of the height limit put forward by the applicant was flawed for a number of reasons, and emphasised that there is an adverse effect where "there is no remedy or mitigation possible"⁶⁵
257. In relation to the meaning of 'adjacent', she noted Mr Lovett's view that 'adjacent' generally applies to properties either adjoining or directly opposite. Ms Chappell noted

⁶² Legal submissions Gill Chappell (6 August 2019), page 6, paragraph 5.2

⁶³ Ibid, page 7, paragraph 6.4

⁶⁴ Ibid, page 11, paragraph 6.22

⁶⁵ Ibid, page 19, paragraph 9.1(g)

that this argument contrasts with the broader purpose of the height control – to manage effects of height. She argued that taking this broad purpose into account, the effects of height must be considered in wider context, particularly given Auckland’s hilly topography and in this case the amphitheatre setting. She considered that “Limiting those effects to adjacent site[s] is an overly narrow interpretation.”⁶⁶

258. Ms Chappell referred to the planning evidence of Mr Wren, and highlighted that he considered the effects of the proposal were inconsistent with, and potentially contrary to objectives and policies for the coastal environment.
259. In conclusion Ms Chappell restated the importance of a gradation of height limits across business and residential zones, and that, with regard to bulk, height and form standards, the MBKRA considered that the proposal “so egregiously non-compliant that this Application must be declined.”⁶⁷
260. Mr **Don Stock** is also the president of the MBKRA and in that capacity prepared a separate brief of evidence. He set out the role of the MBKRA, which is active in a range of projects relating the Mission Bay area and stated that the association has more than 650 members, which he estimated represented 11% of households in the area.
261. Mr Stock summarised the actions and involvement of the MBKRA in response to the proposal and outlined the range of concerns held by members of the association. On this matter his evidence canvassed many of the points summarised for SMB. He emphasised “the depth of community feeling”⁶⁸ and highlighted that “More than 96% of submissions received from residents of Mission Bay and surrounding suburbs were opposed to the application.”
262. His evidence included an outlined MBKRA’s submissions at the AUIHP hearings and identified that MBKRA had sought a height control of 10m as part of those proceedings. At that time, Mr Stock pointed out that the applicant supported the notified height control of 16m for Mission Bay.
263. In summary, Mr Stock reiterated the concerns of the MBKRA that the proposal would cause significant adverse effects to proximate residents, and irreversibly impact the suburb of Mission Bay. He concluded that the MBKRA were opposed to the proposal and sought that it be declined.
264. **Mr David Wren**, a qualified planner, presented planning evidence on behalf of MBKRA. His evidence addressed the adverse effects of the proposal, including amenity effects, effects on public open space and the effects on the coast. He considered that the excessive height and bulk of the proposed buildings would result in unacceptable effects on the amenity of residents and visitors and would dominate the beach and beachfront reserve. He also considered that the provision of public space through the proposal was inadequate.

⁶⁶Ibid, page 17, paragraph 7.6

⁶⁷Ibid, page 20, paragraph 9.2

⁶⁸ Statement of evidence of Don Stock, paragraph 2.8

265. Mr Wren considered whether the application should have been a ‘bundled’ application, as the effects of the cinema and other buildings overlap. He posited that the overall activity status should be discretionary but asserted that under the general rules of the AUP(OP), specifically rule C1.8(1) and C1.9, a full assessment of the objectives and policies was appropriate.
266. Mr Wren went on to consider the proposal against the objectives and policies of the AUP(OP). He outlined those of the Local Centre Zone in particular, with a broader overview of objectives and policies attached in an appendix and concluded that the proposal was “contrary to the relevant objectives and policies relating to the form and nature of development in this location and potentially contrary to those relating to impact of development on the coastal environment.”⁶⁹
267. Mr Wren expressed concern with aspects of the section 42A report and questioned the lack of detail provided about context of the existing tall buildings in the area, and the purpose of the height rule with respect to the relevant policies. Mr Wren considered that the height rule at H11.6.1 makes clear that “Council in developing the AUP(OP) gave careful thought to where it considered additional height (and reduced height) should be provided through the use [of] the Height Variation Control”⁷⁰
268. Mr Wren questioned elements of the applicant’s evidence, including the approach to ‘redistribution of height’, the roof-top projections and the difference between a roof height of 18m and 16m, given that rule H11.6.1.(3) “is clear that the additional 2m is not be used for occupiable space.”⁷¹ He concluded that the proposal would cause adverse effects on neighbour’s amenity, was contrary to the relevant objectives and policies of the AUP(OP) and that the proposal should be refused.

Rob Everitt

269. **Mr Rob Everitt** a resident of Mission Bay spoke of his concern about the bulk and form of the proposed development which he considered was inappropriate for the location. The key for him was topography, he considered that while the development looked reasonable on paper it was its appearance in the wider physical context including from important locations such as Bastion Point where it was apparent how overly dominant the building would be. He suggested the ferry would provide a good vantage point from which to understand what the development would look like from the Harbour. Like other submitters he was concerned the development would undermine the AUP(OP).

Anna Nathan s 9(2)(a)

270. **Ms Anna Nathan** tabled submissions from her legal counsel Mr James Gardner-Hopkins and read from her own statement of evidence. She advised she had lived at 6 Ronaki Road for 25 years. She outlined that the effects on her property were clearly significant but that she understood that sometimes public benefit may outweigh private benefit. However, in this case it appeared the private benefits to the developer would

⁶⁹ Statement of evidence of David Wren, paragraph 7.8

⁷⁰ Ibid, paragraph 8.5

⁷¹ Ibid, paragraph 9.8

outweigh the private impacts on herself and others. She was concerned that if the current proposal proceeds in its current form that it was likely a similar development would occur on the opposite corner of Tamaki Drive and Patteson Avenue, creating a high wall effect. Her evidence included photographs with her evidence to show the views from her property to demonstrate the effects on the area. In her opinion and based on her knowledge of the area, Ms Nathan felt the proposed buildings would feel very near. She was also unconvinced by the applicant's proposal to reduce the height of buildings fronting Marau Crescent; she didn't believe that the proposed setback would provide much benefit to the residents on the opposite side of the road.

271. Ms Nathan had a number of concerns with the proposed design including the access to the podium from alley ways that would lack views, sun and be vulnerable to wind effects. She considered the proposed height would be overwhelming in comparison to a more human scale four storey development. The existing taller buildings were all located at the ends of the bays against the cliffs whereas this development would intrude into the middle of the centre not only impeding views but change much of the cityscape and ruin the beach side atmosphere.
272. Ms Nathan also raised concerns about the integrity of the AUP(OP) and questioned how a proposal could go so far beyond the plan's standards. The community's expectations were that the height limit should only be breached by a small extent, unless there were very special circumstances. She concluded by expressing her sadness that the opportunity to build a "wonderful, inclusive and welcoming suburban precinct, is being missed here, surely one of the most iconic, and loved, areas of Auckland"⁷².
273. Mr Gardner-Hopkins' legal submissions addressed a number of legal matters including the status of the activity, Part 2 considerations, the effects on Ms Nathan and the legal framework. In terms of the status of the application and whether it should be bundled or unbundled, Mr Gardner-Hopkins was clear that the application had been made on a (full) discretionary basis and therefore in the absence of a formal request to unbundle the activities the Panel must proceed on that basis. The provisions related to the restricted discretionary consent required for height were still relevant, but the Panel were entitled to go beyond those provisions and consider any relevant matter.
274. In relation to Part 2, Mr Gardner-Hopkins' reminded Commissioners that the Court of Appeal decision in RJ Davidson has kept the door open to considering Part 2 in the context of a resource consent application. In his submission it is appropriate, if not necessary, for the Panel to consider Part 2. He considered it highly relevant to the interpretation of and application of the key issues identified by the applicant namely the bulk and intensity of development; its massing and allocation on site and the potential adverse visual and urban design effects that arise as a consequence. That Part 2 should not be seen as an "override" to granting or refusing consent rather, Part 2 should inform how the Panel exercises its judgement.
275. In terms on the effects on Ms Nathan's views, he advised that the panel would need to carefully test the proposition that in the s42A report that the "effects from the view of the

⁷² Statement of Evidence Anna Nathan, paragraph 20.

proposal is similar to a development that reflects the plan context and development standards of the zone.” Mr Gardner-Hopkins submitted this was not the case. He advised careful consideration of the photomontages.

276. Mr Gardner-Hopkins challenged the interpretation that the change in activity status for breaches of the height standard to restricted discretionary in comparison with previous district plans regimes which imposed lower heights and required full discretionary or non-complying to breach the rules meant an easier consent path. The alternative interpretation he offered was in raising the height standard, a consent authority needed to be more cautious about breaches going significantly beyond the height standard. In his submission, “the application must be determined on its merits, without presumption or assumption made in respect of the appropriateness of the breach of the height standards. This includes due consideration of the impacts on character, amenity, and, indeed views of existing residents”⁷³.
277. Lastly, he raised the issue of the AUP(OP) seeking to achieve “better quality development” as set out in various issue, objectives and policies. He considered that AUP(OP) was unclear in its use of the term “quality” and had left this to the judgement of decision makers. He also considered the applicant’s reliance on economic factors and achieving the base case development yields as problematic. Overall, he submitted the applicant had not done enough to achieve a quality development and appropriate environmental outcomes.

St Heliers and Glendowie Residents’ Association and Michael Walsh

278. **Mr Michael Walsh** spoke on his own behalf and the St Heliers and Glendowie Residents’ Association. He advised that should the proposal proceed it would create a significant adverse effect on the wellbeing of the local community. He also voiced support for the submissions made by the Orakei Local Board and other Mission Bay community organisations.
279. The association was concerned the proposed height and bulk of the proposal would adversely affect the overall environment of the Mission Bay strip along Tamaki Drive. They were also concerned about the reduction in the scope and nature of services available in the centre. Like other submitters, the Association was concerned about the integrity of the AUP(OP) and the precedent approval of the proposal would create for the area. Traffic, parking, wind effects and the impact of construction noise were also of concern.

John Wardle s 9(2)(a)

280. **Mr John Wardle** a local resident and retired civil engineer spoke to his submission that had been made in a private capacity and related to his perception of the planning process applied to the applicant’s proposal. He spoke of the community’s feeling of being disenfranchised after the process of consultation undertaken for the AUP(OP) for which seafront height constraints were a contested issue. He was critical at the

⁷³ Legal submissions Mr Gardner-Hopkins, paragraph 26

applicant's lack of consideration of alternatives and while he understood the business drivers of the applicant to maximise profitability, in his view a pure mitigation approach should not be the basis for the Council's consideration. In his opinion, the lack of any assessment of alternatives means the proposal must be compared to a base line complying development within the AUP(OP) parameters.

281. In his view the Council's report did not address in enough detail the benefits to the citizens of Auckland of retaining the provisions of the AUP(OP) Business - Local Centre zone compared with the applicant's proposal. Nor did the report give sufficient weight to the predominant expectations of the public that no part of the building should exceed - the zone's height restriction. He considered that the scale of the applicant's proposal was such that it should be tested through a plan change process rather than a resource consent application.
282. Mr Wardle concluded that if the application was granted approval it would lead to a precedent not just for Mission Bay but elsewhere.

Ivan Martinovich s 9(2)(a)

283. **Mr Ivan Martinovich** a retired builder advised the Commissioners that he and four generations of his family had lived in Mission Bay for the last 68 years in and around Marau Crescent. He withdrew the comments in his written submission related to the Orakei Board's support for the Drive Holdings proposal, advising that the letter of support didn't relate to the current proposal.
284. As a resident of Marau Crescent he raised concern about the vagueness of the applicant's shadow study and whether these studies related to the winter or summer. He was concerned that the proposal would impact on both the morning and evening sun. He felt if consent was granted to the proposal then it indicated that the council didn't care about the effects on local residents.
285. Mr Martinovich was also concerned at the potential loss of the local theatre and the impact that the four-year construction period would have on the local community, loss of restaurants, bars and ice cream parlours. He considered if the height of the development was reduced it would be less disruptive to local residents and businesses alike. He was aware Drive Holdings had been buying the properties for over 30 years with the intention of redeveloping, he also considered they not been maintained to the standard of other properties leading to them being described as "shabby." He looked forward to a revised scheme within the boundaries of the AUP(OP).

Rebecca Jerram s 9(2)(a)

286. **Ms Rebecca Jerram** a qualified planner and landscape architect advised Commissioners that she was making her submission in a private capacity. She outlined the standards in the AUP(OP), and likely outcomes of the current planning rules for the Mission Bay area. She considered the 16m (18m maximum) height restriction to be a "valid and measured" approach for managing the future intensification of Mission Bay.

287. She expressed her concern that approval of the proposal would set a precedent for future developments to exceed the height limitations in the AUP(OP), whereby exceptions to the rule, might become default rules instead.
288. Ms Jerram considered that the proposed development was contrary to Objective H11.2(3); *Development positively contributes to a planned future form and quality, creating a sense of place*. She noted that the landform, proximity to the sea and their viewsapes informed Mission Bay's sense of place and considered that new developments should "sit in deference"⁷⁴ to such viewsapes.
289. She described the existing built environment as being at a 'village-type' scale and observed that the description for the Business – Local Centre Zone which applies to the proposal site includes; "typically up to four storeys high, enabling residential use at upper floors"⁷⁵. She felt that development on a scale of the proposal would dwarf the existing and potential future built environment and considered that the proposal did not satisfy relevant assessment matters for visual dominance or adverse effects on amenity values.
290. Ms Jerram referred to the wider built and natural context of the proposal and considered that the proposal lacked any sense of cultural connection, or incorporation of mana whenua interests.
291. While she acknowledged that she did not hold any formal qualifications in climate science or adaptive climate responses, Ms Jerram called attention to the council's responsibilities under section 7(i) of the RMA and highlighted recent storm events in the area which caused localised flooding. She included several images of these events and referred to consideration of Part 2 matters in major applications.
292. Ms Jerram also concluded that the proposal "disregards reasonable community expectations established under the Council's own operative Plan"⁷⁶, and she questioned whether the proposal adequately addressed Section 7(i) matters, with regard to sea level rise and severe storm events already occurring in Mission Bay, St Heliers and Kohimarama.

Tabled Evidence

293. We also had tabled evidence provided on behalf of the Stephen Owen Family Trust, Auckland Planning Limited (Mr Nick Culpan and Mr Gian Farrant), Elizabeth Sampson and Rhys and Catherine Mountfort.
294. **Mr Stephen Owen** through the Stephen Owen Family Trust owns 14 Ronaki Road. His submission raised issues with the impacts on amenity, the proposed height, bulk and scale of the development. He supported the position of the Mission Bay Residents Association and agreed with the evidence of Mr Wren. He considered that the proposal would result in "significant adverse visual effects for the residents of Mission Bay" and

⁷⁴ Submission of Rebecca Jerram (2 August 2019) 3 Future form, quality, a sense of place:

⁷⁵ Ibid

⁷⁶ Ibid, Conclusion, point 3

that it failed to achieve the objectives and policies of the zone⁷⁷. He sought the development be reduced in height to largely comply with the zone height, and the design modified to reduce its bulk.

295. **Ms Elizabeth Sampson** advised by email she was concerned about the impacts on traffic flows and parking in the local area. Recent changes to on street parking management in Tamaki Drive had already caused increases in the number of vehicles parking in the surrounding residential streets.
296. **Rhys and Catherine Mountfort**'s submission objected to the introduction of high-rise development and its impact on the current environment in Mission Bay. They questioned the community benefit of the proposal.

Information Request

297. On the 5 August 2019, the Commissioners issued a minute in response to the evidence from the applicant and some submitters on natural hazards including stormwater flooding and coastal inundation. This minute requested that the council and applicant provide additional information to assist in understanding the associated effects and consent matters.
298. In response to our request to clarify and confirm the coastal hazard classification under the AUP(OP), Ms Lee, the Council's development engineer, advised that the site was not within the coastal erosion hazard area as defined by the AUP (OP). She also confirmed that the site was not subject to the 1% AEP coastal inundation and therefore did not require a consent under Rule E36.4.1(A9). The proposal includes habitable rooms that are above the inundation level of the coastal storm inundation 1% AEP plus 1 m sea level rise and comply with Standard E36.6.1.1. Mr Allan for the applicant confirmed the applicant's consultants agreed with this advice.
299. The Commissioners also sought that the applicant clarify certain matters related to stormwater flooding. These were addressed in a memorandum prepared by Jon Rix from Tonkin and Taylor. This information confirmed the location, invert level and approximate soffit level of the three stormwater outfalls in Mission Bay, the tide heights and frequency by which these would inhibit the outfalls. In relation to the questions on the range, height and frequency of tides from the flood modelling and that the basis for the flood height estimates, Mr Rix advised that the coastal tailwater levels used in the catchment modelling were 1.39m (approximately MHWS), RL 1.89m (MHWS + 0.5m SLR and RL2.39m (MHWS + SLR)., along with the coastal tailwater.
300. He also advised that coastal inundation events occur when a storm surge caused by a strong onshore winds and low barometric pressure coincide with spring tide. Once the coastal level exceeds RL2.7m and inundates directly from the sea to Tamaki Drive, then sea level will control flooding and inundation elevation regardless of catchment inflows.

⁷⁷ Statement on Stephen Owen, paragraph 19

For the Council

301. Following the submitters' presentations, the Council's officers were invited to comment on any matters raised by the applicant and submitters and to indicate whether these had in any way changed their recommendations on the application. Commissioners also had questions and points of clarification for the Council experts arising from their specialist review reports.
302. **Ms Yu-Ning Liu**, the Council's urban designer, maintained her view that while certain aspects of the proposal were acceptable as addressed in her specialist memorandum attached to the s42 report she remained concerned about the visual appearance of the development, in particular the Tamaki Drive and Patteson Avenue blocks, which she considered would be detrimental to the existing and future character of the area. She remained unconvinced that the development was in accordance with the policy directives. Ms Liu maintained her concerns about the impact of the eighth storey penthouse on Building 1 which she considered created a visual discord with the rest of the building. In relation to the Marau Crescent frontage she maintained her concern that the bedrooms were located at ground floor and sought that the layout be altered so the living rooms were located at ground floor with the bedrooms above.
303. **Mr Peter Kensington**, the Council's consultant landscape architect in his initial landscape and visual effects specialist review had advised that he was "generally comfortable that the wider landscape and visual effects of the proposal... are minor within the context of the receiving environment and the anticipated building bulk and height enabled under the AUP(OP)."⁷⁸ At that time, he had two concerns with the proposal where he considered that some design refinements could better mitigate the adverse visual effects. These concerns related to the southern elevation of Building 6 and the eighth level of Building 1. He had also recommended a review of the height and overall bulk of the proposal in order to reduce visual effects to "viewers located within private properties on elevated land to the immediate south of the site".
304. In response to the evidence presented by the applicant and submitters, Mr Kensington provided a supplementary statement of evidence that responded to the expert evidence of Mr Pryor, Ms Absolum and Mr Brown. In response to Mr Brown's evidence, Mr Kensington agreed that effects on amenity values were a key consideration relevant to the proposal. He noted that he considered that the applicant had considered a full range of representative viewpoints for the visual assessment as part of the proposal and agreed with Mr Pryor's rebuttal on this matter.
305. Mr Kensington maintained his position from his initial assessment that "there will be significant adverse visual effects from the proposal for viewers located in elevated properties between Marau Crescent and Ronaki Road"⁷⁹ He also made a clarification

⁷⁸ Peter Kensington (12 April 2019) Memo Re: Review of a publicly notified application for resource consents, as a discretionary activity bundled application – BUN60324987

⁷⁹ Supplementary statement of evidence of Peter Kensington (7 August 2019), page 5, paragraph 7.2.

with regard to the proposed development, that adverse effects arose mainly from the additional height and bulk of the proposal, not from the 'design response' itself.

306. He advised that he had revised his initial assessment conclusions and considered "the overall height and bulk of the proposal is too great for the Mission Bay Business – Local Centre zone"⁸⁰. He recommended a reduction in the height (and associated bulk) of the proposal, pending a review of the appropriateness of such a revised design, in order to provide an improved outcome for landscape and visual effects.
307. **Mr Terry Church**, the Council's traffic consultant tabled a memorandum that responded to a number of the transport matters raised during the hearing by the applicant, submitters and the Commissioners. He referred to the summary of key transportation matters in his specialist report at page 161 and reiterated that his position on the proposal remained unchanged, subject to the updated set of conditions circulated by council.
308. With regard to construction traffic management, Mr Church considered that condition 5, as included in the hearing agenda, did *not* suitably address these matters. He supported condition 5 and 6 as included in the updated conditions circulated by council.
309. He clarified that the proposed development *meets* the height requirements of AUP(OP) standard E27.6.3.5 [Vertical clearance]; "That is, a 3.8m clearance height on the Ground Floor is required where loading occurs and 2.3m for the Basement levels for residential and retail activities."⁸¹. He further clarified that design of the loading zone based on the tracking of an 8m truck was acceptable for servicing private developments.
310. Mr Church did not agree with the stated position of Mr Wren with regard to public transport and considered that any intensification along a public transport route supported public transport.
311. With regard to on street parking, Mr Church noted that the updated conditions circulated by council now required the Construction Traffic Management Plan (CTMP) to address car-parking for construction workers (conditions 5 and 6) and included advice notes (24 and 25) on the separate process for consultation on the proposed removal of nine parking spaces on Patteson Avenue. Mr Church also noted that Auckland Transport had accepted the on-street parking design which included the removal of the nine 90 degree parking spaces.
312. Mr Church reviewed the vehicle access design for Patteson Ave, and Marau Crescent included in the Dodd Civil Report 497/01 July 2019. He advised that "While the gradients (of both accesses) and platform length of the Patteson Ave access do not comply with the standards, I am satisfied with the design."⁸² He nonetheless advised that new condition 71, as included in the updated council conditions, would better ensure the safety of all road users.

⁸⁰ Ibid, page 8.

⁸¹ Memorandum from Terry Church (7 August 2019), page 2

⁸² Ibid, page 3

313. Mr Church clarified that conditions 71 to 74 which related to traffic design and construction, had been omitted from council's recommended conditions, but were now included in the updated set. He also highlighted advice notes 22 and 23, included in the updated set of council conditions. These related to the need for encroachment licences from Auckland Transport, separate to the RMA process.
314. **Mr Ben Cunningham** the Council's reporting planner provided comments on a number of matters raised during the course of the hearing. In relation to the question of whether the application should be bundled or unbundled, Mr Cunningham advised he was satisfied with the assessment in his report and that he had considered all the relevant issues regardless the application was considered as a restricted discretionary or full discretionary activity. He confirmed that the applicant had not asked for the consents to be unbundled.
315. Mr Cunningham advised that he agreed with the applicant's planner that the NPS UDC should be considered in making the decision on the application. He also rejected the suggestion made by several submitters that the existence of other larger buildings in the area provided his justification for the height exceedance of the proposal. Likewise, he addressed the issues of "views" and "outlook" and advised that he had not disregarded them in his consideration of amenity. He clarified that he had considered the amenity of the outlook/views from all relevant sites, not just 6 Ronaki Road in his assessment.
316. In response to Commissioners' questions regarding the relationship between the general business objectives and policies and the Local Centre objectives and policies, Mr Cunningham offered the opinion that where the general objectives and policies refer to "centres" he considered that this meant all centres but not the Business Mixed Use zone (or other non-centre zones).
317. He concluded by advising Commissioners that he maintained his recommendation that the application should be approved subject to the revised conditions tabled by the Council officers.

Applicant's Right of Reply

318. Mr Allan provided a written reply to the matters raised by the submitters, the Council officers and the questions raised by Commissioners. He advised the applicant continued to seek consent for the application in the form it was lodged. The applicant agreed with the revised suite of conditions circulated by Council officers with the exception of condition 1 which they considered should be simplified to list only those documents that establish the key parameters; condition 6 which should be amended to refer to a Construction Traffic Management Plan rather than a Construction Management Plan; and condition 67 requires the addition of "not" to the second line of the bullet point, so the established finished floor level does not further breach the height infringement.
319. Mr Allan addressed the Environment Court's 2000 decision and the evidence of Mr Putt which asserted that the operative height regime at Mission Bay reflected the Environment Court findings and updates them to suit the AUP(OP). He considered Mr

Putt's assertions as flawed and his evidence compromised. The AUP(OP) approach to Mission Bay was a significant departure from the more constrained planning provisions of the legacy plans. The focus of the legacy provisions on protecting views from the Ronaki Road escarpment had been discarded in the AUP(OP) and this was true not just for the site, but for Mission Bay as a whole. As a result, under the AUP(OP) Mission Bay was no longer treated as a peculiarly sensitive environment but is subject to the standard Local Centre provisions that apply to centres across the city, with a significant increase in the height and bulk "and a marked change in the relationship between the Mission Bay hinterland and the coast".⁸³

320. In respect of Part 2 RMA, Mr Allan advised that unlike the advice we received from Messer Putt, Brown and Gardner-Hopkins, our decision would only likely be informed by sections 7 (c) and (f) if we considered that the AUP(OP) provisions governing Mission Bay were incomplete or fail to give effect to the higher order planning instruments. From the applicant's perspectives the AUP(OP) has only recently been confirmed and represented a comprehensive package that give effect to the higher order planning instruments which are addressed through a combination of the policy and zone provisions and zone standards. These provisions elevated the importance of intensification of development in this area above the maintenance of existing or historic form. In any event, s7 RMA only required "particular regard" be had to the listed matters. With reference to the Blueskin Bay decision, Mr Allan advised that amenity effects need to be assessed in the relevant planning context, which in this case anticipates significant and dramatic intensification of development in Mission Bay."⁸⁴
321. With respect to views, Mr Allan accepted Mr Putt's assertions that views formed part of the concept of outlook and outlook is a component of amenity values, however he did not accept that a view is always protected to the extent that it is over or around a permitted building envelope. In Mr Allan's opinion, Mr Putt's evidence treated the zone height as a maximum and ignored the Restricted Discretionary activity status of the AUP(OP). He submitted that Mr Putt was treating the impacts on views from a small number of residential properties as a determining factor for the application rather than one of many factors that needed to be considered. It would only be determinative if the effects were so extensive and so adverse that they rendered the application incapable of being granted consent.
322. In response to submitters concerns about the precedent effect of granting consent to the application to additional height or the cumulative effects of the proposal, Mr Allan advised Commissioners that in this case the Council has deliberately enabled applications for additional height as a Restricted Discretionary activity. He posited that the arguments for the proposal, such as; single ownership of the site, frontage onto three roads, the rising escarpment to the south, and the particular design, were unique and site specific enough to distinguish it from other proposals "should claims of precedent arise in the future"⁸⁵

⁸³ Closing Legal Submissions, paragraph 2.2(c)

⁸⁴ Ibid, paragraph 2.4(d).

⁸⁵ Ibid, paragraph 2.13

323. Mr Allan pointed out that the applicant “has never claimed a permitted baseline for the site”, and rather the ‘base case’ for the proposal was intended to provide “an indication of the scale of activity that could reasonably be established on the site in compliance with the zone build and location standards.”⁸⁶ He went on to reiterate where aspects of the proposal complied with AUP(OP) standards, and argued that where the proposal deviated from them there were factors which mitigated their impact.
324. He refuted descriptions used during the hearing that the proposal had employed an ‘unders and overs’ approach or was seeking to ‘offset’ adverse effects within the proposal and emphasised that the assessment of effects had been carried out in terms of the current environment and had considered all affected parties. He acknowledged that “The Application does involve the reallocation of floor space around the Site”⁸⁷, but asserted that this was to ensure that the proposed development was not more intensive than the AUP(OP) would otherwise allow.
325. In relation to the ‘need’ for additional height, Mr Allan pointed out there was no requirement in law for an applicant to demonstrate the need for their proposal, but that the relevant matters for consideration were sections 104, 104B and 104C of the Act. He also addressed the arguments put forward by some submitters that the height standard of the zone is too high, or that the AUPHHP process was flawed. He pointed out that in the AUPHHP hearings, there was never any consideration of a height variation standard for Mission Bay to *increase* the height standard of the zone, rather a consideration of a height variation to *reduce* the standard, which was ultimately rejected. He also outlined the consultative steps of the AUP process, and that this application hearing was not the appropriate forum to address the merit of the AUPHHP process.
326. Mr Allan disagreed with the criticisms of the proposal in Mr Brown’s evidence, that the proposal failed to comply with the planned form anticipated in the AUP(OP) for Mission Bay. He considered that Mr Brown had taken “a very literal view of what the zone anticipates”⁸⁸. Mr Allan noted that the “provisions do not require strict compliance with standards” but provided a mechanism by which proposals could be assessed and considered against the policy framework.
327. Mr Allan also disagreed with the position of Mr Wren in paragraphs 7.5 and 8.4 of his evidence, that the proposal is contrary to the objectives and policies as it exceeds height and intensity and scale intentions for the area. Mr Allan reiterated that the proposal is intended to provide for a similar scale of development to what would be compliant with the AUP(OP) standards. He also restated that the AUP(OP) provides for the consideration of applications which did not comply with the standards.
328. Mr Allan referred to the evidence of Mr Brown and the submission of retired Judge Hole on the issue of whether application “must” comply with the height standard in the AUP(OP) in order to be appropriate. Mr Allan advised that this argument, that; Rule H11.6.1(1) was a ‘mandatory standard’ and could only be departed from if

⁸⁶ Ibid, paragraph 2.16

⁸⁷ Ibid, paragraph 2.19

⁸⁸ Ibid, paragraph 3.5(a)

commissioners were compelled to exercise discretion in the applicant's favour, was wrong in law.

329. Mr Allan clarified that throughout the zone provisions, there is "a corresponding provision that states that a building *must* meet a specific standard. Rule C1.9 imposes Restricted Discretionary Activity status if the standards are not met."⁸⁹ He further refuted the position of Mr Hole that Commissioners should have 'primary regard' to H11.6.1(1) and advised that "The submitter has misunderstood the legal framework of both the RMA and the Unitary Plan."⁹⁰
330. In response to the submissions critical of the development as it failed to provide for the local convenience needs and sought a different mix of activities, Mr Allan reminded Commissioners that the AUP(OP) provisions provided for a network of centres. He also emphasised that the RMA is an enabling statute and could not force a landowner to undertake specific activities. In response to Mr Wren's criticism that the proposal, did not reinforce the function of other centres in the hierarchy, he highlighted that the application provided for a small increase in the level of commercial activity in comparison with the current development on the site and even when combined with the other commercial activities in Mission Bay it was not large in the context of local centres.
331. Responding to Mr Putt's evidence that the application failed to meet Policy H11.3(8) as it did not maintain the amenity values of the surrounding residential properties, Mr Allan advised that this assertion was not accepted by the applicant. The adverse effects on the amenity (i.e. outlook and views) for the upper part of the escarpment were not significantly adverse, particularly in the context of planning outcomes anticipated by the AUP(OP). The architectural strategy adopted for the site ensured that the areas of additional height could be accommodated without adverse effects on the most sensitive properties in the vicinity.
332. Mr Allan considered the assertions made by Messrs Wren and Putt that Mission Bay is not a centre that has been allocated a greater zone height and is therefore constrained to the general height standard was flawed. The application had taken account of the effects on the properties on the upper levels of the escarpment, as demonstrated by Mr Pryor's evidence. Granting consent to a development that exceeds the zone height standard did not challenge the integrity of the relationship between Local Centre zone and neighbouring residential zones. That Commissioners were entitled to grant consent to the proposal to exceed height in terms of the consideration of the assessment criteria.
333. Mr Allan noted that a strong theme from submitters was that the Council should retain the current amenity and sense of place for Mission Bay. He considered this was not realistic in the context of the AUP(OP) which explicitly enables and seeks significant alterations to the built form.
334. In response to concerns about the adverse effects on the enjoyment of the Mission Bay open space, Mr Allan advised that the applicant considered that there would be minimal effects on the amenity of the open space as was apparent from the photo montages

⁸⁹ Ibid, paragraph 3.10(c)(ii)

⁹⁰ Ibid, paragraph 3.11

showing the development from Tamaki Drive both east and west. It would not impose or dominate the reserve.

335. In responding to the landscape and visual concerns of Messrs Kensington and Brown of the effects of the proposal on a small number of properties on the upper parts of the Ronaki Road escarpment, Mr Allan reminded Commissioners that the applicant and its consultant team had been cognisant of the views from these properties, with a focus on No. 6 Ronaki Road, as the site most affected in that location. He submitted that the applicant had taken great care to design a proposal that while minimising effects on the most sensitive properties on the southern side of Marau Crescent, also provided an appropriate outcome for the more distant properties at the top of the escarpment. The marginal effects on these private views should not determine the application. Likewise concerns raised about the effects of the additional height on views and amenity from the Mission Bay hinterland did not warrant the decline of the application.
336. Responding to criticism of the architectural style and the need for a focal point on the corner of Tamaki Drive and Patteson Avenue, Mr Allan reasserted that this was the largest site in Mission Bay, on a key intersection, where the AUP(OP) enabled 18m buildings and it was therefore the logical location for development to emphasise the focal point of the Local Centre. In response to the dislike expressed by some submitters for the applicant's architectural choices, Mr Allan reinforced the process that the applicant's design team had followed, commenting that it was not possible for any given design to appeal to everyone and neither the AUP(OP) or the RMA required that.
337. In response to the concerns raised about the risk of flooding and sea level rise, Mr Allan reminded Commissioners that the applicant had presented evidence on these matters and the proposed use of the adaptive management regime and other physical measures that would be adopted both during construction and the initial operation of the building, and which may over time be modified and updated as part of the adaptive management process. He submitted that the AUP(OP) provisions were appropriate in terms of the NZCPS and that the application was appropriate and adequate in terms of the AUP(OP) requirements
338. In relation to the NZCPS, Mr Allan reminded Commissioners that their duty was limited to having regard to it. There was no requirement for Commissioners to give effect to the NZCPS or indeed the RPS or any other AUP(OP) policy. The discretion to grant or decline consent is in terms of s104 and 104B.

Principal issues in contention

339. Firstly, we record that there was general agreement between the parties on the effects on infrastructure provision; ground water; soil contamination; wind effects; and street trees.
340. The main issues of contention between the parties related to the issues of:
- Activity status: "bundled or unbundled";

- Effects of height on local centre and coastal environment;
- Effects of height on views as an aspect of residential amenity;
- Effects of height on the wider landscape;
- Effects on Marau Crescent;
- Role of height in centres hierarchy;
- Height and planned future character;
- Design quality;
- Flooding and coastal inundation;
- Construction effects;
- Post-construction traffic and parking.

Main findings on the principal issues in contention

341. Our main findings on the principal issues that were in contention are set out below

Activity status - “bundled or unbundled”

342. The proposal before us involves a range of different resource consent matters which, with the exception of the “cinema” activity are classed as restricted discretionary activities in the Local Centre zone. Only the cinema activity is classed as a discretionary activity. Under the RMA where an application consists of more than one type of resource consent within the same proposal and have effects which do not overlap, then the activities are considered separately (i.e. “unbundled”). If the effects of the proposed resource consents overlap, they are considered together (i.e. “bundled”).
343. We received conflicting advice from the planning experts and legal counsels for the applicant, Council and the submitters on whether the applications should be considered on a “bundled or unbundled” basis; with the Council’s planner and the legal counsels and planning witnesses for a number of submitters of the firm view that the effects of the activities overlapped, and the activities may be considered together; while Mr Bartlett who appeared for Ms Carleton and Mr Lovett a planning witness for the applicant recommended that the matters be “unbundled”.
344. Mr Allan advised that as set out in Mr Neeve’s assessment while it was possible to separate the cinema activity from the other applications, a conservative approach had been adopted of treating the component parts of the application as being bundled. All parties were in agreement that even if the application was bundled, then the criteria relating to the various restricted discretionary activities were still relevant in guiding our decision.

345. We also note the advice of the Council's reporting planner, which was reinforced by the legal submissions of Mr Gardner-Hopkins, given on behalf of Ms Nathan, that the application had been made on a (full) discretionary basis and therefore in the absence of a formal request to unbundle the activities we should proceed on that basis. We therefore find that the applications are to be bundled as a discretionary activity and therefore subject to assessment in terms of s104 and 104B.

Effects on local centre environment

346. By way of context, the application site is zoned Business Local Centre. The zone description states that the zone's standards typically enable buildings up to four storeys high, providing for residential use at upper floors. The total building height standard in the zone is 18m, being 16m occupiable height with an additional 2m height for roof form.

347. The specific objectives applied to the Business – Local Centre Zone (H11.2) are:

(6) Local centres enable commercial activity which primarily services local convenience needs and provides residential living opportunities.

(7) The scale and intensity of development within local centres is in keeping with the planning outcomes identified in this Plan for the surrounding environment.

(8) Local centres are an attractive place to live, work and visit.

348. These objectives are reinforced by policies that require development to be of a quality and design that positively contributes to planning and design outcomes identified for the zone (H11.3 (3)(a)) and to require development adjacent to residential zones to maintain the amenity values of those areas, having specific regard to dominance, overlooking and shadowing (H11.3 (8)). The policies also specifically deal with identified locations with greater and reduced heights.

349. Many submitters were concerned that the height and bulk of the building will be inappropriate in the context of the local centre role of Mission Bay, and in its relationship to Selwyn Reserve and the beach. The applicant's experts such as Mr Munro, contended that seen within the context of the development envelopes possible under the Local Centre zoning, the over height elements will be in keeping with and not antagonistic to the character of the local centre and surrounds, as it develops overtime.

350. The applicant spent some time reinforcing the point that the AUP (OP) had changed the context within which height issues should be considered, compared to the legacy plan provisions. Building height standards had been increased, while there was discretion to consider taller buildings, for example.

351. The submitters generally accepted that the current one and two storey buildings could be replaced by buildings of four to five storeys sitting within the 16/18m height standard of the AUP (OP). Many noted that the legacy plan standard for building height was 10m, and as a result of the increase in the height standard provided by the AUP (OP), the

centre can and will redevelop over time, and in so doing make a contribution to meeting Auckland's growing population and visitor demands.

352. The applicant suggested that the additional height that it proposed over the 16/18m standard would help to create a focal point. In their view, the corner of Patteson Avenue and Tamaki Drive is a corner that is worthy of a taller building, a point generally agreed to by Council's urban design expert. Many submitters suggested that the centre did not need a physical focal point. If anything, the beach area and Domain is the natural focal point. We tend to agree with the submitters. Even if the focal point was to be the shops rather than the beach, as implied by the applicant, we do not see the need for a tall building to reinforce the local centre as a focal point for the community. Mr Munro agreed that the focal point references relate more to the social interaction generated by the centre and its activities, than any physical aspect. A revised and upgraded four to five storey mixed use retail and food offering may strengthen the focal point role.
353. As to the local centre environment itself, the building will be a noticeable change to the current environment. We were urged by the applicant to consider this change within the context of the four to five storeys provided for by the Local Centre zone. Furthermore, it was pointed out to us that there are already a number of four storey residential buildings in the vicinity that are perhaps 12m tall. We agree that if the centre did redevelop to the extent suggested, then the development would more comfortably sit within the urban environment than it might appear as first constructed. In addition, the upper levels of the development are set back from the main façade on the Patteson Road frontage helping to reduce their visual presence.
354. Nevertheless, the six to eight storey components of the development start to modify the local centre environment in a way that incrementally shifts that environment from a local to a town centre-type environment. The development introduces a degree of physical and visual dominance that will modify the environment in a substantial way, particularly as it is experienced on the corner of Tamaki Drive and Patteson Avenue. While a four to five storey building with a taller corner element may be appropriate, we agree with Mr Brown's assessment that the development is more closely aligned with a town centre environment than a local centre environment.
355. With regard to the relationship to the beach and reserve, the site is part of the coastal environment. The development is separated from the beach area by a wide road and partially screened by mature trees. The Council's assessment was that the road environment could accommodate the height proposed. The applicant also pointed to the vegetation within the Domain (Selwyn Reserve) helping to visually separate the coastal area from the redeveloped centre. The taller building would be visible over the tops of the existing trees. Given the urban context of Mission Bay, we do not consider that the development will have a significant impact on the beach / coastal environment.
356. A number of submitters referred to the heritage values of the centre and its art deco theme. We record that we see no specific issues or effects associated with heritage or special character that are relevant to the assessment of effects.

Effects on views

357. The potential impact of the development, particularly its over height components, on views enjoyed from neighbouring properties was a major issue raised in the hearing. The main area in contention was the significance of the impacts.
358. Questions were raised as to the accuracy of various photomontages that were produced, as well as analysis of the floor levels of existing buildings relative to the proposed buildings. We note these concerns but see no need to make findings on the specific issues raised. Suffice it to say that we have treated the various analytical diagrams presented to us with a degree of caution.
359. It was generally accepted by all parties that particular views from residential properties are not protected by the RMA, but views (outlook) are part of residential amenity. The topography of the area creates an amphitheatre type effect where rows of houses overlook the roofs of those below, and many houses have panoramic views of the inner Gulf.
360. On the question of whether the AUP (OP) identifies views as an aspect of residential amenity that is to be addressed when considering effects, the objectives and policies do not send a strong signal that views are an important aspect of amenity to be maintained by the Plan. The purpose of the height standard for the Local Centre zone does not directly refer to maintaining views from surrounding properties, for example, rather referring more broadly to the 'effects of height'. The Local Centre zone provisions do refer to dominance. This was taken to mean 'visual dominance' by Mr Brown.
361. Furthermore, in discussing residential amenity, the Residential – Mixed Housing Urban zone refers to managing impacts of development on amenity, covering visual amenity, privacy and access to daylight and sunlight. Policies refer more directly to visual dominance, overlooking and shading. Views and outlook are not directly mentioned.
362. It was accepted by the applicant that the development would modify views and that some properties would see a reduction in the quality of their view, although this effect was not so great as to be a reason to decline the application. This judgement appears to be partly made on the basis of the design pushing the taller elements of the building away from the residential (southern) interface. This improves conditions for properties along Marau Crescent, while for dwellings further up the slope, there is less bulk on the site's southern boundary.
363. Here we note that we separately address Marau Crescent impacts as well as whether an 'unders and overs' type approach to effects is appropriate. In this part of the decision we address the impact on views as a discrete effect.
364. It is clear to us having visited a number of residential properties to the south of the development site that views of the Hauraki Gulf are an important aspect of the residential amenity of the area. The houses have been designed to capture the views to the north, while the terracing of houses up the slope enables expansive views.

365. Our understanding is that at least six dwellings close to the southern boundary of the site will have their views substantially altered by the development. We visited four of these dwellings. Views will remain expansive, but for some, key features like Rangitoto channel of North Head will be obscured. Mr Pryor accepted that the effect on views will be significant, as did Mr Kensington.
366. A development that sat within the 16m/18m height limit will affect the current views. Views of the pohutukawa trees along the edge of Selwyn Reserve will be largely lost and some of the harbour obscured. The sea/sky horizon line will likely be maintained for many of the properties.
367. While the impact on views may be confined to a relatively small number of properties sitting to the south of the site, it is reasonable to say that the impact of the greater height on their amenity will be significant.
368. Further back up the valley, views of the Gulf and key features are dependent upon aspect and topography. Nevertheless, the sense of a 'cascading circle' of houses looking down and outwards to the harbour is very strong. Concern was expressed as to a precedent effect, that if taller buildings became established, then they would proliferate across the mouth of the valley, adversely affecting views for a wider range of people. Submitters did accept that redevelopment within height standards was anticipated within the Business – Local Centre and the Business – Mixed use zones that extend along Tamaki Drive. We consider this issue to be a more general landscape effect, as discussed next.

Wider landscape

369. A number of submitters referred to the amphitheatre form of Mission Bay. This was in relation to views down the valley from the terraced rows of houses up the valley sides, but also in terms of the landscape as appreciated by visitors to the beach, passer-bys using Tamaki Drive and residents. This was the landscape formed by the two headlands either side of the bay, the flats at the mouth of the valley and the enclosing valley walls that climb towards Eastridge.
370. We took from the submitters a feeling that the development would work against this landscape, creating a large building mass at the foot of the amphitheatre 'blocking' the appreciation of the landform from both the beach side and the inland side. Reference was made to previous attempts to insert taller buildings into this landscape, with the placement of a number of towers at the foot of the headlands, rather than across the mouth of the valley. Some support for the importance of this landform and the visual interactions up and down the valley can be gained from the Tamaki Drive Masterplan prepared by the Local Board. This was referred to by Ms Yates. Ms Jerram referred to the role the landforms play in creating a particular sense of identity.
371. In considering these effects, it is relevant to address the extent to which the height standard of the Local Centre zone is connected to the landscape features present. To begin with, we note that the discretion under H11 to consider additional height is wide ranging and clearly not just confined to centre amenity or outlook enjoyed by nearby

residents. The landscape and landform of the area is part of the wider amenity values experienced by residents and visitors, and as expressed to us by a number of submitters, is clearly important in the bundle of values that make up this amenity.

372. We also note that policy B2.3.2 under the heading 'a quality built environment' refers to:

"(1) Manage the form and design of subdivision, use and development so that it does all of the following:

(a) supports the planned future environment, including its shape, landform, outlook, location and relationship to its surroundings, including landscape and heritage;"

While there is no direct evidence that the 16/18m height standard for the Mission Bay local centre was directly attributed to landscape and landform issues, there is nevertheless an important connection to features such as the trees on Selwyn Reserve and the surrounding headlands either side of the Bay. The green open space of Bastion Point is prominent to the west, with Pipimea Head forming the eastern flank of the Bay. The Ronaki Road ridgeline that sits behind the site rises to around 20 metres above sea level. If much of the centre is redeveloped to 16/18m height standard, then appreciation of the surrounding landform will alter. Some views of the surrounding ridgelines will be lost. But nevertheless, such a height is likely to result in more of a feeling of buildings on the valley floor sitting within the surrounding landforms and landscape features. We do consider there to be adverse landscape effects from the development.

Centres hierarchy

373. Policies refer to whether the height is supported by the place of the centre in the centres hierarchy. The purpose of the hierarchy is not well articulated in the AUP(OP). In addressing this issue, we note that in the RPS⁹¹ local and neighbourhood centres are grouped together, and distinct from town and metropolitan centres. Reference is made in the Local Centre zone to the convenience role of local centres.⁹² The Mission Bay local centre is somewhat different to other local centres as it has a strong focus on food and drink, with limited local shops. It could be said to have a regional focus, given its emphasis on meeting the needs of visitors. In our view, the composition of shops does not detract from or undermine the local centre identification. It would not be appropriate to call the centre an incipient town centre, for example.

374. Mr Allan stressed that the place of the centre in the hierarchy did not impose a height 'cap'. A local centre could have a building in it that is taller than the height limit for town centres, without this contradicting the purpose of a hierarchy. He stressed the functional role of centres as being important to the hierarchy, pointing to the controls on retail and offices in local centres as examples of what the plan is trying to control.

375. We agree that height is not a determinative factor for the hierarchy. However, we find it difficult to say that the additional height is 'supported' by the place of Mission Bay centre in the hierarchy. That is, the local centre identification does not suggest a strong policy

⁹¹ Policy B2.2.2 (6).

⁹² Objective H11.2 (5).

push for taller building mass than that provided for by way of the height standard. The AUP appears to support taller developments in town and metropolitan centres. For example, the Local Centre zone refers to the scale and intensity of development within local centres is to be in keeping with the planning outcomes identified in this Plan for the surrounding environment⁹³. In contrast, the town centre zone refers to the scale and intensity of development in town centres is increased while ensuring development is in keeping with the planning and design outcomes identified in this Plan for the relevant centre⁹⁴. We observe that this is quite a different policy context for local centres, a point made by Mr Wren in his evidence.

Planned future form and quality.

376. Policies refer to development supporting the planned future character of the area. All involved in the hearing accepted that the 16/18m height limit and the associated redevelopment enabled was part of the planned character for the area. What is in dispute is the additional height component.
377. Mr Allan's submission was that the height standard in combination with the ability to provide additional height via the restricted discretionary activity process formed the 'planned outcome'. That is, height above the standard was not just possible, it was 'planned'. In his view, this was quite a different policy approach from the legacy plan, which explicitly sought to limit height to maintain amenity (views) of residential properties to the south. Mr Lovett made a similar comment in his evidence, pointing to the restricted discretionary activity status to exceed height, which in his view was a lower level assessment than in previous plans.
378. We find that Mr Allan's interpretation stretching the concept of planned character a bit too far. In our view, the term 'planned form' has a deliberative, purposeful intent to it. The height standard is an important component of what constitutes this planned form. In our reading of the AUP(OP), the planned form and design is the 16/18m height limit. This interpretation is backed up by the reference in the zone description to built form being predominantly 4 storeys. We understand the point that the plan no longer applies a storey-based height control, while the word 'predominantly' allows for both taller and shorter buildings. What is important is that the height standard is not some sort of 'starting line' for determining the planned character.
379. We readily accept that this planned form is different to the current form, and that the AUP (OP) does not seek to retain the current form. Change will occur. To further the analogy, the height standard is not the finish line for the planned character. However, we are not persuaded that because a degree of change is contemplated, then all change is therefore 'planned for'. The AUP (OP) clearly accepts that additional height is possible, but each case must be tested. In this sense there is a framework within which to consider additional height, but it cannot be claimed that the specific height sought has been planned for.

⁹³ Objectives H11.2 (7)

⁹⁴ Objectives H10.2.(7)

380. Mr Wren noted that local and neighbourhood centres have a closer relationship to their surrounding residential catchments than town or metropolitan centres and that this consideration must also be taken into account in determining what is the planned form. This transition is reflected in the policy for local centres: namely “the scale and intensity of development within local centres is in keeping with the planning outcomes identified in this Plan for the surrounding environment”⁹⁵. As noted, this policy approach is quite different to that applying to town centres.

Marau Crescent benefits.

381. The applicant stressed the benefits to Marau Crescent residents of the design which involved a residential rather than business frontage, and a stepping back of the possible building bulk. At the street edge the three storey units are about 11m high, rather than 16m. A fourth storey is set back some 3m from the street façade, with that level about 14m, 2m below the 16m height limit.
382. The main issue is the extent of the benefit and whether that benefit should be weighed against the effect on views further up the slope. The stepping back of the Marau Crescent frontage is of benefit. Whether this is a benefit that would be delivered by a scheme that sat within the 16/18m height limit is unknown.
383. Given that the planned form could involve 16/18m tall buildings directly on the Marau Crescent street frontage, the benefit of the design must be given a marginal weighting. In one conception, the reduced bulk is actually a lost opportunity (with reference to development positively contributing to the planned form and design). On the other hand, the stepped design does assist with the transition implied in the policies as to development being in keeping with the surrounding environment.
384. We recognise the benefits of the design to Marau Crescent environment, but do not consider that these benefits should be weighed against the other effects generated by other aspects of the design.

Design quality

385. The applicant submitted that the building was of a high design quality. It justified its additional height through this design quality (while generating acceptable effects). The Council’s urban design review, echoing the comments of the Council’s urban design panel, questioned aspects of the design and whether the design quality was sufficient, given the prominent position of the building. Many submitters questioned the design. We do not consider the decision ‘to turn’ on the design issues raised, and therefore see no need to take this issue any further.

Flooding and coastal inundation

386. Ms Lee confirmed that the site lies within the 1% AEP floodplain and within the extent of 1% AEP + 1m sea level rise coastal inundation but is not within the mapped extent of the existing 1% AEP coastal inundation. The applicant’s legal counsel has agreed with

⁹⁵ Objectives H11.2 (7)

that interpretation and no parties have challenged it. Accordingly, and while recognising that the applicant has provided an assessment and design that seeks to address potential effects of 1% AEP + 1m sea level rise coastal inundation, we are satisfied that the proposal does not trigger an infringement of a Chapter E36 AUP(OP) rule relating to existing or future coastal inundation.

387. The proposal will not generate new or additional flooding effects beyond the site boundary, given that existing development is being replaced. Our discussion herein focusses on flooding and coastal inundation effects within the site.
388. Hazard risks can be described as being related to the ground floor retail units, the basement car parking and the future residents. The development essentially replaces existing ground floor units and therefore there are no significant new risks being generated in relation to the ground floor units. The basement car parking area is a new feature. The residential component significantly increases the number of people exposed to potential hazards, compared to the current situation.
389. The effects of flooding within the site were assessed on the basis of catchment flooding (runoff from land) and coastal inundation (storm surge, wave setup and sea level rise). Mr Rix addressed catchment flooding, Mr Shand addressed coastal inundation and Mr Dodd addressed the design elements and proposed management responses that had been incorporated to mitigate those effects. Mr Rix and Mr Shand also explained the effect that tides currently have, and are predicted to have, on catchment flooding by impeding discharges from the three stormwater systems that drain the site and its surrounds.
390. Flooding and coastal inundation effects were reported on for Auckland Council by Ms Lee, whose assessment was informed by technical reviews provided by Dr Natasha Carpenter (Practice Lead for Coastal Management – Auckland Council) and Mr Yassenko Krpo (Healthy Waters Stormwater Specialist). Dr Carpenter and Mr Krpo have accepted as appropriate the assumptions and modelling outputs generated by Mr Rix and Mr Shand.
391. Based on the modelling assumptions accepted by Auckland Council:
- a. The predicted existing 1% AEP catchment flood levels are 2.7m RL on Tamaki Drive and Patteson Avenue, and 3.0m RL on Marau Crescent;
 - b. With the contribution of 1m sea level rise impacting on the catchment outlet points, predicted 1% AEP catchment flood levels by the year 2100 would be 2.8m RL on Tamaki Drive and Patteson Avenue, and 3.1m RL on Marau Crescent
 - c. The predicted existing 1% AEP coastal inundation level⁹⁶ is 2.45m RL;
 - d. The predicted 1% AEP coastal inundation + 1m sea level rise by the year 2100 is 3.45m RL.

⁹⁶ Including tide + storm surge + wave setup.

392. In our Minute of the 5 August 2019 we sought additional advice on the inter-relationship between the stormwater catchment flows, tidal cycle and coastal inundation events. Mr Rix provided an additional statement. The upshot of this is that as sea levels gradually rise, then stormwater related flood events will become more frequent.
393. The current 1% AEP catchment flood level corresponds to the non-habitable floor levels of the existing and proposed ground floor commercial units. The applicant does not seek to raise ground floor levels at this time, based on its preference to maintain unimpeded access and maximise street activation along the retail frontage. Rather, the approach as explained by Mr Dodd is an 'adaptive pathway' response that includes:
- a. Flood resistant construction materials for all parts of the development that may be impacted by flooding;
 - b. Electrical and air conditioning systems protected to 4.0m RL;
 - c. The use of removable barriers to slow ingress of flood water; and
 - d. The floor to ceiling height of the ground floor will accommodate raising the floor level to above 3.45m RL if necessary.
394. Ms Lee noted in her review that the proposed at-grade level of those commercial units would not meet the Auckland Council Code of Practice minimum 300mm freeboard of 'less vulnerable activities' which includes commercial activities, or the minimum 500mm freeboard required under the Building Code.
395. In the hearing report, Mr Cunningham stated that potential flooding effects on ground floor units "are considered to fall on the applicant alone⁹⁷". We don't accept that conclusion as relevant to the management of effects. It may well be that the units are sold to third parties and no conditions of use or terms of such sale have been presented to us. Rather, we refer to Ms Lee's conclusion where she considers that a comprehensive flood management plan and other design elements are required to address the ground floor flooding effects that she had identified as unacceptable at the time of her April 2019 assessment. In that regard we note that the applicant has incorporated her recommendations into the design, as detailed above, and has provided a draft Inundation / Flood Management Plan as appended to Mr Dodd's evidence. That plan addresses duties of the body corporate, duties of commercial tenants, evacuation and follow-up procedures. We also note the condition recommended by Ms Lee that requires the submission of an updated version of the Inundation / Flood Management Plan to be submitted to Auckland Council, to include evacuation plans, named wardens, weather monitoring, site management and maintenance procedures, and flood monitoring and reporting to inform future adaptation. At the conclusion of the hearing Ms Lee supported the proposal subject to compliance with her recommended conditions.
396. All habitable floor levels will be at a minimum level of 3.95m RL, which includes a minimum freeboard of 0.95m⁹⁸ above predicted existing flood levels and 0.5m above

⁹⁷ Hearing Report, page 51

⁹⁸ 0.95m at Marau Crescent and 1.25m at Patteson Avenue and Tamaki Drive.

predicted future coastal inundation levels in the year 2100. As summarised by Dr Carpenter in her review, that additional freeboard makes an allowance for additional factors such as changes in climate change projections, inherent uncertainty in modelling, and wake created by vehicles travelling on flooded roads. A refuge point has been identified on the podium level and a flood evacuation route for pedestrians has been identified between the podium and Marau Crescent.

397. The basement carpark entry points will be raised to 3.0m RL on Patteson Avenue and 3.3m on Marau Crescent. Those levels are predicted to prevent ingress of flood water from the existing 1% AEP catchment flood level and satisfy a point raised by Ms Lee in her April 2019 review. They are also predicted to protect the basement from the 1% AEP + 1m seal level rise coastal inundation until approximately 2050, at which point the inundation level may exceed the height of the entry points to the basement. Beyond 2050 the inundation level is predicted to continue to rise to a 3.45m RL by 2100.
398. To reduce the impact of coastal flooding from approximately 2050 onwards, the following measures are proposed with respect to the basement:
- a. Flood resistant construction materials for all parts of the development that may be impacted by flooding;
 - b. Flood resistant basement doors (including vehicle entry doors);
 - c. Electrical systems designed and located above predicted flood levels within the basement.
 - d. Location of refuse collection areas at ground floor level; and
 - e. A sump and pump system with float switch to drain water as it enters the basement;
399. To inform the above design elements, Mr Dodd has predicted a maximum flooding level within the basement of 500mm, based on the following assumptions regarding water ingress:
- a. Eight unimpeded points of entry (doors) for flood water to the basement;
 - b. All water being stored on 1 basement level;
 - c. Water entering the building for 2 hours before and after high tide; and
 - d. A flow rate ranging from 0 l/s to 30 l/s (note – 1 fire hydrant flows at approximately 15 l/s) at each door. This gives an average flow of 15 l/s for 4 hours.
400. We understand that the design elements listed above, in conjunction with the requirement to provide an updated Inundation / Flood Management Plan address concerns raised by Ms Lee in her review regarding the adequacy of the applicant's Hazard Mitigation report and basement entry levels.

401. Other measures to address flooding effects around the development include drainage services designed to be sealed above the maximum flooding level, and downpipes to have relief valves above 3.45m RL.
402. Many submitters have expressed concern about the proposed development, and in particular the basement, which is proposed within the identified flood plain and the area that will be impacted by coastal inundation. While we did not receive any independent expert evidence in support of those submissions, we acknowledge the relevance of local experience when assessing flooding effects at a local scale.
403. A number of submitters provided photo evidence of flooding along the Kohimarama section of Tamaki Drive. Mr Jerram and Ms Jerram provided photos of storm surge flooding on Tamaki Drive in January and February 2018. The images were of locations in Kohimarama and one on the causeway across Hobson Bay. Mr McCullum provided a picture of similar flooding at Kohimarama in April 2014. The return frequency of those events or coincidence with rainfall was not established, although Mr McCullum stated rainfall during the event that he described was not extreme.
404. While submitters suggested that the wave spill flooding at Kohimarama is representative to that likely to be experienced at Mission Bay, in reply to questions Mr Rix stated that Mission Bay wave spill will tend to drain back to the sea from Tamaki Drive up to the point that coastal inundation takes over. Consequently, wave spill itself, in his opinion, was unlikely to have the same effects that it does at Kohimarama.
405. Ms Davies provided photographs of flooding near the corner of Tamaki Drive and Patteson Avenue that occurred on 30 December 2005, flooding within Selwyn Reserve and Tamaki Drive that occurred in April 2014, and flooding along the edges of Tamaki Drive in Mission Bay in 2018. The return period and cause of these events was not established. With respect to the 2014 photograph, based on observations during our site visits it appeared that the flood level was approximately at the lower door sill of the shops on Patteson Avenue.
406. Mr McCullum expressed concern about the validity of the data used in the coastal inundation modelling. This was refuted by Mr Rix who confirmed the tidal data was based on Devonport rather than the port, and that wave setup had been accounted for. Dr Carpenter also confirmed that in her technical review.
407. Mr Steel suggested that the hazard risk assessment undertaken by the applicant had not adequately addressed changes in the likelihood and consequences of hazards over time or the economic, social and environmental consequences of the hazard. In this regard he drew our attention to the directive imperatives of NZCPS Policy 25 ((a) avoid increasing the risk of social, environmental and economic harm from coastal hazards; and (b) avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards), and corresponding RPS provisions B10.2.1 and B10.2.2.
408. Mr Steel and others also raised concern that the applicants' assessment was based on an outdated 2008 Ministry for the Environment (MfE) guidance document rather than the

current 2017 update. This matter was specifically addressed by Dr Carpenter who noted that the 2017 version was not available at the time of the original assessment but was satisfied that the applicant's assessment was consistent with the updated report. In particular, Dr Carpenter concluded that the proposal would fit with Category B of the 2017 guidance which promoted a risk assessment and pathways approach to adaptation, which is consistent with the approach taken by the applicant. Mr Shand also addressed 2017 MfE guideline in his evidence and confirmed that the various reduced levels upon which the design, as presented to us, was based were consistent with that document.

409. We note that the applicant has undertaken a hazard risk assessment. Ms Lee and others have considered that assessment and have accepted it subject to recommended conditions. Ms Lee did consider in her review that the proposal increases potential vulnerability to flooding compared to the existing development due to the increase in the number of people utilising the site. We accept that conclusion but note the specific design elements, adaptations and procedures that are proposed in response to proposed intensification of use of the site.
410. We also acknowledge that with the exception of ground floor units, flooding and future coastal inundation effects that will impact on the development are associated with the 1% AEP + 1m sea level rise scenario, which in this case does not trigger a reason for consent under the AUP(OP). The frequency of flood impacts on existing ground floor units has not been established by any submitters or the applicant, although the RL of that level is the same as the predicted 1% AEP catchment flood. As noted above, the applicant has provided what Mr Dodd refers to as an 'adaptive pathway' approach to manage such effects on ground floor activities.
411. Not unlike submitters, we were initially challenged by the concept of a significant new development, including basement parking, occurring within a known flood plain and an area that will likely be subject to coastal inundation in the future. However, on the basis of the evidence we received, we find that the applicant has taken appropriate account of flooding and coastal inundation risk, and that flood and inundation effects can be managed to an acceptable extent, including effects on the safety of people.
412. We accept the technical basis of the flood and coastal inundation modelling undertaken, as confirmed by Dr Carpenter and Mr Krpo. We find that the rate of inflow assumptions upon which Mr Dodd has based his basement mitigation design are conservative. We accept that while flooding of ground floor commercial units will not be avoided, measures are proposed to minimise the effects of flooding and inundation, that those spaces will have the opportunity to adapt to changing flood levels, and that avoidance of such effects is not required under the AUP(OP). The basement car park represents a more significant risk for people and property. However, steps are proposed to mitigate these risks. Finally, we accept that the proposed habitable floor levels will not be affected by flooding or coastal inundation under the predicted scenarios, while measures can be taken to address concerns over access during a flood event.

Construction effects

413. Various submitters raised concerns regarding the potential impacts that construction activities would have on the local roading network, pedestrian safety and Mission Bay retail, hospitality and recreation activities. We recognise this as a matter that must be satisfactorily managed, particularly in this environment. We, however, also note that a site-wide development that complied with the Local Centre zone height standards could well comprise up to five storeys and basement levels and may well result in construction effects of a similar nature and scale as the proposal. Some effects, such as the management of erosion and sediment control during the works, were not contested as significant issues. On those matters we find that the relevant effects could be appropriately managed subject compliance with the proposed conditions. Herein, we focus on construction traffic, noise and vibration effects.
414. Construction traffic was addressed by Mr Parlane, on behalf of the applicant, and Mr Church on behalf of Council. The most significant component will be truck ingress to and egress from the site during the basement excavation and construction. As estimated by Mr Giffney, the basement excavation could occur over a period of approximately 16 weeks. After that, there will continue to be significant vehicle access into the site each day, but the type and frequency of vehicles using the access points would evolve as the construction of the basement and floors advanced.
415. We are particularly grateful to Mr Church for providing a comprehensive peer review and detailed set of recommended conditions to address the management of construction traffic effects. While not adopted by Mr Cunningham in his s42 report, those conditions were updated and included in the Council's final comments at the conclusion of the hearing. We also acknowledge Mr Parlane's and the applicant's acceptance of those conditions. The conditions now proposed provide detail and specificity regarding the matters and outcomes that must be met in the development of a CTMP for the proposal, and the management of traffic effects under that plan. Accordingly, we find that construction traffic effects would be adequately minimised and managed under the CTMP, including the safe and efficient Tamaki Drive, Patteson Avenue and Marau Crescent.
416. Construction noise and vibration effects were assessed by Mr Whitlock on behalf of the applicant and Mr Gordon on behalf of Council. Construction noise and vibration is predicted to generally comply with the relevant permitted activity noise and vibration limits specified in the AUP (OP), with exceptions to be minimised and managed in accordance with a CNVMP. Additional controls conditioned to minimise noise and vibration effects include controls on working hours, consultation with affected building owners where vibration limits may be exceeded, a noise wall hording to be constructed along the southern and eastern sides of the site, the construction of the southernmost building first to provide a barrier for ongoing construction noise effects on residential properties to the south of the site, and monitoring where there is potential for limits to be exceeded.
417. Mr Whitlock suggested various changes to the conditions recommended in the s42 report. Mr Gordon has supported those changes in part. We favour Mr Gordon's final

version of conditions presented and the conclusion of the hearing. We find that the implementation of those conditions, which are consistent with the approach taken for large-scale building projects throughout the city and with the technical assessment undertaken by the applicant, would adequately minimise construction noise and vibration effects.

Post-construction traffic and parking

418. Some submitters raised concern regarding the potential for the operation of the development to adversely affect traffic circulation and parking on adjacent streets. Those submissions reflected local experience but were not supported by expert evidence.
419. Having considered the evidence of Mr Parlane and the review provided by Mr Church, we are satisfied that the operation of the development would not result in any significant adverse traffic or parking effects. While it would create an increase in traffic entering and existing the site as a result of the residential tenancies, the adjacent street network does have capacity to accommodate that traffic. Moreover, the site is well located on public transport routes and the Tamaki Drive cycleway, as well as being within easy walking distance from many amenities. The proposal meets the minimum retail parking requirements of the AUP (OP) and replaces nine Patteson Avenue parks (including mobility parks) with parking within the ground floor level. It also provides sufficient on-site parking for the residential tenancies.
420. Based on the assessments provided, we find that the development would adequately minimise off-site traffic effects and would be consistent with the capacity of the local road network and the range of modal options available to residents and visitors to Mission Bay.

Statutory Assessment

Section 104 and 104B considerations

421. We turn now to the matters set out in Section 104 of the RMA. While the application is a discretionary activity, and section 104B provides us with a wide discretion within which to consider effects, we have paid attention to the matters specified for restricted discretionary activities, particularly those matters for development that seeks to exceed height standards. We do this to provide some context to the assessment, as well as to address any concerns that bundling the application is a deliberate move to get around the restricted discretion that applies, should height be considered in isolation. We record that should the applications have been unbundled, and the extra height separately considered, we would still have come to the same conclusion. At the same time, we also record that we do not consider that the restricted discretionary activity classification for buildings that exceed height standards is in some way more enabling than discretionary status, or that because additional height is not a non-complying activity, that this somehow 'opens the door' acceptance of a degree of adverse effects.

422. In terms of actual and potential effects on the environment of allowing the activity, our findings set out in the previous section on matters in contention identified three effects of concern, relating to residential amenity (views), landscapes and dominance of the Local Centre zone environment. Each of these effects by and of themselves, are not large but in combination they represent a significant effect. In making this determination we have not sought to only consider the effects generated by the over height elements of the design. As stated, numerous times, there is no permitted baseline as such. We have looked at the development in its totality.
423. In terms of section 104 (1) (ab) the applicant suggested some positive effects on the environment. It was not clear to us if these were to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity. For example, mention was made of the community role of the cinema and the reduction in possible bulk along the Marau Crescent. We acknowledge these aspects of the development but have not taken these 'benefits' into account in making our determination on the overall scale and significance of effects. There is no certainty over the cinema, while the reduced bulk along Marau Crescent is something which may have emerged from a development that kept within height limits. The applicant did stress that a development that worked within the height standards may result in a bulkier building that may have a worse visual outcome than the proposed design. Again, we take the development as it is presented to us, not as it may have otherwise been.
424. Turning to the relevant planning documents, under (104(1)(b)) a wide range of objectives and policies are triggered by the application, including those relating to activity mix, height and bulk, traffic and parking, natural hazards and construction effects. We concentrate our assessment of the relevant planning documents as they relate to building height and bulk and natural hazards, as these were the matters most in contention.
425. Starting with national level direction, the NPS UDC, and the NZCPS are relevant, but of little import to decision making. The AUP (OP) was prepared before the NPS UDC was issued, but there is no debate that the AUP (OP) somehow fails to address the matters covered in the NPS. Indeed, the applicant did not present a case that the development was needed to meet capacity targets so as to accommodate unmet housing demand. We acknowledge that the development would add to housing supply but are not convinced that the need to do so is so strong as to set aside other considerations.
426. The site is within the coastal environment, and so the NZCPS is relevant. The AUP (OP) was prepared in the full knowledge of that policy statement and can be said to give effect to the coastal policy statement. We are not aware of any gaps or omissions in the provisions of the AUP (OP) as they relate to the management of coastal areas. The concept of 'building up' in an existing urbanised coastal environment, rather than spreading out into undeveloped coastal areas, is supported by the RPS. So too is the need to take steps to manage coastal hazards.
427. The RPS of the AUP (OP) supports quality compact urban development. The proposed development would assist with compact development, and in particular intensification of development in and around centres. In terms of quality, as we have covered, we do

consider the proposed buildings to be of a quality design in terms of form, materials and the like. Having said that, the RPS takes a wider view of quality than just architectural quality. We were referred to a number of sections of the policy statement that helped to determine the framework within which quality effects could be considered. The two most relevant are:

- a. Policy B2.2.2 (6) which sits under the objective of quality compact urban form. This policy refers to a hierarchy of centres within which there is a distinction drawn between local and neighbourhood centres on the one hand and town, metropolitan and city centre on the other. We consider that this distinction is relevant when considering the nature and scale of effects on amenity; and
- b. Policy B2.3.2 (1) under the quality built environment objective. It states: “Manage the form and design of subdivision, use and development so that it does all of the following:
 - (a) supports the planned future environment, including its shape, landform, outlook, location and relationship to its surroundings, including landscape and heritage.”

As we have noted, the planned future environment of Mission Bay is for taller buildings in the centre and surrounding areas. The standards set out in the zone provide one important measure of what is planned (such as building height), but we accept that the standards are not the end of the story. The relevant objectives and policies also help paint the picture of what is planned.

- 428. The RPS’s approach to natural hazards is to avoid creating new hazards in greenfields areas and to not increase hazards in already built up areas. As noted, the increased intensity of use of the site does potentially increase exposure to hazards. Perhaps the greatest risk is that posed long term by rising sea levels and the interaction of this with events involving storm surges and heavy rainfall. As discussed in the section on matters in contention, various design and management measures can be taken to reduce these risks to what the Plan considers to be tolerable levels.
- 429. Looking at the objectives and policies of the Local Centre zone, we begin by noting that these could be subdivided into two categories: those that deal with building form, design and activities and those more related to building height. In terms of the first group of policies, we do not have any concerns over the cinema complex (the activity that is discretionary). It was put to us that this part of the development may be considered an existing use. In any case, there were no effects on wider amenity identified from its operation. In terms of general building design, the development presents a high-quality face to the streets it borders. Building mass is articulated and there are active frontages. The internal first level plaza is a problematical space in design terms if it was to be a public space, but as clarified, it will mostly act as an outlook area for the apartments, with public access controlled.
- 430. There was a question mark over whether the design of the building met the expectations of the Plan that “large-scale development to be of a design quality that is commensurate

with the prominence and visual effects of the development” (policy H11.3(5)). We struggled to apply this policy, given the conflicting evidence of the applicant and submitters’ experts. Clearly views and opinions can diverge on issues of design quality and there is nothing in the statements of evidence or experience or qualifications of the experts who provided evidence on the topic that suggests one opinion should be given more weight than another.

431. What we did have to grapple with is how to assess the effects of the height of the building. As a starting point, when the height standard is exceeded, relevant assessment matters refer to Policy H11.3(3)(a); Policy H11.3(3)(b); Policy H11.3(8); Policy H11.3(13) and Policy H11.3(14). We note that there is no direct reference to the objectives and policies for Local Centres in this list, for example Business – Local Centre Zone Objective 7 which states that “the scale and intensity of development within local centres is in keeping with the planning outcomes identified in this Plan for the surrounding environment”. This is an important objective. The absence of the Local Centre objectives from the listed assessment matters is not fatal as we are dealing with a discretionary activity. Even if height was unbundled from other considerations, and taken as restricted discretionary activity, then by virtue of General Rule C1.9 we need to take into account relevant objectives and policies. Curiously, the matters of discretion for activities that exceed the standards of the Local Centre zone only allow for consideration of any policy which is relevant to the standard (that is, not the objectives for the zone).
432. Policies H11.3(3)(a) and (b) refer to development to be of a quality and design that positively contributes to the planning and design outcomes identified in this Plan for the relevant zone; and the visual quality and interest of streets and other public open spaces. These policies are directed at the design outcomes for the Local Centre zone, not the surrounding zones. Here we have expressed some concerns as to the height of the building in relation to the environment of the centre, particularly the corner elements. We accept that the planned outcome is for at least four to five storey developments and that effects need to be considered in this context. Even within this frame, we consider that the development is a move towards a town centre type environment, rather than maintenance of a local centre environment.
433. Policy H11.3(8) requires development adjacent to residential zones to maintain the amenity values of those areas, having specific regard to dominance, overlooking and shadowing. There was some debate as to what may be ‘adjacent’. We have taken a wide interpretation of what is ‘adjacent’; to us the policy is not just about the immediate interface across Marau Crescent, for example. Neither are we confined to dominance, overlooking and shadowing. We consider it relevant to consider this policy in the context of Objective 7 for the Local Centre zone which requires building scale to be in-keeping with the planning outcomes for the surrounding environment.
434. Policy H11.3 (13) and (14) specifically addresses height, with Policy 13 most relevant. It states: “In identified locations within the centres zones, Business – Mixed Use Zone, Business – General Business Zone and Business – Business Park Zone enable greater building height than the standard zone height, having regard to whether the greater

height: is an efficient use of land; supports public transport, community infrastructure and contributes to centre vitality and vibrancy; considering the size and depth of the area, can be accommodated without significant adverse effects on adjacent residential zones; and is supported by the status of the centre in the centres hierarchy, or is adjacent to such a centre”.

435. We begin by noting that the Mission Bay local centre is not identified as being a centre where greater height is to be ‘enabled’ (it is not subject to a height variation control). Mr Wren’s view was that the policy was not relevant to Mission Bay because there is no specific identification for additional height in the centre. We disagree. We consider that the matters specified in the policy are relevant to address when considering building height, but within the context of additional height not being enabled, and our assessment not being limited to the matters stated. Taking the matters listed in turn:
436. Efficiency: Additional floorspace by way of extra height would make more efficient use of land, provided that the adverse effects of that additional floorspace are not large. The concept of net gain is important here in the consideration of ‘efficiency’ (as we take efficiency to mean benefits less costs). In other words, we are not convinced that the development is necessarily more efficient than a development that worked within height standards just because of the additional floorspace proposed.
437. Support for public transport, community infrastructure and sense of vitality: The residential development will support public transport use, while in some submitter’s eyes, the cinema is community infrastructure. The upgraded ground floor retail will help to enhance vitality and vibrancy.
438. Site size and depth: The site is large in the context of the rest of the local centre and is likely to be able to accommodate a substantial amount of development. The policy refers to development not having significant adverse effects on adjacent residential zones. This is a somewhat different test to other policies that refer to maintaining amenity and development being ‘in keeping’ with the planned outcomes of surrounding areas. Our finding is that there would be adverse effects on some residential properties to the south, both in terms of views and general amenity.
439. Status of centre in the hierarchy: Here we have referred back to the RPS and the distinction between local and neighbourhood centres and other centres. In our view, the status of the centre does not support the extent of additional height sought.
440. Finally, Section 104(1)(c) allows for consideration of other matters. Submitters referred to a number of other matters, such as the Tamaki Design Guidelines and Tamaki Drive Masterplan. These documents shed some light on the amenities of the area and what features people (residents and visitors) value. In our view these documents reinforce the findings that we have made but we have not relied upon them in making our decision.

Overall Conclusions

441. Section 104 is subject to Part 2 of the RMA. We see no need to undertake a separate Part 2 assessment, either as a check of the section 104 assessment or because of concern over the AUP (OP) being incomplete or not competently prepared.
442. Having considered the specialist reports and evidence of the applicant, the evidence of the submitters and the specialist peer reviews undertaken on behalf of the Council we have concluded that consent to the application should be declined.
443. This is not an easy decision to make, and we hasten to add that there may well be scope for some additional height on the site, given the size and position of the site in the centre. It could be said that the effects generated by the development sit close to the point of balance between being appropriate and inappropriate. In the context of our interpretation of the objectives and policies of the Plan, we consider that we must take a conservative view of the scale and significance of the adverse effects generated. Taking the adverse effects together and looking at them through the lens of a plan that refers to development reinforcing planned character and being in keeping with surrounding environments, we have formed the view that the development takes a step too far from the planned outcomes for the area. In other words, the objectives and policies tip the assessment of the effects from being appropriate to being inappropriate. There are positive effects of the development which are supported by a number of objectives and policies. We do not consider that these positive effects tip the balance back the other way.

Decision

1. In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104 and 104B and Part 2 of the RMA, we determine that resource consent to construct a comprehensive multi-level mixed-use development of the site which consists of: 75-79, 81-87 and 89-97 Tamaki Drive, 6-12 & 14 Patteson Avenue and 26, 28 & 30 Marau Crescent, Mission Bay including the demolition of all existing buildings on site, associated earthworks, parking, loading and access is **REFUSED** for the reasons set out below.

Reasons for the decision

- a. In terms of section 104(1)(a) of the RMA and having regard to any actual and potential effects on the environment of allowing the activity it has been determined that overall, the adverse effects of the proposal to construct a new multi-level mixed use development would be unacceptable. The excess height of the proposal will result in adverse visual and dominance effects on the amenity of the surrounding environment, including the local centre environment itself, nearby residential areas that overlook the site, and the wider landscape.
- b. In terms of section 104(1)(b) of the RMA, the proposal is considered inconsistent with some of the key objectives and policies of the AUP(OP), particularly those related to:

- i. the scale and intensity of development within the local centres being in keeping with planned outcomes identified in the AUP(OP) for the surrounding environment;
 - ii. managing the height and bulk of development to minimise adverse effects on adjoining residential sites and developments.
- c. In terms of section 104(1)(c) of the RMA, there are no other matters considered relevant and reasonably necessary to determine the application.

		
Janine A. Bell (Chair) Independent Hearing Commissioner	David Mead Independent Hearing Commissioner	Michael Parsonson Independent Hearing Commissioner

03 October 2019

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2021] NZEnvC 159

IN THE MATTER OF

an appeal under s 120 of the Resource
Management Act 1991 (**the Act**)

BETWEEN

DRIVE HOLDINGS LIMITED

(ENV-2019-AKL-283)

Appellant

AND

AUCKLAND COUNCIL

Respondent

Court: Judge J A Smith
Commissioner Mabin
Deputy Commissioner D Kernohan

Hearing: 24 – 28 May 2021
28 June – 2 July 2021

Appearances: D Allan, J Goodyer and R Bartlett QC for Drive Holdings
Limited
D Hartley and A Buchanan for Auckland Council
J Gardner-Hopkins for Anna Nathan
G Chappell for the Stephen W Owen Family Trust, Support
Mission Bay Incorporated and The Mission Bay Kohimarama
Residents Association Incorporated

Date of Decision: 14 October 2021

Date of Issue: 14 October 2021

DECISION OF THE ENVIRONMENT COURT

A: The appeal is declined, and the Council decision confirmed.

B: Costs are reserved. Applications for costs are to be filed and served within 20



working days, replies within a further 15 working days and any final response from the applicants within a further 5 working days.

REASONS

Introduction

[1] This is an appeal against a refusal of an application for retail/residential development over multiple sites zoned in the town centre at Mission Bay, Auckland. The key issue on appeal is the overall height of the project and the consequences of the bulk and scale of the building over the multiple sites.

Issues

[2] Numerous experts espoused views as to the appropriateness of this development as a restricted discretionary activity. We also received opinion evidence from a number of expert witnesses as to the appropriate height, scale and bulk for this development. This evidence did little to assist us in determining the appropriate height, scale and bulk beyond that implied by the Auckland Unitary Plan (**AUP**).

[3] Section 290A of the Act leads us to consider the Auckland Council's Commissioners' decision, the appropriateness of their decision and whether the appeal evidence has appropriately addressed the concerns raised in that decision.

[4] As it will become clear through the course of this decision, we have concluded that the Commissioners adopted a well-balanced approach to the application and that the concerns identified by them remained for this Court. The major distinction is that the application has been modified both prior to and during this hearing.

[5] Early in the hearing, the Court indicated that given the complexity of the development, it needed to consider the appellant's current proposal (the **Revised Proposal**) rather than some putative alternatives. As a result, the appellants then sought three days into the hearing to introduce an alternative proposal. This development was lower and made modifications to the height, bulk and scale. The alternative (the **June Proposal**) was allowed to be submitted, but time extensions

were granted to allow other parties to provide evidence in response.

[6] Even then we were advised by Mr Allan, lead counsel for the appellant, that in the event the Court did not consider either of the alternatives was appropriate, the Court should indicate the level of development on this site that was appropriate and the type of controls that should be in place. With such a complex development, the range of parameters would need to be relatively narrow as is not for the Court to design the proposal.

[7] Nevertheless, for the reasons we are going to discuss in some detail in this decision, we do believe matters have reached a point where key parameters are settled, particularly in light of the more detailed evidence now provided on the alternatives by all of the parties. To some extent these signal the essential attributes of any proposal that would be appropriate and acceptable.

[8] We are in a quandary as to the outcome in this case, particularly whether there may be a clearly consentable proposal. We decide these issues in our conclusion later in the decision.

The Area

[9] The appellant, particularly through its director, has acquired a number of sites in and around the Mission Bay Centre over the past few decades. The Mission Bay retail areas consist of sites bounding Tamaki Drive and pivoting on its intersection with Patteson Avenue.

[10] There is a small amount of retail development radiating from the intersection up Patteson Avenue, which does not continue past the intersection with Marau Crescent. Nevertheless, there are a number of professional and service activities situated in and around the Mission Bay centre such as medical centres, physiotherapy and legal.

[11] On the seaward side of Tamaki Drive is the site of the original Auckland Melanesian Mission station with one original stone building dating from the 1860s. Over the years, the foreshore areas in Mission Bay have been developed as a reserve

with a full-length promenade, a fountain, toilets facilities and parking areas.

[12] The reserve area is fringed by mature trees, with an expansive grass area in the centre of the reserve which is well used for leisure activities. This area and the beach are popular throughout the year for both local and outside visitors. The fringe of trees along Tamaki Drive to the reserve includes several substantial trees, including Pohutukawa, many of which are at around 20 m or more and constitute a major feature of this bay.

[13] We accept that Mission Bay is a popular seaside area with a visitor focus, both local and overseas, for leisure activities. Food retailers are the predominant activity along the Tamaki Drive frontage with many premises offering takeaway, casual or full meals. Alcohol is also served at a number of restaurants. Several ice cream parlours, a movie theatre and street dining give a clear relationship to the seaside and a relaxed, informal nature of the Mission Bay local centre.

[14] The local centre buildings are mostly of eclectic construction with key features, being the Berkeley movie theatre and the nearby De Fontein restaurant and pub on the corner of Tamaki Drive and Patteson Avenue. Both appear as art deco buildings although this is imitation only. Nevertheless, with the combination of night-time fluorescent lighting, it makes for an attractive seaside view both during the day and night.

[15] Opposite De Fontein, on the corner of Tamaki Drive and Patteson Avenue, the buildings have less street presence with the second storey set back. Retail businesses are on both sides of Patteson Avenue for a short distance towards Marau Crescent but terminate before that intersection.

[16] We conclude that the retail area of Mission Bay Centre is focused on the older strip development on Tamaki Drive, with limited and more recent development on Patteson Avenue.

AUP zoning

[17] The entire site subject to this application is zoned as Business-Local Centre. There is also a similarly zoned adjacent site on Tamaki Drive to the east of the application site, and a number of sites on Tamaki Drive to the west of Patteson Avenue.

[18] The other properties within Tamaki Drive, Patteson Avenue, Marau Crescent and Atkin Avenue are zoned Business-Mixed Use Zone. The other properties to the east of the subject site between Marau Crescent and Tamaki Drive are zoned as Single House Zone. Nevertheless, the opposite side of Marau Crescent between Atkin Avenue and Tamaki Drive is all zoned Residential - Mixed House Urban Zone, with a number of properties identified as Single House Zone on and around Ronaki Road.

[19] The Annexure hereto marked “A” is a zone plan shown as a site in the context of the wider area between Kepa Road and Tamaki Drive. It can be seen that there are Local Centre Zones in St Heliers on Tamaki Drive between Maheke Street and Turua Street and on Kepa Road, near the northern end of Patteson Avenue (known as the New World site).

[20] We note for completeness that adjacent to the eastern edge of the application site, the Gordon Spratt Flats have a heritage overlay and represent an important character component of Mission Bay.

[21] More generally, the site is situated within a sandy coastal embayment with steeper hills to the south, east and west. The ridge to the west is particularly important, constituting the marae and ancestral lands for Ngāti Whātua, and having significant historical value as the site of the kāinga of Ngāti Whātua as well as events of Bastion Point and the Michael Savage Memorial Point. The relationship between Ngāti Whātua and the missionaries is one of some importance in understanding the context of this area. The ridges to the rear (south) create platforms upon which the residences are perched, overlooking expansive northern views from the west to the east city and north to Rangitoto and beyond.

[22] The orientation of the embayment towards the north east creates particular advantages for views, which makes the area popular for both residents and visitors. The relationship of headlands and the slopes to the south with the lower lying area on the foreshore is one of some importance in this case.

The NPS-UD

[23] The role of the Local Centre, in terms of the NPS-UD, was raised. For clarity, we accept the position of *Eden-Epsom Residential Protection Society Incorporated v Auckland Council*¹ in relation to Objectives and Policy 3 of the NPS-UD. In short, we conclude the NPS-UD does not apply to this application for the following reasons:

- (a) It deals with the city centre zones, metropolitan centre zones and areas on the edge of each of those zones. We acknowledge Auckland is within tier 1 and therefore these obligations will apply to future planning processes for Auckland but not within Local Centres.
- (b) The NPS-UD requires a planning response by the Council but not in relation to each individual consent application in the meantime.
- (c) The general thrust of the NPS-UD towards intensification is already captured in the AUP provisions for the town centre zones.
- (d) For the city centre, metropolitan centres, town centres and local centres, the NPS-UD sees a hierarchy between these with intensification levels descending through the hierarchy reflecting the importance of each zone.

[24] In particular, we conclude that the NPS-UD envisages intensification for the Local Centre. There is no argument in this case that the upper building levels may be utilised for residential activity. The NPS-UD statements as to the number of floors (we assume above ground level) also show progressive reduction in number from city centres to metropolitan, town, and local centres. The intensification provisions under the AUP already adopts this approach.

¹ *Eden-Epsom Residential Protection Society Incorporated v Auckland Council* [2021] NZEnvC 082.

Controls under the AUP

[25] At the Council hearing the application was for a discretionary activity because a new replacement movie theatre was proposed. The appellant reluctantly removed the theatre from its proposal for this appeal hearing, thus making the overall application a restricted discretionary activity. However, all parties agreed at this hearing that the theatre would be of particular benefit to the Local Centre.

[26] No party raised any issues in respect of any additional criteria being raised should the theatre be re-instated in the project.

[27] We accept this and agree with the common evidence of all parties that the theatre is currently and would be a focal point for the Local Centre development. Given the positive features of the theatre and its minimal, if any, additional impacts, the parties acknowledged that such an opportunity might be included within any development consented by the Court.

[28] The restricted discretionary criteria were the focus of a great deal of evidence, both as to meaning and achievement in this case. These were extracted from the AUP but are contained in different parts of the plan – sometimes reflected with minor wording differences. Overall, we conclude the following factors arise:

(a) General Factors:

- (i) quality and amenity;
- (ii) permanence – materials, solidity, mass; and
- (iii) transparency – articulation, permeability, bulk, articulation, wind flow.

(b) Local Centre Factors:

- (i) relationship to surrounding areas;
- (ii) public/private position of site;
- (iii) buildings within central position;

- (iv) cohesion;
- (v) accessibility, legibility, efficiency;
- (vi) vitality and vibrancy;
- (vii) integration with public transport;
- (viii) avoiding effects on pedestrian activities – Parking Policy 11.3(7);
- (ix) functional operation Policy 11.3 (312) – loading bays, parking etc;
- (x) Lift shafts Policy 11;
- (xi) height control – hierarchy, City centre, Metro, Town centre and Local centre Policy 11.3 (14);
- (xii) economic and residential – Special Controls 11.2(6);
- (xiii) any significant adverse effects on special character, landscape features, amenity Policy 11.2 (8) Attractive places; and
- (xiv) building height, shadowing, visual character Rule 11.6.1. In keeping with the surrounding environment plan area.

(c) Public Area Factors:

- (i) public areas bar viewing positions to Local Centre;
- (ii) backgrounds, hills and other buildings (Bastion Point);
- (iii) natural character of the coast;
- (iv) focal point for public areas safe and convenient for all age groups;
- (v) sense of place;
- (vi) relationship to public area; and
- (vii) does it reinforce the role on function and centre in relation to public areas?

(d) Residential Area Factors:

- (i) relationship to Local Centre – visual and amenity;
- (ii) significant adverse effect 11.6.1;

- (iii) sense of place; and
- (iv) integration in terms of size, shape, form (possibly transparency (element of visual)).

[29] We see the factors and issues raised in the preceding paragraph as generally encompassing the parties' and the Court's concerns. There is a great overlap and the provisions need to be examined both specifically and generally.

[30] There are many other general issues relating to parking, traffic and flooding to be considered. They require consents, but the evidence for these applications was not contested on those issues. We agree the grant of consent does not turn on those issues but rather those we have identified.

[31] We now go on to describe the proposal. This leads to an analysis of the proposal and a discussion of the decision appealed from.

The Proposal

[32] The designers' evidence stated that they had sought to redistribute the available bulk and scale to achieve a similar overall outcome to that anticipated under the plan. However, during the case it became clear to us that there were aspects of this approach which were inconsistent with the AUP:

- (a) the designers' calculated the floor area based on an envelope 18 m high over the whole of this site;
- (b) they allowed the residential unit floor heights of Level 2 up at 2.5 m floor to floor or 2.2 m to ceiling, but in the actual building design allowed 2.7 m floor to ceiling, i.e. 3 m per floor to floor;
- (c) they assumed a volume calculated at 18 m to the boundary edges was consentable, even though the activity is a restricted discretionary activity at this level;
- (d) the exceedance over the 18 m height limit was based on the redistribution

of bulk from places where there were restricted discretionary activities. This would mean areas where there was bulk was less likely to be consented, such as Marau Crescent; and

- (e) the 18 m height limit still allowed roof and plant above that height based on the designers' interpretation of the plan.

[33] The result is an extremely large building, occupying the footprint to the outer boundaries of this site except on Marau Crescent and on the eastern side of the site facing the housing area. The resulting building is well over 18 m high on Tamaki Drive and Patteson Avenue, except where it approaches the other zones to the east on Tamaki Drive and facing Marau Crescent.

[34] On Marau Crescent there is a setback and slight reduction in height, but the bulk is still close to the 16 m occupiable floor height limit. The interface on the eastern side of the building near the residences is more nuanced, and there was no direct criticism of this interface.

[35] In opening evidence, the Revised Proposal included three extra floors in the northwest corner of the building (Tamaki Drive-Patteson Avenue intersection) up to 30.7 m RL or 28 m above ground level. The relevant ground levels would have been 2.7 RL plus the AUP maximum 18 m building, including roofing to a 20.7 RL height above ground. The building height stepped down along Tamaki Drive and Patteson Avenue to an overall height for the fifth floor of around 20.30 RL, and plants and lift overruns reaching around 21.5 RL.

[36] The Revised Proposal provided to the Court in the evidence at the commencement of the hearing was very similar to that given to the Commissioners, with the exception there had been some redesign of the building as a whole, and the glazing of the penthouse roof to create a floating roof concept and "lighten the design".

Modification and the June Proposal

[37] After three days of presentation by the appellant, including opening and cross examination of witnesses, the appellant sought to amend their Revised Proposal. This was an alternative which reduced the overall height and scale of the building (the **June Proposal**). The appellant did not abandon their Revised Proposal but sought to include the June Proposal as an alternative for the Court if it concluded that the Revised Proposal was not acceptable.

[38] All other parties sought an adjournment to have an opportunity for their experts to consider the changes and file further evidence. The adjournment was allowed with evidence exchange directions and the matter recommenced again some weeks later.

The June Proposal

[39] To assist in understanding the nature of the June Proposal, we annex and mark as “**B**” two versions of a view from a property behind this site overlooking the area in question. Although this is a view from a private property, they are indicative only. We consider them of only limited usefulness given the assumptions underlying them. Nevertheless, they do help understand the distinction between the two proposals given the reference points visible in the photo montages.

[40] In “**B**”, the Revised Proposal shows an eight-storey building, with stepping along Tamaki Drive and Patteson Avenue. The fifth floor remains at the same height. Various other elements of plant are situated on Building 4, with lift overruns and the like protruding. Building 1 is reduced from up to eight floors to seven with some extra floor space still on Building 6.

[41] Key features of the June Proposal which are shown in “**B**” are:

- (a) most of the buildings are five floors and over 18 m high but not by a significant margin (less than 1 m);
- (b) the significant over-height floors are carried in the north western corner with Patteson Avenue and Tamaki Drive to around 27RL for the

penthouse. There is a sixth-floor part way along Patteson Avenue from the corner to Marau Crescent. The other intrusions are relatively minor, such as the lift overruns. They are, nevertheless, all over 16 m occupiable floor area and the total height over 18 m above ground level; and

- (c) there has been relocation of the plant from Building 4 to Building 5 on Marau Crescent. This is now within the 18 m height limit and on balance there was an acceptance that this was a better outcome than that originally proposed. Nevertheless, nearby residents on Marau Crescent opposite the site noted that this outcome may have lost many of the professed advantages to them of relocating bulk elsewhere on the site.

The Core Issue

[42] We have concluded that the real issue in this case is the appellant's continued pursuit of over-height residential apartments on the site. This is notwithstanding clear opposition by residents, the Council and relevant experts. As noted for the residents, there are persistent over-height and bulk elements in the proposal, which are an over-intensification of these sites beyond that anticipated in the AUP.

[43] We are of the view that the AUP provisions are not the result of chance or inattention on the part of the Council, or the Independent Hearings Panel (**IHP**) which considered them. These height limits were the subject of submissions to the IHP who gave some consideration to the height for the Local Centre of Mission Bay. Being at the base of the embayment, there is no surprise that there was particular argument and thought given to the planned outcome for the Mission Bay Local Centre and surrounding zones.

[44] For the reasons we discuss shortly, we conclude the AUP submission process and decision by the IHP was correct, both as to principle and as to the balancing of the various issues in the area at a fine grain. In short, particular consideration has been given to the height relationships between the headlands, the residential areas, behind the reserve areas on the foreshore and the height of the Local Centre.

[45] We conclude the AUP approach has been correctly applied by the decision of Council under appeal. The same issues arise for this Court and we adopt the same approach.

The Council decision

[46] Section 290A of the Act requires us to have regard to the decision at the Council level. We do not consider a full recitation or analysis of the Council Commissioners' decision on this application is either helpful or necessary. There was little, if any, criticism of the methodology or legal approach of the Commissioners, and we endorse their analysis and summary of the issues.

[47] They concluded that it was the height and bulk issues which were of potential concern. They considered that there could be a consentable proposal, but the application before them went too far in terms of height and bulk. We agree that the same issues arise in the case. Further, we conclude that, faced with the same application at first instance, we too would refuse consent. We agree with the principal issues identified by the Commissioners.

[48] The question for us is whether the appellant has now gone far enough to address the issues identified by the Commissioners. Clearly, this is a matter of discretion, but we conclude our concerns are the same as the Hearing Commissioners'.

Key focal point

[49] We conclude, after considering all the evidence, the AUP provisions, the Commissioners' decision and our own inspections, that:

- (a) the corner of Tamaki Drive and Patteson Avenue is a clear focal and pivot point for Mission Bay;
- (b) it is a natural viewpoint when approaching Tamaki Drive from the west as one enters the bay;
- (c) the sense of arrival is dominated by sea views to the east and north, the

view progressively developing to the Local Centre of the bay; and

- (d) travelling either way on Patteson Avenue there is a clear sense of arrival or departure from the Local Centre, marked by intersection at Patteson Avenue and Tamaki Drive.

[50] The following supports our conclusions:

- (a) the Tamaki-Patteson intersection is the midpoint of the bay;
- (b) it is an entry and an access point to the promenade;
- (c) the relationship with the reserve and the particular facilities including the bus, the toilets, the police kiosk and the clock;
- (d) large pohutukawa trees frame the arrival to the south along Patteson Avenue;
- (e) the Patteson-Tamaki corner has a prominent building and the De Fontein sign; and
- (f) there is a clear connection to leisure activities with prominent ice cream and outdoor dining.

[51] In short, we conclude that the Patteson-Tamaki connection is the focus of the Local Centre of Mission Bay, with the recreation elements on the southern side of the corner and the visitor retail elements on the northern side of that corner. It is therefore necessary that any future development maintains that pivot point for the Local Centre. Put another way, the Local Centre is already there, therefore it is important not to lose it and it may be unnecessary to emphasise it further than its present configuration.

Prominence

[52] It follows that the prominence of any new building could either reinforce the focus of the Local Centre or derogate from it. We have strongly concluded that the Mission Bay Local Centre, and particularly this corner of Patteson Avenue and Tamaki

Drive, should continue with at least the same levels of activation and preferably be reinforced to intensify its role as a “people place”.

[53] Currently, this focal function is served by:

- (a) the Patteson-Tamaki corner appearing mid-view when travelling from the west;
- (b) the De Fontein building having outdoor dining and drinking including on the first floor, giving a relaxed signal to all visitors;
- (c) the Mövenpick ice cream parlour, presenting on the corner in plain view to travellers;
- (d) the visible outdoor dining to the east and west of the corner on Tamaki Drive, signalling leisure activity; and
- (e) the reinforcement from the reserve around the clock refers to the Patteson-Tamaki corner, including a line of trees and the deepening reserve in the centre.

[54] We heard a great deal of evidence from the different experts about the need for a distinctive building at the corner to mark out the Local Centre. Yet, most of the proposed floors are residential with balconies, which are private. As originally proposed, the first floor would also contain private apartments.

[55] One of the key changes made to the proposal and presented on recommencement of the hearing was to utilise a portion of the corner of the first floor for retail, such as for a restaurant and bar. The intention was for that to be accessed internally from the building on the corner itself.

[56] We agree that activating the first floor would represent a significant improvement over the Revised Proposal. This would significantly improve the activation of this area. We note that currently there are several buildings on Tamaki Drive which utilise or have utilised the second level for restaurant or bars. Currently, both the Berkeley movie theatre and several restaurants have upper levels on the

subject sites facing Tamaki Drive.

[57] Overall, we conclude that the height of the Revised or June proposal serve little function in marking out the Local Centre purpose. An activation on the first level may justify an over-height building if it does not abrogate from the Local Centre role.

Public Area Outcomes

[58] This leads us to the outcomes anticipated by the plan given there is no permitted baseline for height in the Local Centre. We accept that we cannot adopt a de facto building envelope. The attempt by the appellant's witnesses to do so by showing building envelopes over most of Mission Bay's business areas and photo montages does not represent any permitted activity. Using a "likely consentable" approach adds nothing to that evaluation. That said, it is clear the AUP envisages significant intensification in this Local Centre and in Auckland generally.

[59] We conclude that we cannot require new applicants in the Local Centre zone to be the same height and bulk as existing buildings. In fact, no one suggested this. The issue is what level of intensification is envisaged, and how that enhances the public space and Local Centre.

[60] The primary purpose of Local Centre intensification is to provide retail activity at a level commensurate with other development. We would therefore anticipate a significant increase in the retail offering. This relationship to public space, public accessibility and services is core to the Local Centre provisions in the AUP. Yet, the June Proposal at best offers around the same total in floor space, and the Revised Proposal even less. Given the intensification anticipated we would expect more public and retail space to be provided.

Height Controls

[61] We also conclude that the combination of the AUP Local Centre's description of buildings being generally four to five storeys in height, and the height limit of 16 m with building form fluctuations, i.e. roof and plant to 18 m, gives a clear expectation

as to outcome.

[62] Primarily, the AUP anticipates these four or five storeys could be a mixture of retail and residential, with the retail levels requiring 4-4.5m and the residential levels requiring less height (~3 m). Thus, two levels of retail (9 m) and two levels of residential (6 m) would result in a four-storey building about 15 m high and within the 16 m height restriction. Alternatively, one level of retail (4 m) and four levels of residential (12 m) would result in a five-storey building within the 16 m height restriction. A more generous retail level height of 4.5 m and residential of 3.5 m would reduce the storeys to four in this example.

[63] The control on height relates to 16 m of occupiable floor space, which we conclude can only mean to the ceiling of the upper floor area. Seen in this way, the 16 m height and 2 m variation restrictions have distinct purposes; one is for occupiable area (16 m), and the other the whole building form, including roof plant and lift overruns.

[64] We conclude that the purpose of the 2 m of roof fluctuations above the 16m restriction is to provide some flexibility in articulation of the building to avoid the constant use of flat roofs. However, where the 16 m occupiable height is breached (to the ceiling of the occupied floor), it is clear to us that the plan makes all activity above that height restricted discretionary activity, and the 18 m provision does not apply. In short, the 18 m height provision is not a de facto height for the overall building. It merely allows articulation of the total building from where the building meets the control of 16 m of occupiable area. We agree with the witnesses that the occupiable area is to the ceiling height within the building, not the top of the roof.

[65] Accordingly, if the occupiable area is under 16 m, the 2 m articulation provision can apply. Where the building itself has occupiable area of over 16 m, then that 2 m fluctuation provision is subsumed within the restricted discretionary criteria.

[66] For our part, we do not consider that the exemptions relating to plant/lift overruns apply where the height of occupiable area is over 16 m. In this case, for example, a ground floor height of four metres and the level 2 height of 3.3 m would

then allow levels 3 and 4 of 3 m. Thus, level 5 height to the ceiling height of 2.7 m gives a total height of 16 m. Accordingly, a five-storey building could be constructed here and would be fully in accordance with what is envisaged in the AUP.

[67] Although five storey buildings could be constructed under 16 m, the difficulty is that this would involve a low ceiling height for level 2 and above. This would suggest height from the ground floor around 4.5 m, three floors of three metres and the top floor to the ceiling height 2.5 m. Thus, five stories would involve some compromises in terms of outcomes under the plan.

[68] We conclude this demonstrates the overall intent of the AUP was to allow a generous four-storey development in general, while acknowledging there may be occasions where a five-storey development might be appropriate. That generality does not mean, of course, that in some circumstances lower buildings may not be appropriate or that higher buildings are appropriate.

Relevant cases

[69] Two significant relevant cases were drawn to our attention during the hearing.

[70] One is *Summerset Villages (St Johns) Limited v Auckland Council*, which involved the construction of a residential retirement village (integrated housing development) in terms of the plan in a Mixed Housing Urban (MHU) zone.² To that extent, this case is less comparable with the current one but it is within relative proximity to Mission Bay, although on top of the ridge and one ridge back. It involved construction on a major road which is fully serviced by buses as in Mission Bay and involved a step height over a site to six storeys.

[71] The other relevant case involves a Local Centre Zone, albeit in a different area of Auckland, being *Panuku Development Auckland Limited v Auckland Council*.³ This case contains a detailed evaluation in similar circumstances. The Panuku Development involved development over the site at three storeys and another area with higher

² *Summerset Villages (St Johns) Limited v Auckland Council* [2019] NZEnvC 173.

³ *Panuku Development Auckland Limited v Auckland Council* [2020] NZEnvC 24.

heights up to five storeys (20.5 m). There were topographical effects (20.5 m portion was in a dip), and there were setbacks of 12 m on part of the building and 18 m on the top floor from the road.

[72] In *Panuku*, most of the site was zoned as Local Centre, but some land was zoned as Mixed Housing. In the *St Johns* case, the site adjoined St Johns College which had special precinct overlays and had provided a written consent for extra height against the boundaries. In *St Johns*, the height up to six storeys was focussed on the boundary adjacent to the college and the nearby reserve. There was significant setback and stepping down, both towards the road frontage and towards the single housing area boundaries.

[73] However, we have concluded that these cases are useful in setting out some of general principles that were clearly applicable in this case.

Panuku Development Auckland Limited

[74] This case involved a Council entity, Panuku Development Auckland Limited (**Panuku**), applying for consent for an over-height building. The Court noted in [24]:

The Commissioners determined that, although many of the adverse effects arising from the development could be appropriately mitigated, the intensity of the proposed development overall would not be compatible with the amenity values for the properties in the immediate vicinity, particularly in relation to the adjoining residential amenity and character to the east.

[75] and [25]:

The Commissioners acknowledged that the proposal was not without merit and the positive benefits that residential intensification would offer this part of the inner city. However, the Commissioners identified scale, bulk and intensity of the proposed development within this part of the Local Centre Zone was not in keeping with the planning outcomes identified in the AUP for the surrounding environment. That was particularly in relation to the special character values of the Eden Valley area and the height limit imposed by the Height Variation Control.

[76] To this extent, it can be seen overall concerns of the Commissioners in that case were not dissimilar to those expressed in this case by the Commissioners for the Council.

[77] At [31] to [33], the Court summarises changes that have been made by the applicant to reduce the scale of the development and its amenity impact. In paragraph [33], the Court summarises the features of the buildings. It should be noted that in addition to the concerns about height and bulk, many s 274 parties were concerned with the demolition of the Universal Building and the unacceptable and adverse effects that would occur.⁴ It would be fair to say that issue does not directly arise in this case although s 274 parties have, as in that case, raised various other more general issues.

[78] At [47], the Court relates the concerns for the owners of one property, indicating Building C was 7.5 m over-height, Building A 1.5 m over-height and Building D 400 mm over-height. For comparison to this case, the eighth floor on Building 1 in the Revised Proposal would be around 30 m RL, and the June Proposal at some 27 m RL, or over 9 m over-height for the Revised Proposal and over 6 m for the June proposal if the 18 m height limit is used. Even Buildings 2, 3, and 6 would be up to 1.2 m over the 18 m height or 3 m over occupiable height and this varies depending on whether the plant is placed on Building 4 or Building 5.

[79] Other issues were raised in *Panuku* which did not arise in this case such as parking and traffic congestion. Importantly, however, the owners of 104 Valley Road identified that. For instance, in [51] of the decision, the Court noted Ms Modrow's closing submission:

Assessed that, currently on the site there was a combined area of about 4,100 m² of retail, community-focussed businesses, and "community socialising opportunities". By comparison, she highlighted that new development provided about 915 m² of retail space.

[80] It is fair to say that this issue arises in this case, although to a lesser extent. However, the issues about noise, vibration and dust were not raised directly by any party.

[81] In *Panuku*, the Court goes on to consider a wide range of issues raised. The approach we have adopted in this case is entirely consistent with that decision. We

⁴ At [46].

particularly reiterate the concern expressed by the Court at [65]:

The approach taken by the expert witnesses to their evaluation of the restricted matters of discretion and assessment criteria also requires some comment, because overall the approach taken has required us to take undertake a more fulsome analysis of the evidence than might otherwise have been required.

[82] Given the fulsome analysis contained in that case, we did not consider it necessary to repeat much of the analysis of rules and other provisions in that case for two reasons:

- (a) We are anxious to issue this decision within a reasonable time. The Court has been affected by the COVID-19 lockdown throughout August and September. This has compromised the ability of this Court to issue a more fulsome decision within the next year; and
- (b) We do not consider there would be any significant gain for the parties by our repetition of the analysis and discussion contained in the earlier decision to the extent the provisions are generally applicable to this case. We acknowledge that not every provision is directly applicable but consider our approach entirely consistent with that of *Panuku* and *Summerset (St Johns) Limited*. Not all the issues that are discussed in those cases were raised directly in this case.

[83] In *Panuku* at paragraphs [69] to [72] The Court was led to have made comment about this concept of obtaining outcomes within some form of permitted baseline. We repeat the Court's comment which we adopt entirely:

Some of the evidence appeared to rely on general and speculative statements about the planning and design outcomes envisaged in the Local Centre and THAB zones and made comparisons with compliant developments. What informed these statements and comparisons was often unclear. The evidence was unhelpful given the large number of different restricted discretionary activities involved in this proposal and in most instances, it was not relevant to the issues we need to determine. Furthermore, it did not align with the submissions made by counsel for Panuku that a permitted baseline argument was not being advanced on appeal.

[84] In this case, the appellant did not advance an argument on permitted baseline. Nevertheless, it still had its expert present documents showing a shadowing of

probable development within the area. In most, if not all cases, this would require some form of restricted discretionary consent at the least and so cannot be considered a permitted baseline. We reject any suggestion of a “likely consentable” comparator.

[85] Although we have discussed that intensification changes are anticipated in the AUP, we do not consider this to constitute a permitted baseline nor in any way to derogate from the comments of the Court in *Panuku*. That Court made it clear at the outset of that decision that intensification was anticipated within the zones.

[86] Furthermore, in discussing the question of retail space and Local Centre Zone, the Court concluded that the AUP provisions do not require a predominant focus on retail over residential.⁵ In terms of shared floor space, that was not an argument raised in this case. The question is whether areas that have front public open streets should have dwellings on them as that is not proposed in this case except on Marau Crescent.

The Question at Large

[87] The issue, however, of Local Centre providing for commensurate local demand is not derogated from by the Court in the *Panuku* decision. We note the comments of the Court in *Panuku* from paragraphs [74] to [86] and essentially have made our own assessment of these matters as part of this decision, although we do not understand our position to derogate from that decision. Again, our view is already expressed in [97] in *Panuku* in relation to the restricted discretionary activity consents:

We have also determined that, from a legal perspective, the contraventions of these provisions do not provide a legal impediment to the proposal on the facts of this case, but our factual analysis of the effects arising from the contraventions may.

[88] At paragraph [100] the Court in *Panuku* discussed visual simulations. This Court wants to be very clear that it sees simulations of being of some assistance in evaluating the issues before the Court, but they are not determinative. In particular, we note that issues such as the time of day, the weather (including shadowing and then instantaneous position and perspective of the view) and a range of other matters to

⁵ At [74]-[77].

affect the relationship between the viewer and the subject in an area as visually culturally complex and multi-layered.

[89] We conclude that a visual simulation must be subject to a clear understanding of these limitations. We rely on our site inspection and the evidence of parties with some assistance from the relevant visual simulation perspectives.

[90] We repeat the same criticisms of the Court in *Panuku* in relation to this case, namely that the use of multiple scales for landscape assessment by the parties did not assist us. We are still unclear as to what gain is achieved by some experts utilising different scales. If the scales are truly noncomparable we conclude that such evidence is of limited usefulness.

[91] The Court in *Panuku* then moves on to a more particular analysis but we believe that the common discussion of [157] is of direct relevance to this case:

The purpose of the height standard in the Local Centre Zone is to:

- (i.) Manage the effects of building height;
- (ii.) Allow reasonable sunlight and daylight access to public open space excluding streets and nearby sites;
- (iii.) Manage visual dominance effects;
- (iv.) Allow an occupiable height component to the height limit, and an additional height for roof forms that enables design flexibility, to provide variation and interest in building form when viewed from the street;
- (v.) Enable greater height in areas identified for intensification; and
- (vi.) Provide for variations to the standard zone height through the Height Variation Control, to recognise the character and amenity of particular areas and provide a transition in building scale to lower density zones.

[92] We see *Panuku* as supporting the general principles that we outlined earlier in our decision. Overall, in *Panuku* the approach of focussing excess height in the lower part of the site gave an ability to achieve greater intensity while minimising the effects of height and bulk.

The Summerset (St Johns) Decision

[93] In the St Johns decision, the AUP zoning provisions are slightly different and apply the integrated residential development matters of discretion under H.5.8.1, as discussed in [27] of the decision, which include:

- a) the effects on neighbourhood character, residential amenities, safety in the surrounding resident areas from all of the following:
 - i) Building, intensity, scale, location, form and appearance;
 - ii) Traffic;
 - iii) Design of parking and access;
 - iv) Noise, lighting and hours of operation.

[94] The Court also highlighted at [28] additional criteria under H5.8.2.1(b)(i) for building intensity scale location form and appearance:

- i) Whether the intensity and scale of the activity, the building location form and appearance is compatible with the character and residential amenity provided for within the zone and compatible with the surrounding residential area;
- ii) Traffic – whether the activity avoids or mitigates high levels of additional non-residential traffic on local roads and a series of other criteria which were in the end not argued or addressed by appropriate conditions.

[95] It can be seen therefore that similar criteria arise in respect of the MHU Zone, in respect to building intensity, location and formal appearance. However, the relationship with the surrounding Single House Zone becomes of more importance because of the compatibility requirement under H5.8.2.1(b)(i). The different wordings between these two zones is helpful in showing the distinction between the two zones.

[96] We conclude there is less focus within the Local Centre on the compatibility directly with the surrounding residential area. But there is still an expectation that amenity outcomes will be achieved. We conclude that is achieved in the Local Centre Zone by meeting the other purposes, which we have already discussed in relation to buildings within the Local Centre Zone. Again, we do not think there is anything that is said within the *St Johns* decision that militates towards a particular outcome in this case.

[97] As the Court noted in *St Johns* at [58], the zone description for the Mixed Housing Urban states over time the appearance of neighbourhoods within the zone will change with development, typically up to three storeys and a variety of sizes and forms. In short, we see the words typically and predominantly indicating a general intent with variation provided.

[98] To that extent, the statement in relation to the Local Centre Zones at four storeys is again showing a typical or predominant outcome anticipated, not the outcome in a particular case.

[99] In short, some sites may warrant lesser development and some sites greater where height variation control is being used, such as in the Local Centre Zones of 16 m and on the St Johns adjacent to Summerset at 16 m. This is more indicative of the outcomes anticipated. Although the Court discussed the question of whether or not the intensification was permissible on the Summerset site, this issue did not arise in this case and is accepted by all the parties that some level of intensification - at least to the build height variation controls provided - is anticipated on this site. That case turned, upon compatibility with adjacent residential zones and the Court's conclusion that the layering of the buildings and the setback from the adjacent residential zones, achieved the overall purpose of the plan.

Conclusion as to the Revised and June Proposals

[100] As noted earlier, most other relevant concerns of the AUP have been addressed and there are well advanced provisions provided to the Court, which are acceptable with minor modifications including matters such as parking, flooding, hazards and manoeuvring.

[101] The core issue in this case is what extra occupiable height (to the ceiling of the highest occupiable part of the building) over 16 m and total height of building can this Local Centre zoning carry to achieve the outcomes envisaged under the AUP and the Act.

[102] It is clear that the AUP consideration by the IHP adopted a fine-grained

approach to this site given the historical contention relating to its buildings and its position immediately adjacent to a public reserve and major thoroughfare with significant residential housing on the upper layers of the hills behind. They adopted a height variation control for this zone of 16 m and allowed 2 m variation for roof form variation.

[103] In terms of the current design with the ground floor 4.5 m for retail and the upper floors (excluding the top floor) being 3.2 m, a four-storey building would have an occupiable height of around 13.6 m above ground, depending on the ceiling height of the top floor. A five-storey building would intrude some 0.8 m above occupiable 16 m limit, for instance at under 17 m above ground. Roof form would intrude a further metre plus lift overruns above that, to around 18.8 m or 21.5 RL. A four-storey building clearly at 14 m would still have the allowance of 2 m for roof and lift overrun which would take it to approximately 16 m or 18.7 m RL.

[104] Putting aside the over-height storeys on Building 1, the balance of the buildings themselves use a flat roof to minimise height. The impact upon properties on the ridge behind is affected by the front edge on Tamaki Drive at key positions at which views towards the sea will be impacted if the entire building height is the same to Marau Crescent. If the June Proposal was amended for extra height for the second retail floor to 4 m this would exacerbate this issue by around 700 mm.

[105] Although the June Proposal plans produced at the recommenced hearing show a smaller intrusion on Building 1, the design still provides for two extra storeys above the overall intrusion with a height for the parapet at 27 m RL or 24.3 m above ground. In other words, this is over 8 m above the 16 m occupiable limit and over 6 m above the 18 m height limit. The outcome of that is not inconsequential or mitigated by any of the other redistribution of bulk around the site.

[106] We conclude the appellant is still seeking to maximise the height along the balance of the frontage on Tamaki Drive, which increases impact on the residents behind. We acknowledge that there have been steps taken to move the bulk of the buildings back from the Marau Crescent frontage. However, this has minimal impact

upon those residences higher on the ridge and is probably no more than we would have expected for any development facing this road in any event.

[107] We note that the shadowing effects from the buildings built right on Marau Crescent and facing south could have some impact upon the public space and amenity of the road itself. Again, these matters are not conclusive, but they demonstrate to us that there has been a clear decision to maximise the envelope and benefit to the appellant over the public and residential amenity.

[108] We have concluded that there is no doubt that there is going to be reduction in views to the residences behind because of the building intruding over the anticipated height limit.

[109] We have spent a great deal of time deciding whether the extra height on the corner is warranted. We conclude that some extra height on that corner would have been warranted on the second floor if retail activity were to occur there. However, we have concluded clearly that as a maximum this could involve only a single extra storey on the corner of Tamaki Drive and Patteson Avenue and only to the extent of the current penthouse area shown on the diagram annexed hereto “C”.

[110] We now move to the more problematic issue for this Court as to the height intrusion over the occupiable height. We certainly consider that there would be some justification for carrying extra height on this site if the second floor was retail. However, there is no commensurate benefit to the public for floors 3 to 5, which clearly are private residential development. In terms of the finely grained approach of the IHP, we consider that the intrusion of a further 746 mm, while not critical, is a further increase above the occupiable height limit of 16 m.

[111] While these problems are not insurmountable, neither Proposal is currently consentable as we have no design to justify such an intrusion. Increasing the floor height for the second retail floor by 800 mm would increase the overall intrusion, we consider, to around 1.5 m. More retail on Level 2 should justify some extra height but the question then arises as to whether it justifies that level of intrusion.

Residents' concerns

[112] There was a palpable frustration by various residents who gave evidence including resident groups. The series of cases and disputes relating to the appropriate building heights within Mission Bay has still not led to any resolution of this issue. In their view, this proposal is clearly a significant increase in impact over that envisaged after a significant hearing before the IHP Plan Commissioners.

[113] In the case before the Council Commissioners they noted:

We consider that key features of this area are as follows:

- (a) That there is a highly developed residential area surrounding the site including multi-layered buildings, similar to the type of outcomes anticipated under this plan; and
- (b) That there has been a finely grained expectation on development and the Local Centre and surrounding areas based on a series of decisions.

Outcome

[114] In our view, there is no doubt there would be a transference of the outlook that is currently enjoyed by those properties of Ronaki Road and other streets to those on the Tamaki Drive frontage. The AUP gives residents in Marau Crescent and on Ronaki Road no guarantee that the buildings in front of them will not obscure their views. However, they have a reasonable expectation that the plan provisions represent a reasonable understanding of what may occur on that site.

[115] We do not consider it appropriate to provide a design approach in terms of the issues to be addressed under the plan. For our part, the lack of articulation of the roof has both advantages and disadvantages for residents. The main advantage is it gives a more open and uniform view across the whole view.

[116] Neither the Revised Proposal put to us in opening (which was not abandoned by the appellant) nor the June Proposal (which required a resumed hearing) are acceptable to the Court.

[117] Mr Allan invited us to look at some alternative proposal that may be suited to us if neither of these are acceptable. I anticipate he was considering us allowing a sixth floor on the corner of Patteson Avenue. The Court has, over the years, sought to accommodate parties by seeking to avoid a repeated litigation in circumstances where a sensible outcome appears to be available.

[118] This is not one of those cases for the following reasons:

- (a) Drive Holdings' position has been argued multiple times, and the IHP outcome is an appropriate approach to height on this site;
- (b) It is clear that even minor deviations from the AUP requirements can have impacts on the surrounding properties and landowners;
- (c) While some intrusion might be justified, for example by a second level of retail development, the level of intrusion that would occur in this case still may still be unacceptable in our view. A single extra storey penthouse on corner and five floors with second floor retail may be justifiable depending on the overall height and design. However, that detail is not before us;
- (d) We are unpersuaded by the arguments about redistribution of bulk; and
- (e) In particular, we consider that the expert witnesses have not been helpful to us in evaluating the issues at large under the AUP. The repeated opinion evidence, which was often in conflict, left us no proper basis for an evaluation based upon expert opinion.

[119] It is for this Court to be satisfied that the consent should be granted. We are to consider not only the evidence before us and the AUP, but the decision of the Commissioners. We consider their decision was well founded.

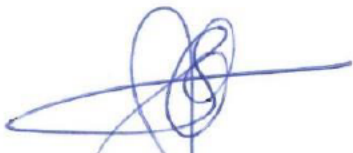
[120] Although there are two variations to this proposal, we conclude neither achieve nor implement the AUP or meet the wider purpose of the Act. We note context of the issues that were clearly identified from the very first meetings between the developer and the Council, reflected both in the decisions of the IHP and AUP and the decision of the Commissioners on this application.

[121] It must follow that it is not for this Court to redesign a consentable proposal and we refuse to do so. We conclude that a redesign is required but there are many issues that are affected by such a redesign. On the basis of the applications put to this Court, we refuse consent and at this stage are not satisfied there is currently a consentable proposal before us.

[122] **Accordingly:**

- (a) the appeal is refused, and the Commissioners decision confirmed; and
- (b) the Court allows the parties 20 working days to file any application for costs if these cannot be agreed. Any replies that we filed a further 15 days thereafter. And final reply, if any, five working days after that. The Court encourages the parties to resolve cost without reference.

For the Court:

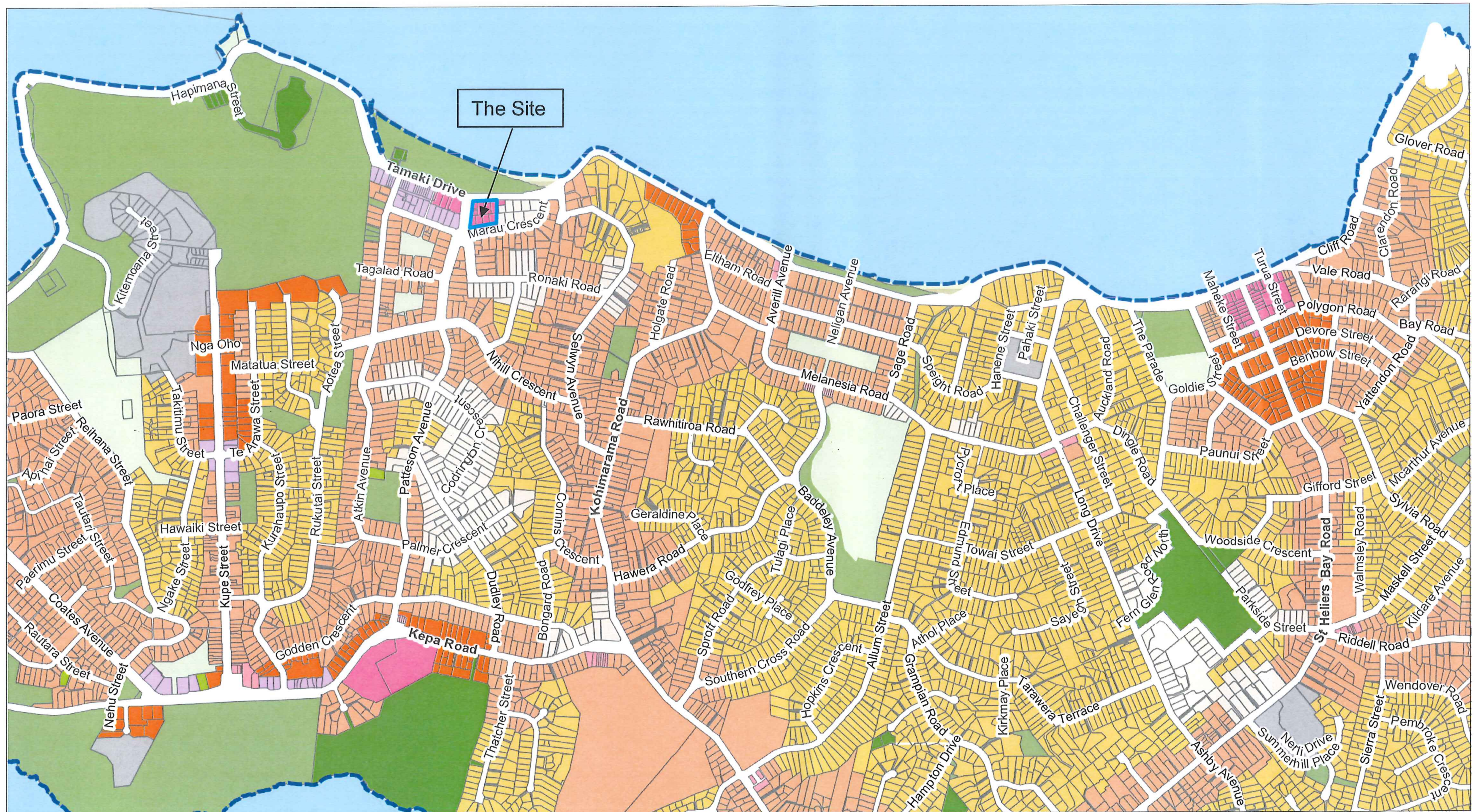


Judge J A Smith

Environment Judge



Annexure A



DISCLAIMER:
This map/plan is illustrative only and all information should be independently verified on site before taking any action.

Zones and Rural Urban Boundary

0 110 220 330
Meters

Annexure B



**PROPOSED MISSION BAY DEVELOPMENT
PHOTOMONTAGE VPT 11 VIEWED FROM 6 RONAKI ROAD**

Date of issue: 20 August 2020 | Resource consent issue | Revision: -
VPT 11 | Image 2 of 3
Page 63

Photomontage information:

Photography Date/Time: 09/07/2020 10:15 a.m
Camera type: Canon EOS 5D Mark III / 50mm prime lens, focal length of 50mm
Field of view (FoV): 66 degrees horizontal FoV / 27 degrees vertical FoV
Camera location: (Coordinates are in terms of Mt. Eden 2000 Circuit, Levels in terms of Auckland Vertical Datum 1946) 803326.13mN, 406092.23mE, Viewfinder 24.11mRL
Photograph location and control point items have been accurately surveyed by Fluker Surveyors Ltd

Optimum viewing distance of this image is 312mm when printed at scale 1:1 (100%) on SRA3 paper then trimmed to A3 size.
This image should be assessed in the field from the same location from where the photograph was taken.
In reality photographs and photomontages can not convey a view exactly as it would be seen by the human eye.
This photomontage has been prepared by U6 Photomontages Ltd in accordance with the NZILA Best Practice Guide for Visual Simulations BPG 10.2 document.



PHOTO VIEWPOINT 11 A

PROPOSED DEVELOPMENT
BUILDING 1 PENTHOUSE GLAZING



PROPOSED MISSION BAY DEVELOPMENT PHOTOMONTAGE VPT 11 ILLUSTRATING THE 18m TOTAL BUILDING HEIGHT STANDARD & 16m OCCUPIABLE BUILDING HEIGHT STANDARD

Date of issue: 20 August 2020 | Resource consent issue | Revision: -
VPT 11 | Image 3 of 3
Page 64

Legend:
18m Total building height standard
16m Occupiable building height standard

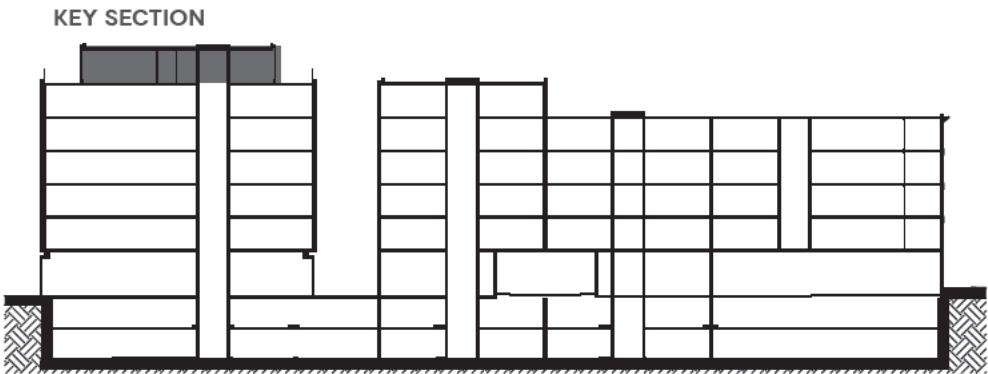
Annexure C

June Proposal











Mission Bay
Environment Court

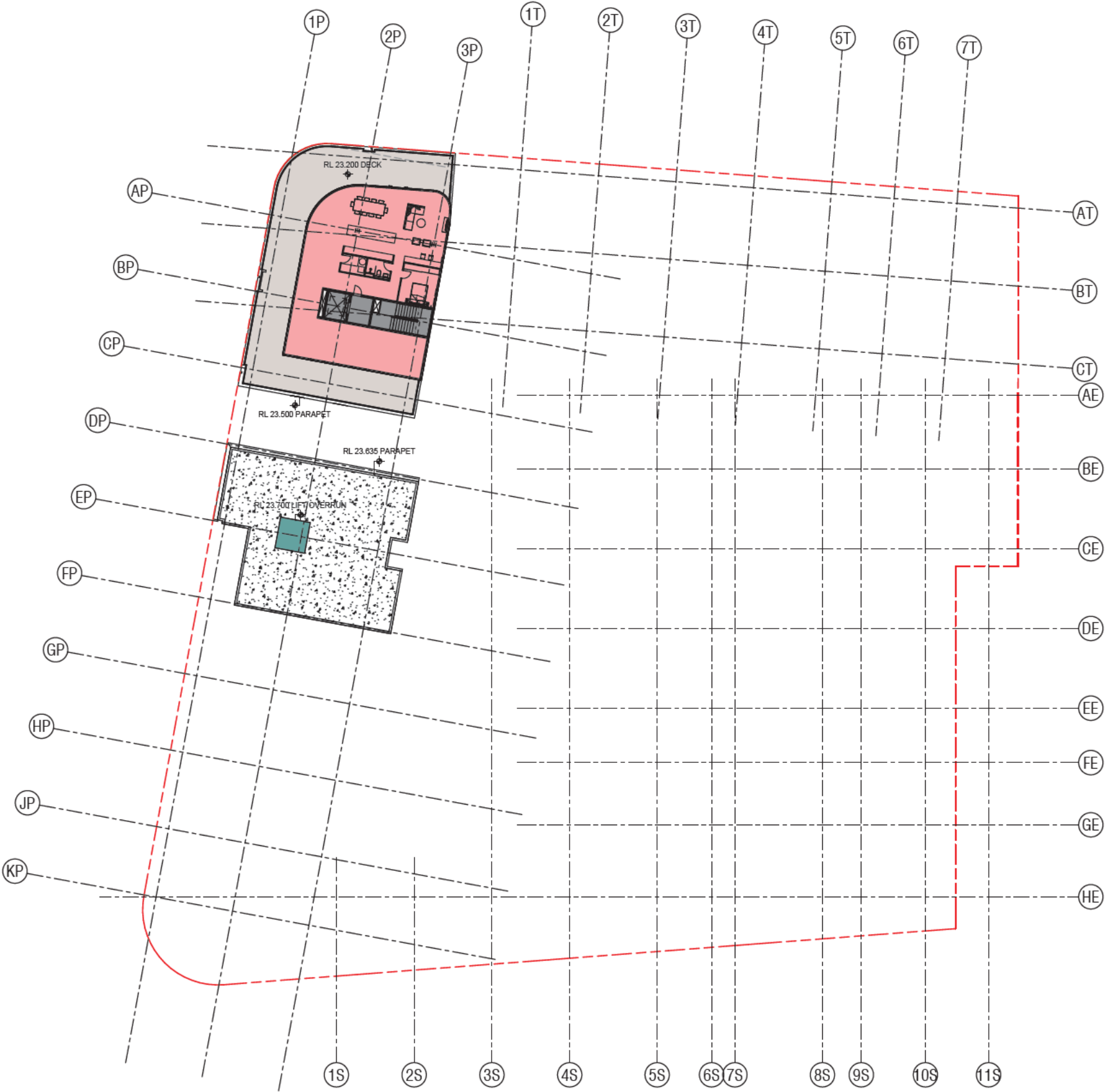
Buchan
917032 / 01 June, 2021

Level 7 Floor Plan / 1:500@A3



STANDARD KEY

	PARKING/LOADING/VEHICLE ACCESS
	RETAIL
	RESIDENTIAL 231m ²
	CIRCULATION 36m ²
	DECK / MIXED LANDSCAPE AREA 199m ²
	STORAGE
	PLANT SERVICES 9m ²
	ACCESSORY RECREATIONAL FACILITY
	ROOF
	INACCESSIBLE LANDSCAPED ROOF GARDEN
	GROUND LEVEL LANDSCAPING



Level 7
Scale 1:500@A3

