

BEFORE THE ENVIRONMENT COURT

I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2020] NZEnvC 024

IN THE MATTER of the Resource Management Act 1991
AND of an appeal pursuant to s 120 of the Act

BETWEEN PANUKU DEVELOPMENT AUCKLAND
LIMITED

(ENV-2018-AKL-000176)

Appellant

AND AUCKLAND COUNCIL

Respondent

AND R Peters and R Bannan
R Dexter and A Modrow
N Smith
P Lange
L Whiley

s 274 parties

Court: Environment Judge M Harland
Commissioner K Edmonds
Commissioner D Bunting

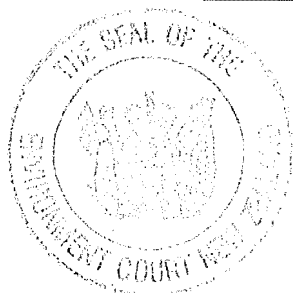
Hearing: 20-23, 26-27 August and 24-25 September 2019

Counsel: D J Minhinnick and S H Pilkington for the Appellant
D Hartley, A Buchanan and B Ford for the Respondent
Mr R Peters, Mr R Bannan, Mr R Dexter, Ms A Modrow, Mrs N Smith, Mr
P Lange and Mr L Whiley – s 274 parties – for themselves

Date of Decision: 6 March 2020

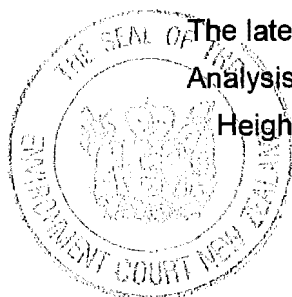
Date of Issue: - 9 MAR 2020

INTERIM RESERVED DECISION OF THE ENVIRONMENT COURT

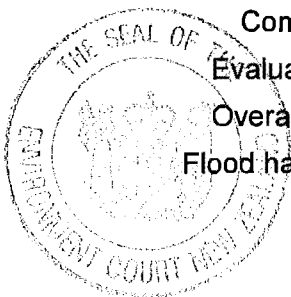


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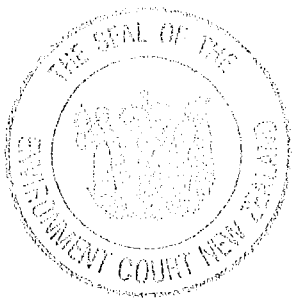
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- A: The parties are to address the matters referred to in this decision summarized in paragraphs [397] to [399] to see if agreement can be reached about them. If the parties are unable to agree, they are to provide memoranda to the Court **no later than Friday 24 April 2020** setting out their respective positions, following which we will consider whether a final decision can issue on the papers or whether the hearing should be reconvened to deal with the remaining issues.

REASONS

Introduction

[1] This is an appeal by Panuku Development Auckland Limited (**Panuku**) against a decision of Independent Hearing Commissioners (**the Commissioners**) appointed by Auckland Council refusing its application for resource consents to construct a new multi-level mixed-use development on eight adjoining sites at 198-202, 214-222 Dominion Road and 113-117 Valley Road, Mount Eden, Auckland (**the site**). The development at this stage comprised four separate buildings containing 102 residential units, nine retail units and 116 carparks. The proposal required all the existing buildings on the site, including two character supporting buildings, to be demolished.

[2] The application was refused because the Commissioners concluded that the development was not compatible with the amenity and character of the surrounding residential area, neither was the scale, bulk and intensity of it in keeping with the planning outcomes identified in the Auckland Unitary Plan (**the AUP**), particularly in relation to special character values and height.

[3] Since the appeal was filed, Panuku has redesigned the development. At the outset of the hearing, Panuku's evidence proposed a development still comprising four separate buildings with the original nine retail units, but with fewer residential units and carparks and with further design elements and amendments to the construction details and proposed conditions of consent to reduce its potential impact on the neighbourhood. By the end of the hearing additional amendments to the design, the configuration of carparks, construction details and the proposed conditions were presented to the Court by Panuku.



[4] The appeal was initially opposed by Auckland Council (**the Council**), but by the time the hearing commenced its position had changed. It supports the revised proposal. That proposal includes the conditions for any consent.¹

[5] The seven s 274 parties who participated in the hearing² are all residents and/or owners of properties who live and/or own properties near to the proposed development. They oppose the proposal even though there have been changes to it and they ask the Court to dismiss the appeal. The key issues for them relate to the effects the proposal will have on their amenity, health and wellbeing (including during construction), the loss of the Universal Building and the special character values ascribed to it, and the proposal's non-compliance with various provisions in the AUP.

[6] We commence this decision with some matters of background to provide context to the proposal. We then provide an overview of the proposal and the legal and planning framework that applies to it before dealing with each of the issues in contention between the parties.

Background

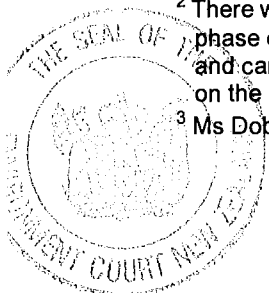
[7] Panuku is a Council Controlled Organisation of Auckland Council tasked with managing and developing the Council's non-service property portfolio and providing strategic advice on the Council's remaining property portfolios. It is responsible for approximately \$1.5 billion of Council-owned land³ and it is the owner of the properties at 198-202 and 214-222 Dominion Road and 113-117 Valley Road.

[8] The properties at 214-222 Dominion Road and 113-117 Valley Road were initially purchased by Auckland City Council in 2003 and 2006 for a proposed roading project which was designated under the then operative District Plan. The project was for a dedicated bus

¹ There were three versions of the proposed conditions provided during the hearing: The set of conditions that were proposed at the start of the hearing were attached to Mr Pope's evidence dated 7 June 2019. These are referred to as "Version 1". An updated set of conditions dated 23 August 2019 was provided to the Court by Mr Lala when he gave evidence. These are referred to as "Version 2" of the conditions. Mr Lala advised that Version 2 had been prepared in response to various issues raised during the hearing. A further set of amended conditions dated 12 September 2019 was provided to us by counsel for Panuku at the resumed hearing on 24 September 2019. These are referred to as "Version 3". We were told that, while Version 3 was fully supported by both Panuku and the Council, as noted in the comment boxes in the set there were a number of the conditions which the s 274 parties did not accept.

² There were 19 s 274 notices filed opposing the appeal, however two were withdrawn during the case management phase of the appeal and the remainder did not file evidence or participate in the hearing. We have however read and carefully considered the fact of their opposition and the s 274 notices they filed, even though their positions on the amended proposal cannot be assumed.

³ Ms Dobson, evidence-in-chief, at [4.1].



road that bypassed Dominion Road to the east of the Dominion and Valley Road Town Centre and reconnected to Dominion Road at 214-222 Dominion Road. After an options assessment was undertaken by Auckland Transport,⁴ it was decided that accommodating a rapid transit network within the existing Dominion Road was a better option than continuing with the dedicated bus road. Accordingly, the properties became surplus to Auckland Transport's requirements and further investigations revealed that they were not needed for any other Council services, nor were they of cultural interest or importance to mana whenua.

[9] In March 2015, 198-202 Dominion Road was purchased to amalgamate with the properties referred to above, bringing the total area of the land owned there by Panuku to a total of eight sites with a combined area of 5,173 square metres. We refer to these sites collectively in this decision as "the site". In terms of an inner city site, this is a large one.

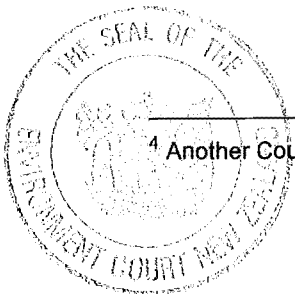
[10] The site is an "L" shape with prominent frontages to both Dominion and Valley Roads. It currently contains a mix of one- and two-storey buildings that front onto these roads. At present there are a variety of activities carried out in the buildings on the site, including retail, food and beverage, offices, services and a fitness studio. Some of the buildings are light industrial type buildings with car parks. The buildings facing Valley Road are vacant.

[11] The site has a "split" zoning. Most of it is zoned Business-Local Centre (**Local Centre Zone**) under the AUP, but a small portion at the northern end is zoned Terraced Housing and Apartment (**THAB**).

[12] Dominion Road is an arterial route. It is a busy transport corridor with frequent public transport services. Further public transport infrastructure is planned, including the prospect of light rail. The Local Centre and THAB Zone provisions encourage and enable intensified development along this corridor.

[13] The site contains two character-supporting buildings – the Universal Building and a building at 214-216 Dominion Road. These buildings are subject to the Special Character Areas Overlay – Business: Eden Valley in the AUP. There is another Special Character Overlay in the AUP that applies to some residential zones, but this does not apply to this site. When we refer to **Special Character Overlay** in this decision, we are referring to the one that applies to the Business: Eden Valley area.

⁴ Another Council Controlled Organisation set up following the reorganisation of Auckland Council in 2009.



[14] An important feature of the site is its topography. The site dips down towards its northern boundary so that its interior is lower than Dominion Road and the neighbouring land to the east. Another key feature of the site is the basalt that sits 1.5-2 metres below ground level. The presence of the basalt (part of the lava flow from Maungawhau/Mount Eden) has a significant impact on construction methodology. This aspect will also be considered in detail later in this decision.

[15] The adjoining properties to the east of the site comprise a bungalow converted to commercial use (111 Valley Road) and a light industrial building (109 Valley Road). These properties have the same Local Centre zoning as most of the site.⁵

[16] The properties further to the east are zoned Residential/Single House (**Single House Zone**). They include the residential properties at 107 and 107A Valley Road and beyond that the property at 105 Valley Road owned by Mr Dexter and Ms Modrow, s 274 parties, who oppose the proposal.

[17] The adjoining property to the north (9-15 Carrick Place) comprises a retirement village with single-storey units including Mrs Smith's unit (also a s 274 party who opposes the proposal). This property has the same THAB zoning as the northern portion of the site. Surprisingly, neither the witnesses for the Council nor Panuku addressed the ownership of the retirement village in their evidence.

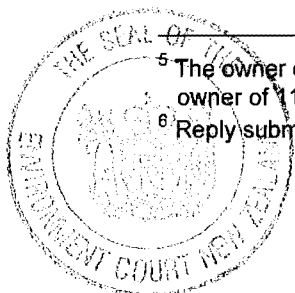
[18] We heard from the s 274 parties that the land at 9-15 Carrick Place had been gifted to the Council and was subject to a 999-year lease. This, on the face of it, had implications for how much weight we should give the THAB zoning over it, even though Panuku did not mount a permitted baseline argument with reference to it. We asked for the ownership of this property to be properly addressed by Panuku in its closing. We were advised that:⁶

The Carrick Place Village is run as an Own-Your-Own pensioner village whereby Council sells the individual units to eligible parties (pensioners) and then buys them back when the pensioners move on to other premises. The ability to buy these units back are secured by a covenant signed by the "private" owners and a caveat registered against the property. The purchase price for the units are approximately 50% of market value as Council only owns a half share of the underlying fee simple of the cross lease units.

The above does not address the lease issue, so the evidence of the s 274 parties about this is uncontested.

⁵ The owner of 109 Valley Road filed a s 274 notice opposing the proposal, but withdrew it before the hearing. The owner of 111 Valley Road did not file a s 274 notice.

⁶ Reply submissions on behalf of Panuku, dated 24 September 2019 at [6.5].



[19] Properties on the opposite side of Carrick Place (including Mr Lange's property at 16 Carrick Place) are in the Single-House Zone. These are typically villas on wider sections of approximately 19 metres. The exception is the property at the end of Carrick Place (21 Carrick Place) which contains three more-modern-style flats that overlook the light industrial building at 109 Valley Road, including one owned by Mr Peters and Mr Bannan, also s 274 parties who oppose the proposal. These properties are more elevated and look down on the site. Mr Whiley lives at 3 Carrick Place.

[20] There are commercial buildings opposite the site on Dominion Road and on Valley Road, including a Countdown supermarket and carpark opposite Mr Dexter and Ms Modrow's property at 105 Valley Road.

The initial proposal and the Independent Hearing Commissioners' decision

[21] The application before the Court was for a mixed-use but primarily residential development comprising of four buildings (Buildings A, B, C and D) varying in height and internal layout with nine retail units, a basement carpark for residents and four at-grade parking spaces off Carrick Place to service the retail units.

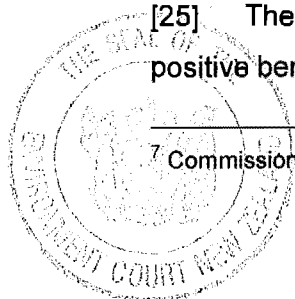
[22] The design presented to the Commissioners included two five-storey buildings (Buildings A and C) each with a maximum height of 20.5 metres, and two four-storey buildings (Buildings B and D) with a maximum height of 18.5 metres and 17 metres respectively. An internal courtyard area and bicycle parking for occupants and visitors were provided as communal areas. The heights of these buildings contravened the AUP provisions.

[23] A number of resource consents were required for the proposal, virtually all to be assessed as restricted discretionary activities.

[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.⁷

[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,

⁷ Commissioners' decision, dated 10 August 2018 at [314].



the Commissioners identified that the 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.

[26] As well, the Commissioners considered that the demolition of the Universal Building would have a significant adverse effect on the special character of this business area because "the group coherence with the adjoining two storey character-defining buildings...would be lost, as would the contribution that the building makes in its own right". The Commissioners referred to a lack of evidence provided to support the removal of the Universal Building.⁸

[27] In relation to the height exceedances, the Commissioners determined that this, coupled with the bulk and scale of the buildings, would result in "unacceptable visual, bulk, shading and dominance" effects on the neighbourhood character and immediate area. They considered that Panuku had placed "far too high a reliance on the redevelopment of the surrounding sites at 9-15 Carrick Place and 111 and 109 Valley Road as mitigating, longer-term, the effects of the proposed development". They agreed with the Council's planner that there was no certainty about whether these developments would occur, or the form that they might take.⁹

[28] In relation to the AUP, the Commissioners noted that the proposal was contrary to certain key objectives and policies, and they considered that Panuku's experts had placed too much reliance on the higher-level Regional Policy Statement (RPS), Urban Growth and Form objectives and policies, and the non-statutory documents in developing the proposal, rather than applying the provisions of the AUP to the site.

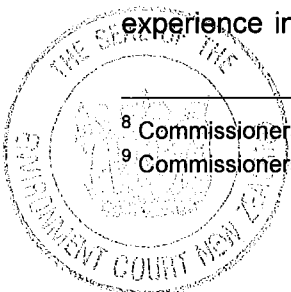
[29] Under s 290A of the Resource Management Act (RMA) we must have regard to the Commissioners' decision in determining the appeal.

The proposal

[30] Following the Commissioners' decision an updated design was developed. This was presented to the Court for Panuku by Mr de Graaf, a registered architect with considerable experience in master planning and urban design of intensive residential developments. Mr

⁸ Commissioners' decision, dated 10 August 2018 at [316].

⁹ Commissioners' decision, dated 10 August 2018 at [317]



Minhinnick, counsel for Panuku, referred to the first revision of the design as the "Evidence Design", a term we adopt to distinguish it from the changes to the design made during the hearing, which was referred to as the "Closing Design" and a term which we also adopt. We will start by referring to the Evidence Design because the Closing Design added to it rather than replacing it in its entirety.

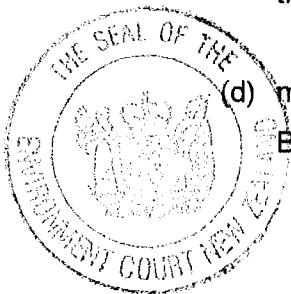
The Evidence Design

[31] The Evidence Design comprised the following:

- (a) 92 residential units (down from 102 under the hearing design) including removing an entire storey from building A (taking it from five to four storeys) and an entire storey from building D (taking it from four to three storeys);
- (b) Provision of 104 basement car parks (down from 112 car parks under the hearing design) but with four at-grade car parks on Carrick Place still being proposed, one of which is to be a dedicated loading space;
- (c) 105 cycle parks; 98 of which will be located in the basement (an increase of 20 secure cycle parks provided under the hearing design) and seven cycle parks at podium level;
- (d) Nine retail units at ground level (no change from the hearing design).

[32] - In terms of the Commissioners' findings about visual dominance and shading effects, the Evidence Design also:

- (a) made changes to the Dominion Road façade to provide greater articulation and modulation as well as to change refinements to some of the materials to be used;
- (b) made changes to the Valley Road façade to remove the mansard roof;
- (c) made changes to the eastern façade to avoid compromising the future development of 111 and 109 Valley Road while providing treatment for the party wall condition that will exist in the meantime;
- (d) made changes to the northern façade for the western units on levels 3 and 4 of Building C, including to the louvre design and spacing, to further minimise the

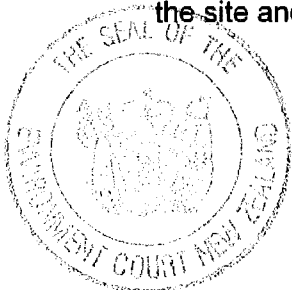


potential for overlooking two neighbouring properties (particularly the retirement village at 9-15 Carrick Place).

[33] In summary, under the Evidence Design:

- Buildings A and B each comprise four levels;
- The Dominion Road elevation for both buildings will be at or below 13 metres, apart from a portion of the roof profile which will up to 1.5 metres high when viewed from Dominion Road, however the apex of it would be set well back from Dominion Road;
- Building C will continue to be five levels up to a maximum height of 20.5 metres, but the justification given to us for this is that the maximum height coincides with the lowest part of the site making it purportedly less dominant when seen from the street, and to ensure any associated effects are internalised i.e. absorbed within the site;
- Building C is set back 12.7 metres from the northern site boundary with the upper level (level 5) set back a further six metres from the northern face of levels 1-4 providing a purported significant buffer between the northern end of Building C and the properties to the north;
- Building C is also set back from the eastern boundary, with Building D being located between Building C and the bulk of the eastern site boundary. This purportedly mitigates the potential effects of Building C's additional height on the neighbouring properties to the east;
- Building D comprises three levels and has a maximum height of 13.4 metres. Panuku contends that the eastern façade has been designed so as not to compromise the future development of the adjoining Local Centre zone sites while ensuring appropriate treatment of the party wall in the meantime.

[34] At the hearing, Panuku contended that the revisions it had made resulting in the Evidence Design were "significant concessions", substantially affecting both the utilisation of the site and the yield that it will be able to generate from the development.



The Closing Design

[35] Panuku proposed two revisions to the design of the project in its closing submissions. These relate to:

- (a) amending the roof design for Building C; and
- (b) amending the configuration of the basement and Carrick Place parking design.

[36] The amendments are depicted in the Closing Design versions of the Resource Consent Drawings and Mediation Summary Report.¹⁰

Amendments to Building C roof design

[37] The effect of the amendments to the Building C roof design can be seen at Resource Consent Drawing 3.2, which shows Building C as it would be viewed from both Dominion Road and Valley Roads. Resource Consent Drawing 3.4 shows the amended (lower) roof form from all elevations.¹¹ Pages 18-21 of the Mediation Summary Report show how the revised roof form will be incorporated into the overall design of the proposal.

[38] Mr de Graaf told us that the impact of these changes will be that:

- (a) two of the units on the fifth floor (Units 501 and 506) are reduced in size from 3-bedroom to 2-bedroom units;
- (b) the fifth floor of Building C is now set back further from the Valley Road frontage, which will reduce the deck space available for the units.

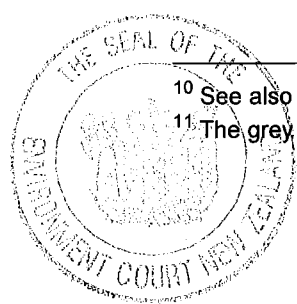
[39] Mr de Graaf explained that the purpose of the revised roof form is to increase the setback to further mitigate overlooking privacy, bulk and dominance effects on neighbouring properties.

Carparks

[40] Although covered in detail later, the Closing Design results in a reduction in the number of carparks available for residential use in the basement (from 104 to 93 carparks) with eleven basement carparks being provided for retail parking to accord with the provisions in the AUP.

¹⁰ See also Panuku Exhibits 4A and 4B.

¹¹ The grey line indicates the Evidence Design and the black line shows the Closing Design.



This means that the total number of carparks located within the basement remains at 104, but the configuration of the carparks changes. It means, however, that the three carparks for the retail staff originally proposed to be situated on Carrick Place (although within the site) are now increased to 11 and are accommodated within the basement.

[41] The Closing Design still proposes to include a loading bay for the retail units on Carrick Place, but within the site owned by Panuku.

Other amendments to proposed conditions

[42] There were other amendments made to the proposed conditions to manage construction noise and vibration to deal with the demolition of the Universal Building, geotechnical issues, the storage volume for the stormwater detention tanks, and provisions dealing with vehicles exiting the basement carpark onto Valley Road. These amended proposed conditions where relevant will be dealt with in this decision when each of the issues they address are analysed.

Summary of residents' concerns

[43] Because the opposition to the proposal, as it has been amended, comes from the s 274 parties, we set out in more detail the specific nature of their concerns, which will then be dealt with in detail in our analysis of the various effects of the proposal on the environment.

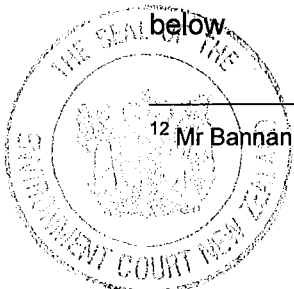
[44] Of the 19 s 274 parties who lodged notices of wishing to be heard in opposition to the proposed development, written evidence was provided by Mr Peters on behalf of the co-owners of 21 Carrick Place,¹² Mr Lange of 16 Carrick Place, Ms Modrow and Mr Dexter of 105 Valley Road, and Mrs Smith of 9 Carrick Place in the retirement village. At the end of the hearing each of these parties, apart from Mr Lange, also made a closing submission.

[45] Mr Whiley of 3 Carrick Place did not provide evidence, but made a closing submission.

[46] The common theme in each of the s 274 notices was that the height and bulk of the development as well as the demolition of the Universal Building would result in unacceptable adverse effects on them to varying degrees as neighbours. In addition to these matters, in their evidence and submissions the s 274 parties raised a range of other issues as set out

below.

¹² Mr Bannan, a co-owner of 21 Carrick Place with Mr Peters questioned several of the experts on certain topics.



Owners of 21 Carrick Place

[47] In his evidence, Mr Peters identified two primary concerns for the owners of 21 Carrick Place. There were that:

- (a) the excessive height, bulk and form of the proposal would cause adverse visual, shading and dominance effects on the character and amenity of the surrounding neighbourhood. He referred to the height and length of Building C and the mass of Buildings A and D;
- (b) Related to this, the development did not comply with the height restrictions in the AUP, with Building C being 7.5m over-height, Building A up to 1.5m over-height and Building D 400mm over-height.

[48] In his closing submission, Mr Peters raised the following points:

- He accepted that residents would be adversely affected by construction activities in the short-term, and that reasonably some disruption could be expected although he considered that there needed to be greater noise mitigation than that provided in the Construction Noise and Vibration Management Plan (**CNVMP**). Conversely, he said that any adverse effects from the completed development needed to be minimised as these would last for generations.
- He agreed that the reduction in the heights of Buildings A, B and D and the setback of the buildings in relation to the road frontage and Carrick Place were positive, but he was still concerned about the height of Building C.
- He considered that in the long term (10 – 15 years) it would be accepted that a development of this nature could be built without carparks. He submitted that, if the carparks were removed from this development it would enable the basement to be removed, resulting in less excavation, reduced times for construction noise and vibration to be experienced by neighbours, and a reduction in the height of Building C to about the AUP height limit. (We are not sure we agree with Mr Peters' reasoning on this last point as the building height is measured from the existing ground level, a point we develop later in this decision).



Owners of 16 Carrick Place

[49] Mr Lange acknowledged the amendments which had been made to the original design including the Dominion Road façade, the lowering of the heights of Buildings A and D and the increase in the set back of the northern end of Building C. His primary concern about the modified proposal was the adverse effects of dominance and shading on neighbouring properties because of the height of Building C. He said that if the fifth floor of this building was to be removed, his opposition to the development would disappear.

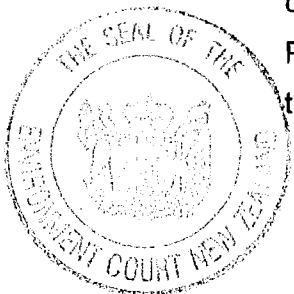
Owners of 105 Valley Road

[50] Ms Modrow was concerned about:

- (a) the scale and heights of Buildings C and D, which she contended would result in adverse shading and dominance effects at 105 Valley Road;
- (b) vehicles entering and leaving the site, which she contended would increase traffic congestion on the local roading network, particularly during peak hours. If the basement carparking was removed, she said that the additional traffic congestion would not arise, it would not be necessary to construct the basement, and there would be a substantial reduction in the volume of basalt to be excavated from the site; and
- (c) the demolition of the Universal Building, which she said was historic.

[51] In her closing submission, Ms Modrow:

- (a) assessed that, currently on the site there was a combined area of about 4,100m² of retail, community-focused businesses, and "community socialising opportunities". By comparison, she highlighted that the new development provided about 915m² of retail space. She considered it unlikely that a similar community supporting environment to that which currently exists would be provided for by the development. She said that this was inconsistent with the Local Centre Zone, which was a Business Zone; and
- (b) was concerned about the noise, vibration and dust that would occur during construction, and the effect this would have on the elderly residents of 9 – 15 Carrick Place. She referred to the potential for problems to arise such as respiratory issues, the inability to dry washing outside, and disruption to the ventilation of the houses



from having to keep windows closed to mitigate the intrusion of noise and dust. She said that requests had been made to Panuku for mechanical ventilators to be installed in the homes and for the homes to be washed, but that these requests had been declined.

[52] In his evidence, Mr Dexter said that:

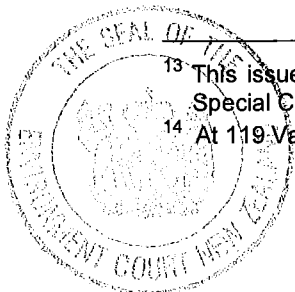
- (a) the neighbouring properties would be adversely affected by the bulk, dominance, shading, loss of privacy and loss of amenity from the new development;
- (b) he was concerned that the development would impact adversely on the Special Character Overlay which applied to the local residential area;¹³ and
- (c) the development would add significantly to the existing traffic congestion on the local roading network.

[53] Following on, in his closing submission, Mr Dexter:

- (a) listed the provisions in the AUP which he considered would be contravened by the proposed development;
- (b) contended that the split of commercial, community service, and residential use in the development did not reflect the intent of the AUP, with an under-provision of commercial and community service facilities in the development;
- (c) questioned the findings of the traffic experts that there would be minimal impact on the local roading network from the traffic generated by the development;
- (d) contended that there had been no evaluation of the effects of the development on the Dominion Building and Cross Bar¹⁴ and the property at 107a Valley Road. He considered that the effects on each of these properties should have been assessed and included in the overall evaluation of the effects of the development on the surrounding properties; and
- (e) requested that the appeal be dismissed, as the proposal did not satisfy the kind of development he said was envisaged in the AUP for this site.

¹³ This issue was not developed during the proceedings, but we have identified that this Overlay exists in the Special Character section.

¹⁴ At 119 Valley Road, next to the site.



9-15 Carrick Place – retirement village

[54] Mrs Smith was concerned about the potential for adverse effects relating to:

- (a) the dominance of Building C and the impact this would have on her privacy. She asked that the fifth floor of this building be removed;
- (b) noise and vibration during construction. She was worried about her wellbeing during this period as she is retired and therefore at home a lot during the day; and
- (c) the safety of residents, because commercial vehicles will be using Carrick Place to access the new development.

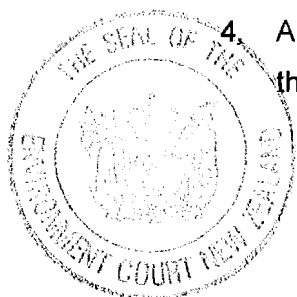
Owners of 3 Carrick Place

[55] In his closing submission, while acknowledged the improvements made to the design since the Council hearing, Mr Whiley echoed the concerns of other s 274 parties about shading, noise and vibration during construction, and the adverse effects of commercial vehicles (and construction traffic) using Carrick Place.

Issues

[56] Arising from the above, the main issues we need to determine are:

1. Does the height, bulk and form of the buildings create adverse effects on the s 274 parties' properties that are to be considered as restricted discretionary activity matters for the Local Centre Zone and THAB Zone and are these consistent with the relevant objectives, policies and assessment criteria in the AUP?
2. Should the Universal Building be demolished, and if so do the proposed conditions mitigate any adverse effects caused by its loss including in relation to the timing of its demolition and the construction of the proposed development?
3. Are any adverse construction noise and vibration effects on s 274 parties' properties able to be adequately avoided, remedied or mitigated in terms of the relevant objectives, policies and assessment criteria in the AUP?
4. Are any other potentially adverse effects relating to flooding and stormwater and those relating to ground contamination and earthworks able to be avoided,



remedied or appropriately mitigated in line with the matters discretion is restricted to and considering the relevant objectives, policies and assessment criteria in the AUP?

5. Are the parking provisions and traffic effects adequately dealt with and consistent with the relevant objectives, policies and assessment criteria in the AUP?

[57] There were several other issues to do with how we should approach certain planning provisions, which we deal with under our section entitled "Planning framework – general issues".

Legal framework

[58] Because the proposal has an overall restricted discretionary activity status, the key statutory tests are contained in s104 and s104C of the RMA. Section 87A(3) is also relevant. It provides:

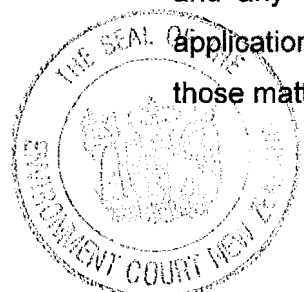
If an activity is described in ... regulations (including any national environmental standard), a plan or a proposed plan as a restricted discretionary activity, a resource consent is required for the activity and –

- (a) the consent authority's power to decline a consent, or to grant a consent and to impose conditions on the consent, **is restricted to the matters over discretion is restricted** (whether in its plan or proposed plan, a national environmental standard, or otherwise); and
- (b) if granted, the activity must comply with the requirements, conditions and permissions, if any, specified in the Act, regulations, plan or proposed plan.

[59] Section 104C specifies:

- (1) When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which –
 - (a) a discretion is restricted in national environmental standards or other regulations;
 - (b) it has restricted the exercise of its discretion in its plan or proposed plan.
- (2) The consent authority may grant or refuse the application.
- (3) However, if it grants the application, the consent authority may impose conditions under section 108 only for those matters over which –
 - (a) a discretion is restricted in national environmental standards or other regulations;
 - (b) it has restricted the exercise of its discretion in its plan or proposed plan.

[60] Section 104 requires the Court, when determining the application, to consider the effects of allowing the proposal (both positive and adverse), the relevant planning framework and any other matters considered relevant and reasonably necessary to determine the applications. In undertaking that assessment, s104C restricts the Court's consideration to those matters where its discretion is restricted by the AUP.



[61] We briefly refer to Part 2 of the RMA, and in particular the Court of Appeal decision in *R J Davidson Family Trust v Marlborough District Council*,¹⁵ which confirmed that although the Court can look to Part 2 when determining resource consent applications, where a plan has been competently prepared such an assessment under Part 2 should not alter the assessment under the AUP itself. We agree that an additional assessment of the kind anticipated under *Davidson* is not required in this case.

Planning framework-general issues

[62] We have outlined above the two zones that apply to the site, the Local Centre Zone and the THAB Zone. We have also outlined that the Special Character Overlay – Business applies as well and that overall the development is to be assessed as a restricted discretionary activity.

[63] The various restricted discretionary matters that apply are complex and occupied numerous pages of planning evidence. In fact, the development triggers a requirement to consider 26 restricted discretionary activities; 15 for the activity itself and 11 because a standard in the AUP is infringed.¹⁶ That number expanded during the application and hearing process.¹⁷

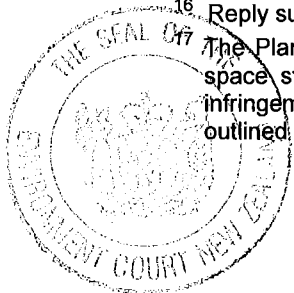
[64] There were several of what we would describe as “legal planning issues” that arose during the hearing. We refer to them as this because they require more of an interpretive approach than an analysis of evidence. These issues are:

- To what extent we can and/or should take into account the general restricted discretionary matters provided in the AUP and how that might impact or potentially conflict with the more specific matters?
- How should we interpret the AUP provisions and the evidence that referred to “planning outcomes”?
- Does the Local Centre Zone contemplate development that is more business than residential focused?

¹⁵ *R J Davidson Family Trust v Marlborough District Council (Davidson)* [2018] NZCA 316.

¹⁶ Reply submissions on behalf of Panuku, dated 24 September 2019 at [3.3] – [3.4].

¹⁷ The Planning Joint witness statement (JWS) dated 9 September 2019 refers to infringement of the outlook space standard H11.6.8 (as outlined in Mr Lala’s supplementary statement dated 26 August 2019) and infringement of the rear yard standard between the Local Zone and the THAB zone at 9-15 Carrick Place (as outlined by Mr Pope when he gave evidence on 27 August 2019) and considers these infringements.



[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.

To what extent we can and/or should take into account the general restricted discretionary matters provided in the AUP and how that might impact or potentially conflict with the more specific matters?

[66] For the activity itself, General Rule C1.8 in the AUP provides:

- (1) When considering an application for resource consent for an activity that is classed as a restricted discretionary, discretionary or non-complying activity, the Council will consider all relevant **overlay, zone, Auckland-wide and precinct objectives and policies that apply to the activity or to the site where that activity will occur.**
- (2) When considering an application for resource consent for an activity that is classed as a discretionary or non-complying activity, the Council will have regard to the standards for permitted activities on the same site as part of the context of the assessment of effects on the environment.¹⁸
- (3) The absence of any specific reference to positive effects in the objectives, policies, matters of discretion or assessment criteria does not mean that any positive effects of allowing an activity are not relevant to the consideration of an application for resource consent for that activity.

(emphasis added)

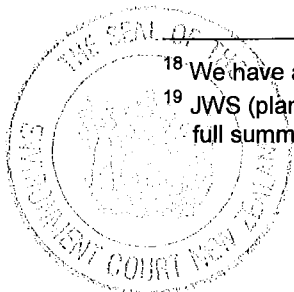
[67] For the infringement of standards, General Rule C1.9 in the AUP provides:

- (3) ... When considering an application for a resource consent for a restricted discretionary activity for an infringement of a standard under Rule C1.9(2), the Council will restrict its discretion to all of the following relevant matters:
 - (a) any objective or policy which is relevant to the standard;
 - (b) the purpose (if stated) of the standard and whether that purpose will still be achieved if consent is granted;
 - (c) any specific matter identified in the relevant rule or any relevant matter of discretion or assessment criterion associated with that rule;
 - (d) any special or unusual characteristic of the site which is relevant to the standard;
 - (e) the effects of the infringement of the standard; and
 - (f) where more than one standard will be infringed, the effects of all infringements considered together.

[68] We note here that the specific rules for matters of discretion for the infringement of standards do not align with General Rule C1.9 but the flow charts from the planners¹⁹ and counsel for the Council submitted that we should consider not only the specific rules but also

¹⁸ We have added this provision because it may be relevant to statutory interpretation.

¹⁹ JWS (planning), dated 9 September 2019 of Mr Lala and Mr Pope states that the planners met and prepared a full summary of the reasons for consent (Attachment A) and three flow charts (Attachment B).



the general rules. The approach suggested could be adopted in this case, because it does not make any difference to our decision. This is because the issues we need to determine do not involve a conflict between the general and specific rules that apply. Such a conflict could however arise in other cases. Because the point is moot in this case however, we do not determine it.

How should we interpret the AUP provisions and the evidence that referred to "planning outcomes"?

[69] An interpretation issue arose in relation to the provisions for Chapter 11 Local Centre Zone, which refer to 'planning outcomes'.²⁰ Objective H11.2(7) and Policy H11.3(3)(a) were specifically referred to during the hearing. They provide:

(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.

...

(3) Require development to be of a quality and design that positively contributes to:
(a) planning and design outcomes identified in this Plan for the relevant zone;

[70] The Council accepted²¹ that a permitted baseline cannot be applied in this case, primarily because all new buildings in both the Local Centre and THAB Zones require resource consent for a restricted discretionary activity. However, the Council's submission is that the reference to 'planning and design outcomes':²²

... extends beyond those activities that are permitted by the AUP and requires a wider view of the relevant plan provisions in order to understand the type of development envisaged in either the surrounding environment or relevant zone. This understanding is also necessary to ensure that the assessment of the application is undertaken in the correct context.

The Council considers that such outcomes should primarily be identified with specific reference to any relevant zone and overlay descriptions, objectives and policies, activity table rules, standards, and standard purpose statements.

In this regard, an activity may require consent but still be in keeping with the planning and design outcomes identified for the surrounding environment or relevant zone. The Council's view is that the proposal achieves those outcomes.

[71] Counsel for Panuku submitted:²³

[6.2] To be clear, Panuku is not seeking to rely on any form of permitted baseline or to rely on future development of other sites to mitigate the effect of the Project. However, the AUP specifically directs consideration of the planned outcomes for the area. This includes the bulk and form anticipated by the AUP. In other words, it requires decision-makers to take into account the strategic direction of the AUP in relation to the bulk and form of development that is contemplated by the AUP (and importantly focuses on the AUP outcomes rather than requiring decision-makers to crystal ball gaze about what levels of development are fanciful or non-fanciful for a range of surrounding sites).

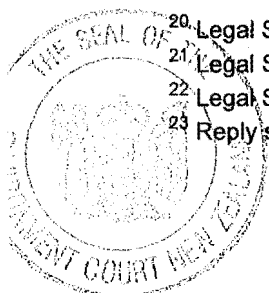
...

²⁰ Legal Submissions of Counsel for Auckland Council in Reply, dated 24 September 2019 at [28].

²¹ Legal Submissions of Counsel for Auckland Council in Reply, dated 24 September 2019 at [30].

²² Legal Submissions of Counsel for Auckland Council in Reply, dated 24 September 2019 at [31]-[33].

²³ Reply submissions on behalf of Panuku, dated 24 September 2019 at [6.2], [6.4]-[6.6].



[6.4] As a result, the evidence for both Panuku and the Council focused on the assessment of effects against the receiving environment as it currently exists. However, the planning assessment also takes into account the outcomes anticipated by the AUP. This can particularly be seen with reference to 9-15 Carrick Place.

[6.5] The Carrick Place Village is run as an Own-Your-Own pensioner village whereby Council sells the individual units to eligible parties (pensioner) and then buys them back when the pensioners move on to other premises. The ability to buy these units back are secured by a covenant signed by the "private" owners and a caveat registered against the property. The purchase price for the units are approximately 50% of market value as Council only owns a half share of the underlying fee simple of the cross-lease units.

[6.6] We recognise that this means that it is unlikely that these would be sold and redeveloped in the foreseeable future. Panuku's experts have acknowledged that the underlying zoning for 9-15 Carrick Place is THAB and provides for intensification with unlimited density.²⁴ However, their assessments have not relied on the potential development of this zoning. To the contrary, the use of setbacks, louvres, planting and building articulation all act to reduce the effects of the [proposal] on the modest height of the flats at 9-15 Carrick Place.²⁵ The attention paid to this sensitive interface is also shown by Panuku exhibit 5A, which demonstrates the development potential of the THAB zoned portion of the [proposal] site.

[72] 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. This 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.

[73] We note that the approach taken by the Commissioners was to inform their assessment by a consideration of the effects of the proposal against the existing environment and with reference to any relevant resource consent approvals.²⁶ We adopt that approach here.

Does the Local Centre Zone contemplate development that is more business than residential focused?

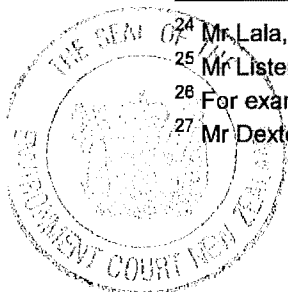
[74] Mr Dexter considered the zone description to make it clear that once sufficient space is available for business use extra space can be used for residential where it is not on the ground floor.²⁷ He also referred to sections of Buildings C and D as containing nothing but residential apartments as going against the zone provisions.

²⁴ Mr Lala, evidence-in-chief, at [5.12]

²⁵ Mr Lister, evidence-in-chief, at [5.65]

²⁶ For example see the Commissioners' decision, dated 10 August 2018 at [233].

²⁷ Mr Dexter, Closing Submissions, at [5].



[75] We do not read the zone description in that way, recognising the general nature and limitations of a short zone description and the need to drill further into the objectives, policies and rules of the zone.

[76] The Local Centre Zone specific objectives refer to the role of local centres as enabling commercial activity which primarily services local convenience needs and provides residential opportunities (H11.2(6) and as an attractive place to live, work and visit (H11.2.(8)). The nine retail units will primarily provide for the local convenience needs of surrounding residential areas as well as the residents thereby supporting local business viability.

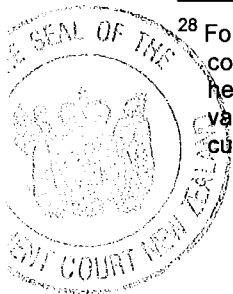
[77] We do not accept that the Local Centre Zone contemplates development that is more business than residential focused, particularly given that dwellings that meet the permitted activity standards are permitted activities (H11.4.1(A2)), as is also the position with supported residential care (H11.4.1(A5)), visitor accommodation.1(A6) and boarding houses (H11.4.1(A6)). While the zone has a standard at ground floor requiring dwellings including units not to locate on the ground floor of a building where the dwelling or unit has frontage to public open spaces including streets (H11.6.3(1)), that standard is not infringed. Neither do we accept Ms Modrow's argument that the proposal's approximately 915m² of retail space compared with what might once have been the situation in the current buildings make the proposal inconsistent with the Local Centre Zone.

General observations about the evidence

[78] Early in the hearing we expressed some concern about with the way the evidence had addressed the different restricted discretionary activities. In many cases, the evidence had not clearly and systematically set out and evaluated the matters of discretion required to be considered in relation to the individual restricted discretionary activities.²⁸ Some of the evidence, including the planning evidence, adopted an approach more in line with the assessment of the proposal as a discretionary activity.

[79] It is unfortunate that the expert witnesses did not appear to have been briefed on the scope of the restricted discretionary activity consents required and applied for. We would have expected at least the planning witnesses to have had a greater awareness of the need

²⁸ For example, Mr Lala's evidence-in-chief, Appendix B contained tables that addressed only what he termed key consent requirements and assessment criteria (and that was only specific assessment criteria) for the building height variation control infringement in the Local Centre Zone and the Special Character Overlay Business in varying and sometimes limited detail. His treatment of other consent requirements in Appendix B was largely cursory.



for all the expert evidence to directly and systematically address the matters of discretion, and the relevant assessment criteria and objectives and policies for each of the individual restricted discretionary activities. If that had been done, it would have made our decision-making task much more straightforward and less time-consuming.

[80] We suggested that flow charts setting out the AUP rule and related policy framework could better express and explain the approach we needed to take to address each individual restricted discretionary activity. Our concern was that, if we were having difficulty understanding how the planning provisions fitted together and what was relevant to the issues in contention, how would the s 274 parties (all self-represented with valid issues to advance) be able to do so?

[81] Late in the hearing the planners for Panuku and the Council produced a document labelled "AUP Framework" setting out three flow charts:²⁹

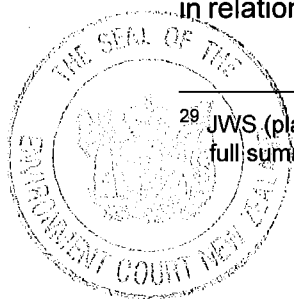
- (a) the first flow chart contained key restricted discretionary consent requirements dealing with the Business-Local Centre H11, Special Character Overlay Business D18 and THAB Zone;
- (b) the second flow chart set out other restricted discretionary consent requirements for natural hazards and flooding, transport, earthworks, noise and vibration, contaminated soil and street trees; and
- (c) the third flow chart set out the controlled activity consent requirements for stormwater and contaminated soil.

[82] We have found the flow charts informative and useful to refer to in writing this decision, however as will be evident from our observations above, it would have been preferable to have them at the start or even before the hearing. Unfortunately, applying the evidence as presented to us within the AUP framework provided in the flow charts was challenging.

Our approach to analysing the restricted discretionary activities

[83] Under the heading of legal framework, we outlined the restricted discretionary activity framework that we are required to work within, and the way in which we must approach s 104 in relation to the individual restricted discretionary activities. We must deal with each restricted

²⁹ JWS (planning), dated 9 September 2019 of Mr Lala and Mr Pope states that the planners met and prepared a full summary of the reasons for consent (Attachment A) and three flow charts (Attachment B).



discretionary activity separately and cover both the effects and the relevant AUP provisions set out in the matters for which our discretion has been restricted, and we must also evaluate the proposal under the assessment criteria provided under those restricted matters of discretion.

[84] We apply that approach to the restricted discretionary activities in the Local Centre and THAB zones in relation to the evidence we heard about landscape, visual amenity and urban design effects and amenity values. Because (as we have outlined above) expert witnesses did not always distinguish the specific zone and restricted discretionary matters in their evidence, we have decided to analyse their evidence in a general sense before evaluating the effects in terms of the matters of discretion and relevant AUP provisions for each restricted discretionary activity.

[85] We appreciate this is cumbersome, and at times results in seeming duplication, however the general observations we have made above about the process adopted to applying the evidence to the AUP framework have necessitated this.

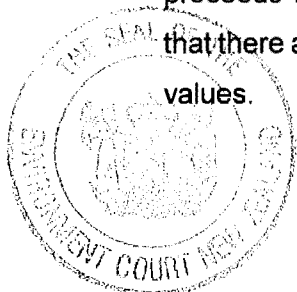
[86] Before doing so, we make some general observations about the term "amenity values" as this term was referred to in many of the matters of discretion, assessment criteria and relevant objectives and policies we are required to consider.

Amenity values

[87] Section 2 of the RMA defines "amenity values" as follows:

amenity values means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

[88] Those members of the community and landowners giving evidence and making submissions set out their concerns about the effects of the proposal on what they considered to be the amenity values of the area. These effects extend beyond those people are likely to experience in their houses and businesses, but also include the effects they experience while going about their daily lives whether on foot or by car or public transport. Understandably there was considerable focus on the nature and length of construction effects and the impact the height exceedances would have on residential amenity values. If the development proceeds however, many of those giving evidence and making submissions acknowledged that there are elements of it that will positively contribute to their amenity and therefore amenity values.



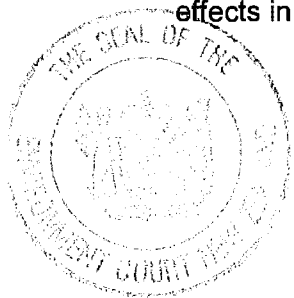
[89] The Commissioners at first instance acknowledged that the proposal was not without merit and the positive benefits that residential intensification would offer this part of the inner city. We too appreciate the proposal's potential for positive effects from the regeneration and intensification of development of a commercial and residential nature on this site and along a major public transport route in the inner city, as did the s 274 parties to varying degrees.

[90] Alongside those positive effects however, there is also the potential for adverse effects on amenity values to occur. In our view, given the definition of "amenity values" in the RMA, the residents evidence about what comprises the amenity values of the area they enjoy is equally important to consider as is the expert evidence about what the predicted effects might be that could affect those amenity values and how, if adverse (in the sense of comprising a change to the current values enjoyed) it is considered those adverse effects might be avoided, remedied or appropriately mitigated.

[91] We are also of the view that what might be appropriate mitigation of an adverse effect on amenity values is most likely to require not only a technical or expert suggested solution, but an understanding and appreciation of the amenity values that are currently enjoyed by those experiencing them, and an understanding in a practical sense of how that solution intersects with the way in which they are currently experienced. It is impossible to understand how a practical and suitable solution can be offered as mitigation to an adverse effect on amenity values without consulting those that enjoy that amenity value. It was therefore surprising that few if any attempts had been made by Panuku or the Council before the hearing to engage with the residents about these matters. However, as a result of this hearing, we now have a sound understanding of the amenity the residents that appeared before us consider they currently enjoy, and their concerns about how this could change if the appeal is granted.

Landscape, visual amenity and urban design effects

[92] In this section we deal with Issue 1, namely: Does the height, bulk and form of the buildings create adverse effects on the s 274 parties' properties that are to be considered as restricted discretionary activity matters for the Local Centre Zone and THAB Zone, and are these consistent with the relevant objectives, policies and assessment criteria in the AUP? To answer it, we need to analyse the evidence about landscape, visual amenity and urban design effects in the context of the relevant provisions of the AUP.



Overview

[93] As noted in the introduction to this decision, Panuku's proposal is to construct four new buildings to accommodate 92 residential apartments and 9 retail units all sitting above an interconnected underground basement carpark on land zoned Local Centre and THAB.

[94] For the Local Centre Zone restricted discretionary consent is required for the four new buildings, as well as for parts of the development that exceed the 13m (11m occupiable plus 2m for roof form) Building Height Variation Control Standard (H11.6.1.2 and 3). We refer to this control in this decision as **the height standard**. Restricted discretionary activity consents are also required for infringements of the standards for outlook space (H11.6.8) and minimum dwelling size (H11.6.9).

[95] For the THAB Zone, restricted discretionary consent is required for dwellings (H6.4.1(A3)), new buildings (A35)³⁰, infringement of Standard H6.6.9 Yards and the use of the Alternative Height in Relation to Boundary Standard (H6.6.7(1) and (2)). Part of Building D and a small portion of Building C extend into this zone.

[96] The four buildings have been identified as A, B, C, and D with:

- Building A being four stories high fronting Dominion Road and located at the north-western end of the site, with up to 1.5m exceedance of the height standard for the apex of the roof setback from Dominion Road;
- Building B also four stories high, also fronting Dominion Road and located south of Building A.
- Building C being 5 stories high, fronting Valley Road and extending northwards through the middle of the site to within about 12.7m of the boundary of 9 Carrick Place, with 7.5m exceedance of the height standard.
- Building D being three stories high extending from Valley Road northwards along the eastern boundary of the site to within 4 m of the boundary of 9 Carrick Place, with 400mm exceedance of the height standard.

³⁰ New buildings have the same activity status and standards as applies to the land use activity that the new building is designed to accommodate.



[97] We have outlined above the parts of the proposed development that do not meet the AUP provisions and require 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.

[98] Expert evidence on this topic was provided by Mr G Lister, landscape architect and Mr A de Graaf, urban designer for Panuku, and Mr P Kensington, landscape architect and Mr C Butler, urban designer, for the Council. In addition, Mr A England, a geospatial expert provided evidence on the preparation of the visual simulations used for the proposal for Panuku.

[99] We have looked carefully at the evidence. Where it strays into general statements about planning and design outcomes and compares theoretical "compliant developments" with the proposal, we have set that evidence aside to focus on the effects arising from it, for the reasons we gave earlier.

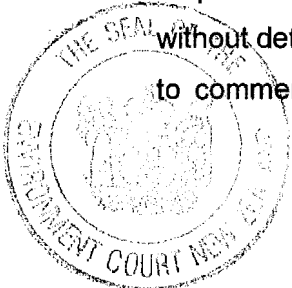
How accurate are the experts' visual simulations depicting the completed development?

[100] It is important that we are clear on the accuracy of the experts' visual simulations depicting the completed development because the potentially adverse effects of bulk and dominance, loss of privacy and shading rely on these predictive assessments.

[101] Mr Lister submitted a booklet of A3 visual simulations taken from 14 different viewpoints to show what the new development is expected to look like when it is completed.

[102] Mr Peters, Mr Dexter and Mr Lange each raised concerns as to accuracy of at least some of these simulations which they said appeared to have misrepresented the true extent of the development in some way, most noticeably in relation to the height of the roof of Building C.

[103] Mr Peters said that he and Mr Lange had engaged a survey company to fly a drone to take photos of the existing site and that these photos showed some features relative to others being in different locations from those shown in Mr Lister's visual simulations. Mr Lister responded that, while he was confident about the correctness of his visual simulations, but without details of the methodology used to produce the drone photos, he was not in a position to comment on them. He added that he was not an expert in the preparation of visual



simulations and that he had relied on others for this.

[104] Following ongoing questioning by Mr Peters, Mr Lange and Mr Dexter about the accuracy of the visual simulations, it was agreed that evidence should be sought from Mr England, the expert who had led the team which prepared the simulations.

[105] Mr England described himself as a geospatial specialist and chief pilot. He told us that the simulations were prepared using a technique known as "visual simulation technology".³¹ His evidence was set out under a number of headings which addressed viewpoint photograph capture, the preparation of visual simulations, the presentation of visual simulations, the accuracy of visual simulations, and the use of Remotely Piloted Aircraft Systems (RPAS) or drones. He said that his methodology for the production of the visual simulations had been based on the New Zealand Institute of Landscape Architects Best Practice Guidelines Version 10.2 referred to as NZILA BPG 10.2 (**the NZILA Guidelines**).³² Drones were not used for the production of visual simulations, as he said that these fell outside the scope of the NZILA Guidelines. The reason for this was that drones were subject to several dimensions of vertical and horizontal error such as air pressure and atmospheric interference such as wind.³³

[106] Mr England did not provide a specific measure as to the accuracy of the simulations developed for the Panuku development, other than to say that there had been a number of simulations prepared over time as more detailed information had become available.

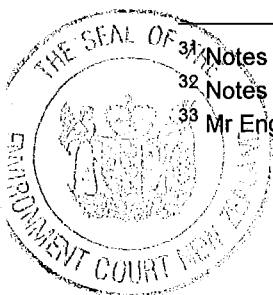
[107] In answer to a question from Mr Peters about the accuracy of the handheld GPS used in the preparation of visual simulations, Mr England said that this depended on the number of satellites which were available at the time the measurements were taken. While he was not able to advise on the accuracy of the measurements for the Panuku development, to minimise any inaccuracies, he said that the locations would have all been cross-checked against geo-referenced aerial photography.

[108] Mr England said that the accuracy of measurements by drones would depend on the type of drone used. In one situation he had been involved with, there had been as much as a 10m inaccuracy while at the lower end he had not experienced accuracies below plus or minus 500mm.

³¹ Notes of Evidence at page 385.

³² Notes of Evidence at page 38.

³³ Mr England, evidence-in-chief, at [7].



[109] When asked by Mr Peters whether the NZILA Guidelines should have been revised to take account of advances in drone technology since these guidelines were prepared in 2010, Mr England said that this was a matter for NZILA.

[110] There was an extended discussion between Mr Dexter and Mr England³⁴ about the basis for establishing the reference point(s) for the photographs used in the preparation of the visual simulations. We were not entirely clear at the end of this discussion whether Mr Dexter accepted Mr England's explanation or whether he continued to have reservations. At issue here was the accuracy of the elevation of the roofline of Building C depicted in the simulations with some s 274 parties including Mr Dexter contending it should have been shown at a higher elevation.

[111] Mr England was asked by the Court whether visual simulations on other developments had been "ground-truthed" against the completed developments to validate the accuracy of the simulations. While he said that he did not have any examples of his own, he referred to a series of photographs in the NZILA Guidelines that had compared the existing view, the simulated view and the as-built view for three different developments, all showing good correlation.

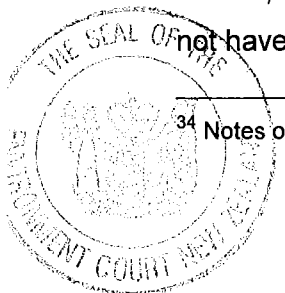
[112] As we have noted, it was not entirely clear to us whether the s 274 parties (Mr Dexter, Mr Peters and Mr Lange) accepted Mr England's evidence about the accuracy of Panuku's visual simulations and whether they considered that these portrayed a realistic picture of how the proposed development would look when completed.

[113] Mr England has significant expertise and experience in preparing visual simulations of the kind produced in this case, the production of which we are satisfied is highly technical. We find the simulations prepared by Mr English to be sufficiently accurate depictions of the proposed development from which we can evaluate the visual amenity urban design effects arising from the completed development.

The expert evidence about the bulk, height and dominance of the development

[114] It would have been helpful to the Court if the experts had used a common scale for assessing adverse effects of urban design elements of the development. Unfortunately, they did not, and we were not helped by the lack of explanation as to why a common scale could not have been adopted.

³⁴ Notes of Evidence at pages 406 – 409.



[115] Mr Kensington said that, on his scale, an adverse effect assessed as very low and negligible equated to *less than minor*, an adverse effect assessed as low equated to *minor*, an adverse effect assessed as moderate and high equated to *more than minor*, and an adverse effect assessed as high and extreme equated to *significant*.

[116] Mr Lister told us that the points on his seven-point scale were very low, low, low moderate, moderate, moderate high, high and very high.

[117] Mr Butler said that he was not sure whether the Council had a ratings system for assessing the urban design effects of developments and that urban design experts tended to use their experience from multiple assessment with a focus on three criteria, less than minor, no more than minor or more than minor. He said that where he had assessed effects as being minor this meant a marginal loss of existing or anticipated amenity.³⁵

[118] Starting with Mr Lister, with respect to his 7-point scale, even though he had assessed the adverse effects of two elements of the development as being low to moderate (as discussed below), Mr Lister's overall assessment was that the adverse effects of the development would be low.

[119] Mr Lister said that the three factors he had used for assessing bulk were the viewing position, what was between the viewer and the building and how the building was modulated and articulated.³⁶

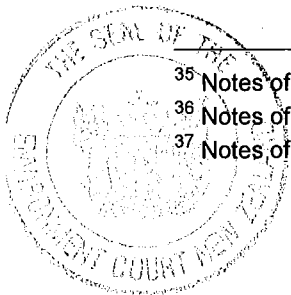
[120] It was suggested to Mr Lister in cross-examination that the development would seem bulky when viewed from angles other than from north to south where was articulation with the laneways between the buildings.³⁷

[121] While he agreed that the development would appear bulkier when viewed from the east because of the long party wall of Building D, he said that from the south on Valley Road and from other viewing points, the gaps between the buildings would articulate as separate buildings rather than as a single mass. He added that the bulk of the party wall would be mitigated with differentiation between the two storey texture and panel concrete wall and a folded roof form with dormer windows, modulation of the building into two parts on either side of a glazed circulation core and a 1m offset from the boundary and windows opposite 111.

³⁵ Notes of Evidence at page 555.

³⁶ Notes of Evidence at page 50.

³⁷ Notes of Evidence at page 48.



Valley Road which would become a light-well in the event of redevelopment on the boundary.

[122] When asked how the development would look when viewed from Mr Peter's property at 21 Carrick Place, he said that the current view was towards an existing utilitarian building, and that the view with the development in place would be somewhat similar in character, as the outlook onto both buildings would be to a commercial building. Mr Lister assessed the effects from this view as low to moderate on his 7-point scale.

[123] For views of the development from 9 – 15 Carrick Place (the retirement village) he said that, compared with the existing run-down two-storey commercial building along the boundary with 9 Carrick Place, while the new development would be more visually dominant, it would also be more attractive, and would be set back from the boundary and landscaped. He was confident that the proposed landscaping (Jacaranda trees and Nikau palms) would be able to grow on top of the concrete podium, as the trees would be planted in large planting boxes with depths varying between 800mm and 1.2m. He said that the function of the landscaping was to screen as well as to provide a foreground element to give depth perspective for softening the form of the buildings.³⁸

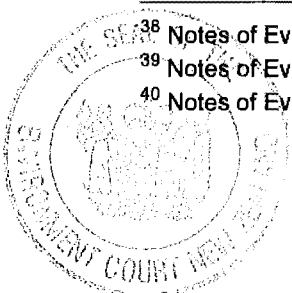
[124] Mr Dexter noted that the existing buildings on the site in front of Carrick Place were rundown and had not been maintained by the Council. He considered that it was unfair to use these buildings as a comparison rather than a new building which could be built on the site. In response, Mr Lister said that both the existing and anticipated environments were relevant and that he had taken account of both in his assessment of effects, although he had given more weight to the existing building as this was more conservative.³⁹

[125] In response to a question from Ms Modrow, Mr Lister said that the potential effects of dominance (and privacy) had been minimised by locating Building C in the central part of the site. He said that from Ms Modrow's home (105 Valley Road), her view of the top of this building would be past several other buildings. Conversely, if Building C had been located on the site of Building D, Mr Lister considered that the effects on Ms Modrow's property would have been much greater.⁴⁰

³⁸ Notes of Evidence at page 64.

³⁹ Notes of Evidence at page 71.

⁴⁰ Notes of Evidence at page 81.



[126] In relation to bulk and dominance, Mr de Graaf said that:⁴¹

The quality, scale and massing in combination with the overall appearance of the updated design (would), in (his) opinion, mitigate any adverse urban design effects on the surrounding environment...and... the updated design...(uses) a site layout strategically to deliver an appropriate variety of building form for the site.... and....the building blocks include a diversity of apartment topologies and sizes which are set amongst well-considered open spaces.

[127] In answer to questions from Mr Peters about how he would classify the degree of encroachment above the AUP height limits, Mr de Graaf said that he classified the encroachment of Building D (0.4m) as "very minor, but he classified the encroachment of Building C (7.5m) as "large".

[128] He went on to say that under the AUP, building heights were measured from the existing ground level and that Building C was located at the low point in a depression at the middle of the site. This meant that when viewed from the higher elevations outside the boundary, Building C would appear in fact to have a lesser height encroachment (between 4.5m to 5.5m).

[129] In terms of longer views, Mr Lister agreed that someone viewing the development from further away along Dominion Road would sense a degree of bulk, although this sense would reduce as the distance increased.⁴² He added that the differences in the heights of the four buildings would also counter any sense of there being one mass.⁴³

[130] Asked whether there would be adverse visual effects when the development was viewed from the top of Maungawhau (Mt Eden), Mr Lister said that he did not consider that this would be the case from such a distant viewing point.

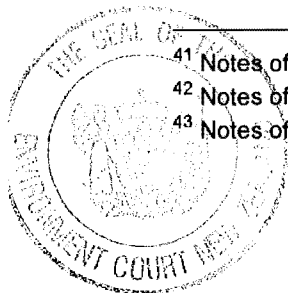
[131] Mr Butler said that his role on behalf of the Council had been to comment on the development in the context of privacy, visual dominance and shading. Having taken account of the gaps between the buildings, the end elevations, the articulations including the stepped forms, the balconies, the extent of glazing and the use of different use of materials, he had assessed the visual dominance effects of the development for the residents of 9-15 Carrick Place (the retirement village) as being "minor".

[132] Mr Kensington said that, as a result of the changes made to the design since the Council hearing, he was satisfied that the built form of the revised design would have low

⁴¹ Notes of Evidence at page 127.

⁴² Notes of Evidence at page 136.

⁴³ Notes of Evidence at page 137.



adverse visual dominance effects and positive visual effects. He also considered that the proposal would result in positive urban generation.

[133] Mr de Graaf concluded that the way in which the quality, scale and massing of the development had been designed would mitigate any adverse effects on the surrounding environment while offering a series of positive benefits. In his opinion, the building blocks provided a diversity of typologies and sizes all set amongst well considered open spaces.

[134] We analyse this evidence later in this section of our decision once we have outlined the evidence about the issues related to this topic and once we have outlined and assessed the relevant AUP provisions.

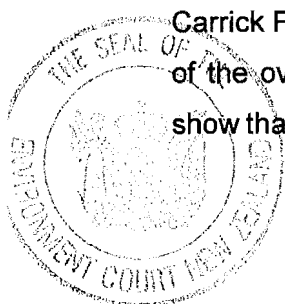
The loss of privacy for neighbours

[135] Mr Dexter was concerned about the loss of privacy for the residents of Carrick Place because of the prospect that residents in Buildings C and D could look over their properties. Mr Lister responded that there was no absolute privacy in an urban setting and that, while they would not prevent someone from looking into Carrick Place, the buildings had been designed with a package of measures to protect privacy. These included the landscaping, building setbacks, apartment orientation and the use of louvres on the windows of the buildings.

The shading of neighbouring properties

[136] Ms Modrow said that she would normally arrive home at 4 30pm and, in March on a sunny day she would experience 2.75 hours of sunshine on her property, whereas with the proposed development this would reduce to 1.75 hours. Mr Butler's response was that, in March, a compliant building on the site would result in a loss of sunlight through Ms Modrow's lounge window at 6.30pm, with the over-height component of the development causing this loss to start at 6.15pm. He said that an equivalent period of loss would apply in mid-winter and at the September equinox, while at the summer solstice there would be no additional shading from the over-height component of the new buildings. Taken overall, his assessment was that the effects of shading from the new development on Ms Modrow's property would be "no more than minor".

[137] Mr Lister was asked by Mr Lange (speaking on behalf of Mrs Smith, the owner of 9 Carrick Place in the retirement village) whether she should have to lose any sunlight because of the over-height Building C. In response, Mr Lister explained that the shading diagrams show that, at the time of the summer solstice, by 4pm one of the existing buildings on Dominion



Road would cast a shadow on the outdoor area of Mrs Smith's property; at 5pm the shadow from the top of Building A would reach the boundary of the property; by 6pm this shadow would have crossed the outdoor area and reached the house; and by 6.30pm the shadow from a compliant building would cover the whole of the outdoor area. This meant that Mrs Smith would lose 30 minutes of sunlight at the time of the summer solstice because of the non-compliant building. He added that, with a compliant development, Mrs Smith would have no sun on her home after 7pm. Mr Lister's assessment was that the effects of shading from the development on Mrs Smith's property would be "low to moderate".⁴⁴

[138] We note that the shading analysis evidence was initially prepared on the basis of comparisons with a theoretical permitted bulk and location design.⁴⁵ In our view, an assessment of shading solely based on a comparison with a speculative compliant development is evidentially unreliable for the reasons we have already expressed elsewhere in this decision. However, Mr Butler also helpfully undertook a different assessment, using the shading diagrams prepared by Mr Lister, but considering the outcomes themselves and the effects on residents rather than on a comparative basis.

[139] In terms of the shading of neighbouring properties, Mr Butler gave evidence that the AUP is silent about what a 'reasonable' level of sunlight hours in the Local Centre, THAB and Single House Zones might be.⁴⁶ However, he referred to the AUP approach in H4.8.2(4) to the situation where a new building infringes the Height in Relation to Boundary standard but complies with an Alternative HIRTB in the Residential-Mixed Housing Suburban (MHS) and Residential-Mixed Housing Urban (MHU) zones. H4.8.2(4) requires:

...
Four hours of sunlight is retained between the hours of 9am – 4pm during the Equinox (22 September):

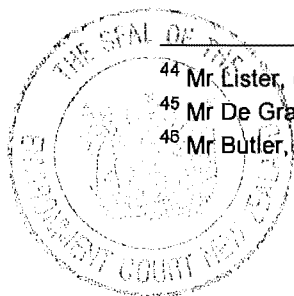
- (i) over 75% of the existing outdoor living space where the area of the space is greater than the minimum required by Clause H4.6.13; or
- (ii) over 100% of existing outdoor living space where the area of this space is equal to or less than the minimum required by Clause H4.6.13.

[140] Mr Butler's evidence was that using this criterion, the proposed development easily achieves the minimum of 4 hours of sunlight between 9am and 4pm during the September Equinox. Overall, his opinion was that any adverse effects from the Evidence Design would be minor.

⁴⁴ Mr Lister, evidence-in-chief, at [5.69].

⁴⁵ Mr De Graaf, evidence-in-chief, at [3.10(d)].

⁴⁶ Mr Butler, evidence-in-chief, at [7.67].



[141] We accept Mr Butler's evidence about the shading effects that are likely to arise when assessed in accordance with H4.8.2(4), which is the criterion used in other residential zones to determine what amounts to a 'reasonable' level of sunlight hours.

The late changes made by Panuku to the configuration of the fifth storey of Building C

[142] In answer to a question from the Court about whether it would be better for Building C to have four storeys rather than five, Mr de Graaf said that a potential improvement could be to retain the fifth storey, but simplify its roof form and increase the setback from Valley Road, while retaining the northern end setback.

[143] Following up on this, after he had finished being heard on his primary and rebuttal evidence, Mr de Graaf was released to prepare sketches showing how a reconfiguration of the fifth storey of Building C might look. He returned with two overlays sketched on copies of Visual Simulation 4.⁴⁷ The first of these depicted how a reconfigured northern end of the fifth storey of Building C might look in comparison with the original layout while the second showed the same reconfiguration with the original layout removed.

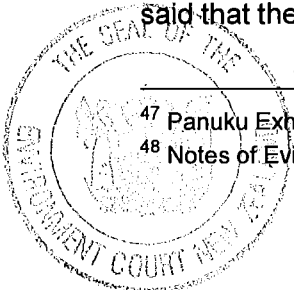
[144] When asked to comment on Mr de Graaf's overlays, Mr Lister said that they would provide a more elegant appearance through achieving commonality between the fifth-floor roof form and the roof form of Buildings A and B.⁴⁸ His opinion was that the increased setback would be an incidental benefit in achieving a slight reduction in bulk.

[145] In its closing legal submissions, Panuku confirmed that its design had been revised in line with Mr de Graaf's sketches as shown on Closing Design Resource Consent Drawings 3.2 and 3.4. In addition, pages 18 to 21 of the Closing Design Mediation Summary Report showed how the revised roof form would be incorporated within the overall design. Counsel advised that the cost to Panuku for this was that two fifth floor three-bedroom units have had to be reduced in size to two two-bedroom units.

[146] Mr Kensington said that as a result of the changes made to the design since the Council hearing (prior to the late changes made by Mr de Graaf), he was satisfied that the built form of the revised design would result in "low adverse visual dominance effects" and "positive visual effects". With the late changes made by Mr de Graaf to the roof form of Building C, he said that these would further assist with the mitigation of adverse landscape and visual effects

⁴⁷ Panuku Exhibits 4 and 4A.

⁴⁸ Notes of Evidence at page 565.



with a visually lighter appearance for this roof and a better integration with the roof forms of Buildings A and B.⁴⁹

[147] Mr Dexter had asked what the effects would be if the southern end of Building C was extended into the THAB Zone. In response, Mr de Graaf produced conceptual sketches⁵⁰ for this and a consequential modification to the northern end of Building D (which already extends into this zone). Apart from a brief discussion on these concepts at the hearing, they were not supported by Panuku and were not incorporated in any way in the final design. This evidence has no bearing on our decision.

[148] For the Dominion Road elevation, Mr de Graaf said there had been discussion about providing a balanced variety to the façades of the six individual buildings that made up this elevation, while at the same time achieving an overall consistency. He considered that the final design had achieved the desired consistency through materiality and the repetition of modules, textures and colours.⁵¹ Mr Lange said that he supported this design even if it was a "little busy" for him.

Analysis

[149] We now evaluate the evidence in relation to each individual restricted discretionary activity in terms of the matters of discretion and the relevant assessment criteria, including relevant objectives and policies. We first deal with the provisions under the Local Centre Zone, then the THAB Zone.

Height variation control in the Local Centre Zone (H11.6.1(2))

[150] We recognise that parts of each of the proposed buildings comply with the height standard, however part of Buildings A, C and D do not. The degree of exceedance of the height standard for buildings A, C and D that trigger the restricted discretionary activity are as follows:⁵²

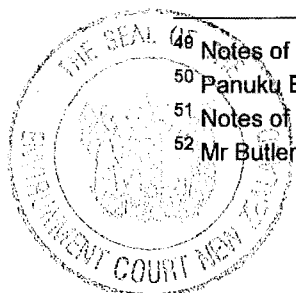
- Building A – up to 1.5m (this applies to the apex of the roof – setback from Dominion Road);
- Building C - 7.5m (total building height of 20.5m); and

⁴⁹ Notes of Evidence at page 593.

⁵⁰ Panuku Exhibits 5 and 5A.

⁵¹ Notes of Evidence at page 183.

⁵² Mr Butler, evidence-in-chief, at [7.15].



- Building D – 400mm (total building height of 13.5m).

[151] As we have said there are matters of discretion in H11.8.1(8), some of which differ from those in C1.9(3). We refer to both, with the general added in brackets, as follows:

- (a) any [objective] or policy which is relevant to the standard;
- (b) the purpose of the standard [and whether that purpose will still be achieved];
- (c) the effects of the infringement of the standard;
- (d) the effects on the amenity of neighbouring sites;
- (e) the effects of any special or unusual characteristic of the site which is relevant to the standard;
- (f) the characteristics of the development;
- (g) any other matters specifically listed for the standard;⁵³ and
- (h) where more than one standard will be infringed, the effects of all infringements [considered together].

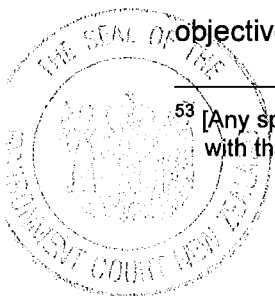
[152] Specific policies listed as assessment criteria for buildings that do not comply with the height standard (H11.8.2(8)(a)) are Policies H11.3(a) and (b), H11.3(8), H11.3(13) and H11.3(14) under the heading of general policies for all centres. There are also general objectives for all centres and more particularly specific Local Centre Zone objectives. We factor in these objectives and policies to our consideration of the matters of the discretion.

[153] The specific policies set out in H11.3 of particular relevance are:

- ...
 - (3) Require development to be of a quality and design that positively contributes to:
 - (a) planning and design outcomes identified in this Plan for the relevant zone;
 - (b) the visual quality and interest of streets and other public open spaces;
 - ...
 - (8) Require development adjacent to residential zones ... to maintain the amenity values of those areas, having specific regard to dominance, overlooking and shadowing.
 - ...
 - (13) In identified locations within the centres zones ... enable greater building height than the standard zone height, having regard to whether the greater height:
 - (a) is an efficient use of land;
 - (b) supports public transport, community infrastructure and contributes to centre vitality and vibrancy;
 - (c) considering the size and depth of the area, can be accommodated without significant adverse effects on adjacent residential zones; and
 - (d) is supported by the status of the centre in the centres hierarchy, or is adjacent to such a centre;
 -

[154] Notwithstanding that the specific assessment criteria do not refer to the Local Centre objectives, we note that there are general objectives applicable to all centres (H11.2(1)-(5))

⁵³ [Any specific matter identified in the rule or any relevant matter of discretion or assessment criterion associated with that rule].



that also apply to the Local Centre Zone, as well as specific objectives that apply to it.

[155] In particular, the Business – Local Centre Zone objectives (H11.2) inform the implementing policies referred to in the specific assessment criteria:

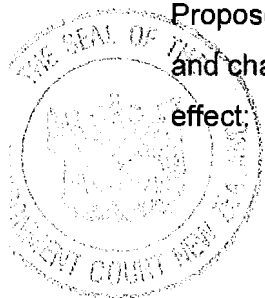
- ...
- (6) Local centres enable commercial activity which primarily services local convenience needs and provides residential living opportunities.
 - (7) The scale and intensity of development within local centres is in keeping with the planning outcomes identified in this Plan for the surrounding environment.
 - (8) Local centres are an attractive place to live, work and visit.

[156] The site is of a considerable size and depth, with part of it a THAB zone that extends across a retirement village and with an adjoining single house zone elsewhere. The issue is whether there are significant adverse effects on those adjacent residential zones from the additional height. That includes consideration of whether the amenity values of those areas are maintained, with specific regard to dominance, overlooking and shadowing.

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

- manage the effects of building height;
- allow reasonable sunlight and daylight access to public open space excluding streets and nearby sites;
- manage visual dominance effects;
- 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;
- enable greater height in areas identified for intensification; and
- 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.

[158] In their Joint Witness Statement of 9 September 2019, the planners referred to Proposed Plan Change 16 (notified during the first week of the hearing on 22 August 2019) and changes to an aspect of the purpose of the building height standards (H11.6.1) with legal effect:



- ~~allow reasonable sunlight and daylight access~~ manage shadowing effects of building on to public open space, excluding streets and nearby sites;

[159] The planners said this does not alter their view about the purpose of the rule, which still requires the effect of building height to be assessed.

[160] There was no suggestion that any matter, such as the purpose of the standard, had any priority over any other. We now work through the matters of discretion in the order in which they appear in the general rule in the AUP, noting that there is no priority in the order.

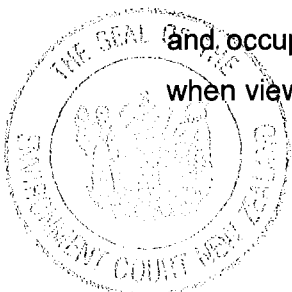
Purpose of the height standard

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

- manage the effects of building height;
- allow reasonable sunlight and daylight access to public open space excluding streets and nearby sites;
- manage visual dominance effects;
- 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;
- enable greater height in areas identified for intensification; and
- 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.

[162] Some of these purposes do not advance our consideration of effects given their use of the neutral word 'manage' in terms of specific effects and we therefore focus on other elements referred to in the purpose.

[163] The evidence was that the additional height would still allow reasonable sunlight and daylight access to public open space excluding streets and nearby sites. The landscape and urban design witnesses were of one mind that the design and location of the additional height and occupiable components of the buildings provides variation and interest in building form when viewed from the street.



[164] Mr Lala gave evidence that the AUP provisions seek to intensify development in locations on a public transport arterial route and within a centre, referring particularly to the RPS objectives and policies of the AUP.⁵⁴ However, we do not need to place great weight on this point as we are satisfied that the other purposes relating to effects are achieved.

[165] Does the proposal recognise the character and amenity of the area? The landscape, urban design and planning evidence is that the additional height and its design treatment contributes positively to the character and amenity of the area. We acknowledge that the area extends beyond the more immediate residential neighbours and the amenity effects on residents that was the focus of the hearing.

[166] Does the proposal provide a transition in building scale to lower density zones? The planning evidence is that the proposal includes development on an adjoining higher density THAB zone that is of a building scale that provides a better transition to the lower density single house zone than might be possible in a THAB zone.⁵⁵

Effects of infringement of the standard

[167] What are the effects of infringement of the standard? The evidence is that there are no effects of concern for the neighbouring Local Centre zoned areas. We deal with the effects on the amenity of neighbouring sites under the next heading.

Effects on the amenity of neighbouring sites

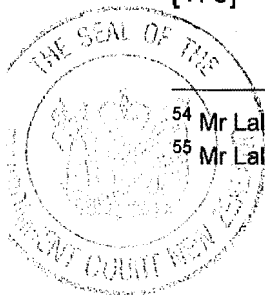
[168] We need to consider the nature and magnitude of the effects on the amenity values of neighbouring sites in residential zones from the height of the proposed development, including the way it is configured. These effects include dominance, overlooking and shadowing.

[169] We are satisfied with the evidence given by the landscape and urban design witnesses that the attention paid to reducing the potential for effects on dominance, overlooking and privacy in the proposal means any adverse effects are at an acceptable level outside the site. Much of this is a result of locating the taller built elements of Building C in the depression towards the centre of the site and in the design detail.

[170] With respect to the shading effects of the over-height buildings, we have carefully

⁵⁴ Mr Lala, summary statement, dated 26 August 2019 at [2.10].

⁵⁵ Mr Lala, evidence-in-chief, at [5.7]-[5.11].



considered the predicted 30 minute loss of late afternoon sunlight on Mrs Smith's property at the summer solstice. While the shading is generated from a development in the recently re-zoned Local Centre and THAB Zones through the AUP process, we accept that it is appropriate to assess the shading effects by applying criteria used in other residential zones for a 'reasonable' level of sunlight hours.

Special or unusual characteristics of the site

[171] The development site is a large land holding, with part of it (recently) zoned THAB and separated from some of its neighbours by the Carrick Place legal road.

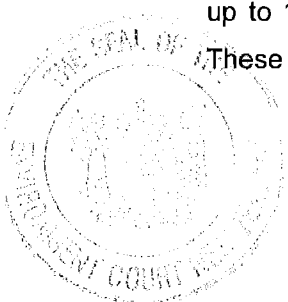
[172] There are also the physical characteristics of the site. As Mr de Graaf pointed out, Building C is located at a low point in a depression in the middle of the site. This means that the building appears to have a lesser height encroachment when viewed from higher elevations outside the boundary. He estimated the height encroachment to be between 4.5 to 5.5 metres rather than the 7.5m measured under the rolling height from the existing ground method used in the AUP. This means that when viewed from outside of the site, Building C will be less dominant than it would have been if the site had been level over its full extent. In addition, as we have noted elsewhere in this decision the late changes made to its roof form mean that Building C will have a visually lighter appearance, and be better integrated with the roof forms of the other three buildings on the site.

Characteristics of the development

[173] The development has two major road frontages in Dominion and Valley Roads and its orientation and design reflects these. Many of the characteristics of the development fronting Dominion Road and the comparatively small increase in height of Buildings A and B accord with the streetscape and special character of the Special Character Area (and is discussed in the section of the decision on the Special Character Areas). Building C is set well back from the Special Character Area, located at a low point in a depression as already referred to therefore reducing its viewed height from higher elevations in residential properties and the surrounding streets.

Effects of all infringements considered together

[174] The infringements of height for Buildings A and D involve small areas, with Building A up to 1.5m for the apex of the roof setback from Dominion Road and Building D 400mm. These infringements are not such as to add to the matters we have considered for the height



of Building C.

Objectives and policies

[175] Mr Lala considered that the building heights proposed support an efficient use of land (Policy 11.3(13)(a)), supported public transport (given the increased intensity of residential use) and would contribute to centre vitality and vibrancy (Policy 11.3(13)(b)), and would not compromise the centres hierarchy of the AUP (Policy 11.3(13)(d)). We accept that evidence.

[176] We are satisfied from the evidence given by the landscape and urban design witnesses that the attention paid to reducing the potential for effects on dominance, overlooking and privacy means that the proposal will maintain the amenity values of residential zones in accordance with Policy 11.3(8). We accept that there is no absolute privacy in an urban setting, and that the measures in the proposal designed to protect privacy are a reasonable response. The size and depth of the site, along with its topography, has assisted with accommodating the built proposal without significant adverse effects on adjacent residential zones (Policy 11.3(13)(c)). We find that much of this is a result of taking advantage of the depression in the site for the location of the taller Building C towards the centre of the site and in the design detail.

[177] In terms of the specific Objective H11.2(8) for the Local Centre Zone we find that the height of the buildings and particularly Building C, as designed, will not detract from the attractiveness of the centre as a place to live, work and visit.

Conclusion

[178] After considering all the matters of discretion and relevant objectives and policies and assessment criteria, we are satisfied that the building heights now proposed can be approved.

New Buildings in the Local Centre Zone (H11.4.1(A44))

[179] A long list of matters of discretion are included in H11.8.1(4) which deals with new buildings in the Local Centre Zone. Rather than repeating them, we focus on those in contention. They are:

- (a) the design and appearance of buildings in so far as it affects the existing and future amenity values of public streets and spaces used by significant numbers of people. This includes:
 - (i) the contribution that such buildings make to the attractiveness pleasantness (*sic*) and enclosure of the public space;



- (ii) the maintenance or enhancement of amenity for pedestrians using the public space or street;
- (iii) the provision of convenient and direct access between the street and building for people of all ages and abilities;
- ...
- (g) the positive effects that landscaping, including required landscaping, on sites adjoining public spaces is able to contribute to the amenity values of the people using or passing through the public space;
- ...
- (i) all the above matters to be assessed having regard to the outcomes set out in this Plan and the functional requirements of the activities that the buildings are intended to accommodate.

[180] The matters of discretion particularly concern the public realm. The reference to amenity values is to effects on people using public streets and spaces and not to residential neighbours.

[181] Specific assessment criteria of relevance (H11.8.2(4)) are Policies H11.2(3) (a) and (b), 11.3(8) and 11.3(13) and we set these out earlier.

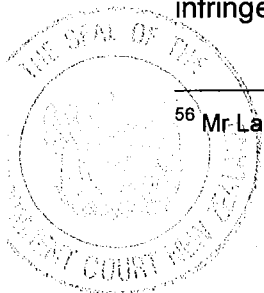
[182] The urban design, landscape and planning evidence identifies the design of the proposal will add to the amenity values of public streets and spaces used by significant numbers of people. That includes the positive effects of the required landscaping on the amenity values of people using or passing through public space. We accept that evidence.

[183] After considering the matters of discretion and relevant objectives and policies and assessment criteria related to the new buildings and their effects, we are satisfied that the new buildings can be approved.

Other restricted discretionary activities in the Local Centre Zone

[184] There are exceedances of the Outlook Space Standard (H11.6.8), which has as its purpose to ensure a reasonable standard of visual privacy between habitable rooms of different buildings on the same or adjacent sites and manage visual dominance effects within a site by ensuring that habitable rooms have an outlook and sense of space. The degree to which several of the units infringe the provisions of the standard for bedrooms and living areas is set out in Mr Lala's summary statement dated 26 August 2019.⁵⁶ Both planners considered the development provides a reasonable level of amenity for the adjoining business zoned sites consistent with Policy H11.3(2) in managing reverse sensitivity effects where these infringements occur and that the infringements do not affect adjoining or adjacent residential

⁵⁶ Mr Lala, Summary Statement, dated 26 August 2019 at [2.2(a)].



sites.⁵⁷

[185] There are also infringements of the Minimum Dwelling Size Standard (H11.6.9) for two units as set out in Mr Lala's summary statement.⁵⁸ However, we are unclear as to the final tally and degree of infringement of the minimum dwelling size standard⁵⁹ following the additional redesign that occurred during the hearing. As said earlier, counsel advised that the two fifth floor three-bedroom units have had to be reduced in size to two two-bedroom units.

[186] No party specifically challenged these infringements or further infringements arising from the additional redesign during the hearing. As these were not issues of concern for anyone including the Council, who we can legitimately assume would raise it as a barrier to the consents if it was, we do not take these infringements further.

THAB Zone

[187] For the THAB Zone, restricted discretionary consent is required for dwellings (H6.4.1(A3)), new buildings (A35),⁶⁰ infringement of Standard H6.6.9 Yards, and the use of the Alternative Height in Relation to Boundary Standard (H6.6.7(1) and (2)). Part of Building D and a small portion of Building C extend into this zone.

[188] Relevant objectives of the THAB zone that provide context are:

H6.2

- (1) Land adjacent to centres and near the public transport network is efficiently used to provide high-density urban living that increases housing capacity and choice and access to centres and public transport.
- (2) Development is in keeping with the areas planning urban built character of predominantly five, six or seven storey buildings in identified areas, in a variety of forms.
- (3) Development provides quality on-site residential amenity for residents and the street.

[189] Relevant policies of the THAB zone to implement the objectives that provide context (and some of which are referred to in specific assessment criteria) are (H6.3):

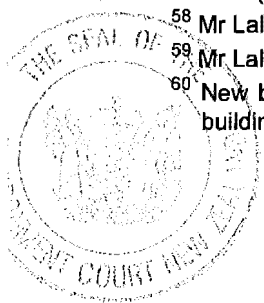
- (1) Enable a variety of housing types at high densities including terrace housing and apartments and integrated residential development such as retirement villages.
- (2) Require the height, bulk, form and appearance of development and the provision of setbacks and landscaped areas to achieve a high density built character of predominantly five, six or seven storey buildings in identified areas, in a variety of forms.
- (3) Encourage development to achieve attractive and safe streets and public open spaces

⁵⁷ JWS (planning), dated 9 September 2019.

⁵⁸ Mr Lala, Summary Statement, dated 26 August 2019 at [2.2(b)].

⁵⁹ Mr Lala, Summary Statement, dated 26 August 2019 at [2.2(b)].

⁶⁰ New buildings have the same activity status and standards as applies to the land use activity that the new building is designed to accommodate.



including by:

- (a) providing for passive surveillance
- (b) optimising front yard landscaping
- (c) ...
- (4) In identified locations, adjacent to centres, enable greater building height through the application of the Height Variation Control where the additional development potential enabled:
 - (a) provides an appropriate transition in building scale from the adjoining higher density business zone to neighbouring lower intensity residential zones; and
 - (b) supports public transport, social infrastructure and the vitality of the adjoining centre.
- (5) Manage the height and bulk of development to maintain daylight access and a reasonable standard of privacy, and to minimise visual dominance effects to adjoining sites and developments.
- (6) Require accommodation to be designed to meet the day to day needs of residents by:
 - (a) providing privacy and outlook; and
 - (b) providing access to daylight and sunlight, and providing the amenities necessary for those residents.
- (7) Encourage accommodation to have useable and accessible outdoor living space.
- (8) Restrict the maximum impervious area on a site in order to manage the amount of stormwater runoff generated by a development, and ensure that adverse effects on water quality, quantity and amenity values are avoided or mitigated.
- (9) ...
- (10) Recognise the functional and operational requirements of activities and development.

Dwellings (H6.4.1(A3))

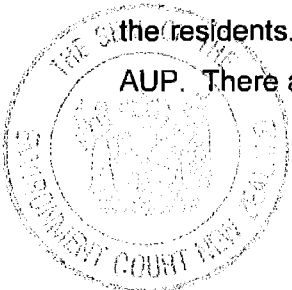
[190] Dwellings H6.4.1(A3) contain the following matters of discretion H6.8.1.2:

H6.8.1(2)

- (a) the effects on the neighbourhood character, residential amenity, safety and the surrounding residential area from all of the following:
 - (i) building intensity, scale, location, form and appearance:
 - (ii) traffic; and
 - (iii) design of parking and access.

[191] The specific assessment criteria for dwellings refer to Policies 6.3(1) – 6.3(8). These policies are encouraging of a well-designed high density built character, with height and bulk maintaining daylight access and a reasonable standard of privacy and minimising visual dominance effects on adjoining sites and development. We are satisfied that the design intention of the proposal meets the THAB policies.

[192] We accept that the development will change the character of the neighbourhood and surrounding residential area and will impact, to a degree, on the amenity currently enjoyed by the residents. That change, however, reflects the nature of the zoning of the site under the AUP. There are benefits from the proposal, as acknowledged in the urban design, landscape



and planning evidence along with points fairly made by members of the community and landowners that appeared before us.

[193] We conclude that the proposal is not only consistent with the policies referred to in the specific assessment criteria in the AUP for the THAB Zone, but it is also consistent with the objectives that those policies implement.

Alternative Height in relation to Boundary Standard H6.4.1 (A34)

[194] New buildings that do not comply with Standard H6.6.6, but do comply with Standard H6.6.7 Alternative height in relation to boundary Standard H6.4.1 (A34) H6.6.7(1) and (2)), set out the matters of discretion in H6.8.1(5):

- (a) visual dominance effects;
- (b) attractiveness and safety of the street; and
- (c) overlooking and privacy.

[195] Specific assessment criteria H6.8.2(4) elaborate on the above matters of discretion (none of which refer to specific objectives or policies). They are:

Visual dominance

- (a) The extent to which buildings as viewed from the side or rear boundaries of adjoining residential sites or developments are designed to reduce visual dominance effects, taking into account:
 - (i) the planned urban built character of the zone;
 - (ii) the location, orientation and design of development; and
 - (iii) the physical characteristics of the site and the neighbouring site.

Attractiveness and safety of the street

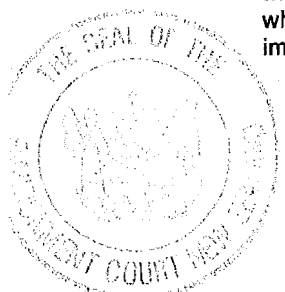
- (b) The extent to which those parts of buildings located closest to the front boundary achieve attractive and safe streets by:
 - (i) providing doors, windows and balconies facing the street;
 - (ii) optimising front yard landscaping;
 - (iii) providing safe pedestrian access to buildings from the street;

...
Overlooking and privacy

- (c) The extent to which direct overlooking of a neighbour's habitable room windows and outdoor living space is minimised to maintain a reasonable standard of privacy, including through the design and location of habitable room windows, balconies or terraces, setbacks, or screening.

[196] The purpose of Standard H6.6.7 is:

...to enable the efficient use of the site by providing design flexibility at the upper floors of a building, while maintaining a reasonable level of daylight access and reducing visual dominance effects to immediate neighbours.



[197] We are satisfied with what we can abstract from the urban design and landscape evidence that the infringement achieves the purpose of the Standard by maintaining a reasonable level of daylight access and by reducing visual dominance effects to immediate neighbours and that overlooking and privacy has been adequately catered for. This has been achieved to a large extent through the provision of generous laneways between each of the buildings, limiting the height of Building D to three levels and through the setbacks provided in the roofline of Building C. In addition, the package of measures to protect privacy, including landscaping, building setbacks, apartment orientation and the use of louvres on the windows of the buildings, are a suitable response to a level of privacy that is reasonable in an urban setting.

THAB Zone – Side yard infringement H6.6.9(1)

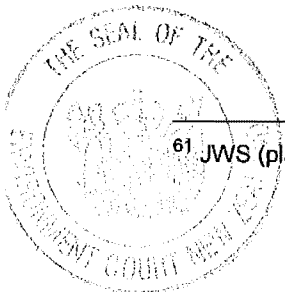
[198] There is an infringement of the side yard standard between the Local Centre Zone and the THAB zone at 9-15 Carrick Place (the retirement village). The AUP requires a 3m yard on this boundary. The proposed basement podium wall is located 1.5m from this boundary and is 1.5m above existing ground level.

[199] In relation to the purpose of a yard (H6.6.9), of relevance is 'to maintain a reasonable standard of residential amenity for adjoining sites'. Specific assessment criteria H6.8.2(9) refer to Policies H6.3(1), (2), (4) and (5).

[200] The planners⁶¹ gave evidence that the proposed building is at an appropriate setback distance for a landscape buffer for the adjoining retirement units at 9-15 Carrick Place, with appropriate landscape planting for a landscape buffer and visual screening of this part of the podium when viewed from the retirement units. They referred particularly to proposed condition 23 on finalised landscape design drawings, specifications and maintenance requirements.

[201] We accept the evidence that the development, with its setback distance and landscape buffer and planting, will maintain a reasonable standard of residential amenity for the adjoining retirement units in line with the purpose of a yard. The policies referred to in the specific assessment criteria relate to effects considered as part of residential amenity and we need not cover them separately.

⁶¹ JWS (planning), dated 9 September 2019.



Special Character Overlay issues

[202] In this section we deal with Issue 2, namely should the Universal Building be demolished, and if so, do the proposed conditions mitigate any adverse effects caused by its loss including in relation to the timing of its demolition and the construction of the proposed development? To answer it, we need to analyse the evidence about the special character overlay in the context of the relevant provisions of the AUP.

[203] As outlined above, part of the site proposed for the development lies within the Special Character Overlay of the AUP,⁶² which extends along both sides of Dominion Road. The Special Character Area Statement Schedule (15.1.6.4 of the AUP) contains a map showing the location of sites with character-defining and character-supporting buildings within the Eden Valley Special Character Area,⁶³ and a summary of special character values under the headings "historical" and "physical and visual qualities".⁶⁴ We have identified that the site contains two character-supporting buildings – the Universal Building and a building at 214-216 Dominion Road.

[204] Restricted discretionary activity consents are required:

- (a) for the demolition of the two character-supporting buildings (D18.4.2 (A18)) of the AUP and the other buildings in the site of the development because they are within the Special Character Overlay (D18.4.2 (A26) of the AUP));⁶⁵ and
- (b) for the construction of new buildings within the Special Character Overlay (D18.4.2(A20) and (A27) of the AUP).

[205] The matters of discretion are set out below, with D18.8.1.2(1) applying to demolition and both D18.8.1.2(1) and (2) applying to new buildings:

D18.8.1.2. Special Character Business Areas

- (1) For all restricted discretionary activities:
 - (a) the effects of the activity on the streetscape and special character context as outlined in the special character area statement;⁶⁶
 - (b) the integrity of the building in its current state, having regard to its architectural form and style and the authenticity of its component parts as well as its contribution to the streetscape character;

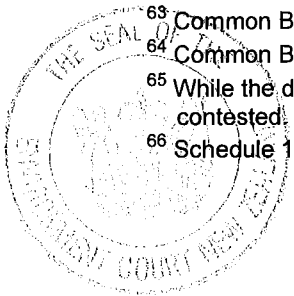
⁶² Common Bundle, at page 18.

⁶³ Common Bundle, at page 481.

⁶⁴ Common Bundle, at pages 482-483.

⁶⁵ While the demolition of other buildings (A26) also requires restricted discretionary activity consent, this was not contested.

⁶⁶ Schedule 15.1.6.4 Special Character Areas Overlay – Business: Eden Valley.



- (c) the building's relationship to other adjacent buildings, and if it contributes to a group in such a way that its demolition, alteration or addition would result in the loss of a character value attributable to the group; and
 - (d) the condition of the building, and the practicality and cost of any necessary rehabilitation, and the ability to achieve reasonable amenity for occupants and reasonable compliance with any requirement of the Building Act 2004.
- (2) for an infringement of any of the standards on the zone in which the building is located:
- (a) the effects of the infringement of the standard on the streetscape and special character context as outlined in the special character area statement.

Note 1

Where more than one standard is infringed, the effects of all infringements on the streetscape and special character context as outlined in the special character area statement will be considered together.

[206] There are also assessment criteria in D18.8.2.2, with several referring to Policies D18.3(8) to (14) and containing several other broad factors. We do not need to recite all the specific assessment criteria but consider them as necessary to address particular issues. We do, however, set out Policies 18.3(8) to (12), and (14):

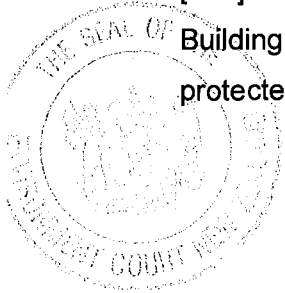
Policies

D18.3

...

- (8) Require all development and redevelopment to have regard and respond positively to the identified special character values and context of the area as identified in the special character area statement.
- (9) Identify individual buildings that contribute to the identified special character according to the following descriptions:
 - (a) character defining – makes a considerable contribution to the character of the area because of historical, physical and visual qualities; and
 - (b) character supporting – makes a moderate contribution to the character of the area. The building should contribute to the appearance, quality, and identify of the area and should be consistent with the values of character-defining places.
- (10) Require any application for demolition or removal of a character-defining and character-supporting building in a Special Character Area – Business to, on its own or cumulatively as a result of other demolition, demonstrate that the loss of the building:
 - (a) would not erode the identified special character values of the area; and
 - (b) would not disrupt the cohesiveness of the streetscape and wider special character area, including links with scheduled historic heritage places.
- (11) Discourage the removal or substantial demolition of buildings that contribute to the continuity or coherence of the special character area as identified in the special character area statement.
- (12) Require new buildings ... or infrastructure, which are within the overlay but are not character defining or character supporting buildings, to maintain the integrity of the context of the area by providing quality design, materials, colour and decoration which respects and enhances the built form and streetscape of the area.
- (13) ...
- (14) Encourage the ongoing use and maintenance of buildings in special character areas.

[207] The main issue under this topic was to do with the demolition of the Universal Building, which was opposed by Ms Modrow. Her position was that every character-protected building (we assume she was referring to the character-supporting buildings)



should be protected and not demolished as, once gone it was gone forever. She also relied on the Independent Commissioners' findings about built heritage and the Special Character Overlay, and their conclusion that the demolition of the Universal Building was a significant unmitigated adverse effect justifying (with other matters) their decision to decline the application.

[208] Before us, Panuku submitted, and the Council agreed, that there is evidence to support the demolition of the Universal Building because of its limited contribution to the Special Character Area and the positive effects the proposal will have on the special character of the area once it has been completed.

[209] The Special Character Overlay also applies to the new buildings proposed to be constructed on the site. There was no real challenge to the evidence by Panuku supported by the Council that the restricted discretionary matters can be met in respect of them, however for the sake of completeness we address the evidence about this below.

[210] The built heritage witnesses who provided evidence on this topic were Ms Rebecca Fogel (Team Leader Built Heritage Implementation) for the Council and Mr John Brown (an independent expert) for Panuku.

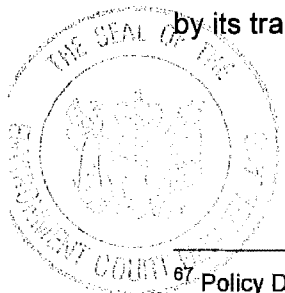
[211] The discussion must start by identifying the special character values and context of the special character area described in the special character area statement.⁶⁷ We then deal with the evidence in relation to the proposed demolition of the two character supporting buildings and the new buildings, before undertaking our analysis of both.

The Special Character Area and special character values

[212] Ms Fogel⁶⁸ described Dominion Road as one of Auckland's key traditional town centres that was developed along the electric tram routes in the early 20th century, with the main period of development for Eden Valley being in the 1900s to 1920s. She said that the character statement in the AUP is clear that Dominion Road has a strong, cohesive character defined by its traditional buildings.

⁶⁷ Policy D18.3(8).

⁶⁸ Ms Fogel, evidence-in-chief, at [7.2]-[7.5].



[213] Ms Fogel agreed with Mr Brown's assessment that the context⁶⁹ for the Eden Valley Special Character Area exhibits the following characteristics:

- (a) a prevalence of one-to-three- storey but predominantly two-storey commercial and residential developments dated from the late 1800s or early 1900s to the early 1920s;
- (b) buildings constructed in a range of classically derived architectural styles popular during that period and exhibiting the use of traditional building materials such as brick and tile or plastered finishes;
- (c) buildings constructed to the street edge with a largely consistent sense of enclosure arising from construction to the full width of the subdivision, punctuated by narrow access to rear lots;
- (d) buildings demonstrating a high degree of vertical and horizontal modulation through clear vertical division of bays and clear horizontal division of floor levels and parapets; and
- (e) street frontages exhibiting a strong degree of articulation arising from the use of applied ornate details with deep relief and shadow.

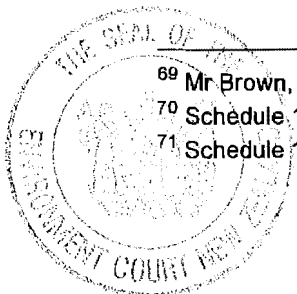
[214] The character-defining and supporting buildings which make an important contribution to the area are shown on the map.⁷⁰ These include the Auckland Meat Company Building (219-225 Dominion Road), the Worata Building (277-231 Dominion Road) and the Bridgman Building (234 Dominion Road) located on three of the four corners of the Dominion Road/Valley Road intersection and examples of 1910s to 1920s commercial main street buildings.⁷¹

[215] Against this context we set out the evidence we received about the effects of demolishing the two character-supporting buildings subject to the Special Character Overlay. We then set out the evidence we received about the proposed development and how the new buildings relate or interact with the special character values identified in the AUP.

⁶⁹ Mr Brown, evidence-in-chief, at [4.3]-[4.4].

⁷⁰ Schedule 15.1.6.4 Special Character Areas Overlay – Business: Eden Valley.

⁷¹ Schedule 15.1.6.4.3 Description of physical and visual qualities.



Can the proposed demolition of the character-supporting buildings meet the AUP provisions?

The building at 214-216 Dominion Road

[216] Notwithstanding the description of “character-supporting” in Policy D18.3(9)(b) outlined above, Mr Brown gave evidence⁷² that the character-supporting building at 214-216 Dominion Road makes a low contribution to the Special Character Area, largely because of the significant alterations made to its façade over time. He said the redevelopment as a post-war “modern” commercial building has resulted in it now lacking the architectural detail and articulation that appears in the original drawings for the early 20th century building.

[217] Mr Brown’s opinion was that the demolition of this building would not generate adverse effects in terms of the special character values set out in the Special Character Overlay. Ms Fogel did not disagree with Mr Brown’s opinion and we note that the Independent Hearing Commissioners at the Council hearing were also of this view.⁷³

The Universal Building

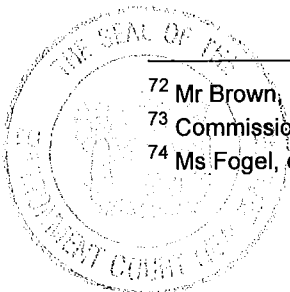
[218] The Universal Building was originally built as a single-storey garage in 1932, with its present appearance dating from 1949 after it was remodelled by A.C Jefferies, a notable architect at the time.⁷⁴ Ms Fogel’s evidence was that, even though the Universal Building is a modest building post-dating the key period of significance (1900 -1920s), it is still an authentic building reflecting the growth of the Dominion Road corridor as a “tram suburb”. She said that the mass, fenestration and materials comprising the Universal Building are important qualities that are relevant to the special character of the area. Her view was that the Universal Building complements the group of character-defining buildings adjacent to it.

[219] Ms Fogel’s opinion was that, while regrettable, the loss of the Universal Building would be adequately mitigated by providing an appropriately scaled new development. She accepted that the size and positioning of the Universal Building made it awkward to incorporate into the proposed development, and if this occurred, could result in a worse design outcome in terms of “streetscape”. She considered that the requirement to record photos and drawings (archival recording) prior to demolition (proposed condition 20) would ensure that some knowledge of the building would be retained for future generations, and would go some way towards mitigating its loss. Also, in her view the requirement to incorporate interpretive

⁷² Mr Brown, evidence-in-chief, at [4.5].

⁷³ Commissioners’ decision, dated 10 August 2018 at [210].

⁷⁴ Ms Fogel, evidence-in-chief, at [9.1]-[9.5].



signage (proposed condition 21) would ensure that the history of the building would not be entirely forgotten.

[220] Mr Brown's evidence⁷⁵ was that the Universal Building's character-supporting contribution to the Special Character Overlay arises from its width, the materials used in its construction (it is a plaster-clad masonry building) and its general scale (it is a two-storey building). However, in his opinion, the integrity of the building has been reduced by the modifications made to it, which include a 1949 façade of a different architectural style. As a result, Mr Brown's opinion was that little of its original architectural character of the building is left, particularly as it is expressed to the streetscape, however he identified two features that provide some architectural interest as it presents to the street - the applied lettering and the negative parapet detail. Mr Brown's opinion was that the Universal Building does not share the ornate architectural qualities of key late Victorian and Edwardian commercial buildings along Dominion Road that define the architectural values of the Special Character Overlay.

[221] Mr Brown's opinion was that the Universal Building bears no close relationship, in age or spatially, to the character-defining buildings near to it, which are of a different architectural scale, notwithstanding it having a similar façade "rhythm" to them.⁷⁶ He contrasted the Universal Building with the qualities of the nearby character-defining buildings – their high integrity, variety of materials, finely grained nature and detailed neo-classical and Italianate architectural styles. In his opinion, the removal of the Universal Building would not affect the coherence of the character-defining buildings nearby, and would not erode the identified special character values associated with late 1800s to 1920s commercial development. Unlike Ms Fogel, he considered that the northern gateway to the Special Character Overlay area is demarcated by character-defining buildings at the intersection of Dominion Road, Walters Road and Valley Road which are outside the site for the proposed development.

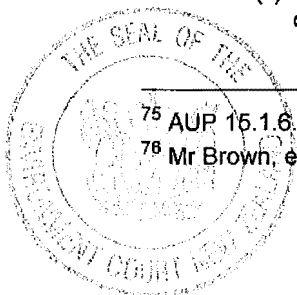
[222] In addition to the restricted discretionary matter "the condition of the building, and the practicality and cost of any necessary rehabilitation ... (D18.8.1.2(1)(d))" there is assessment

criteria D18.8.2.2(1)(a), which requires an assessment of:

- ...
- (v) whether the costs of restoration and repair are significantly greater in comparison to the costs of a new building of similar size and quality.

⁷⁵ AUP 15.1.6.4 Special Character Areas Overlay – Business: Eden Valley.

⁷⁶ Mr Brown, evidence-in-chief, at [5.36].



[223] Mr de Graaf undertook a quantitative analysis⁷⁷ and considered the potential costs of restoring and repairing the Universal Building, or replacing it with a like-for-like replacement. His evidence (on which both built heritage experts relied) was that the cost of restoration would be considerably higher, and conservatively of the order of 20% or \$200,000 more than replacing it with a building of the same sort.

[224] Mr Brown also referred to potential restoration and repair costs, but his view was that it would be difficult to rehabilitate the 1932 single-storey garage, which he said was modified "beyond recognition".

[225] In closing,⁷⁸ counsel for Panuku submitted there would be additional costs, associated with retaining the Universal Building, including lost yield because of the reduced number of residential units (estimated at 1-5 units), the loss of developable land (26m²-39m²) and the likely increased complexity of construction. Mr Lala (the planner for Panuku) considered these broader costs would need to be considered under D18.8.1.2 relating to "the condition of any building, and the practicability and cost of any necessary rehabilitation".⁷⁹

[226] Given Ms Fogel's reliance on the implementation of the proposal to justify the demolition of the Universal Building, the Court asked what conditions would guard against an outcome that resulted in the Universal Building being demolished as a stand-alone action, without the full proposed redevelopment of the site, as anticipated, being undertaken. The final version of the proposed set of conditions contained proposed condition 21A, which Panuku contended met this difficulty by specifying that the demolition of the Universal Building cannot occur until building consents for Buildings A and B have been issued.⁸⁰ It provides:

21A Demolition of the Universal Building shall not take place until building consent applications for all of Buildings A and B have been approved. The purpose of this condition is to ensure these character buildings are not demolished without sufficient certainty that the consented replacement buildings will be constructed shortly after demolition of the Universal Buildings and in accordance with the design approved under this resource consent.

Can the proposed new buildings meet the AUP provisions?

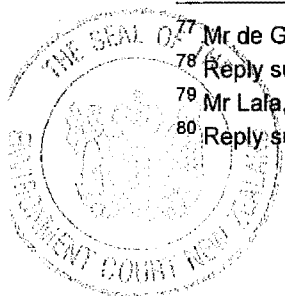
[227] Ms Fogel's evidence was that the Dominion Road frontage is the most important part of the design from a special character perspective, as the development is located at a prominent site at the 'gateway' to the Eden Valley area with a strong collection of character-

⁷⁷ Mr de Graaf, evidence-in-chief, Table 1.

⁷⁸ Reply submissions on behalf of Panuku, dated 24 September 2019 at [6.26].

⁷⁹ Mr Lala, evidence-in-chief, Attachment B – Consent requirements and Assessment Criteria.

⁸⁰ Reply submissions on behalf of Panuku, dated 24 September 2019 at [2.16(a)].



defining buildings immediately adjacent to the site. While she considered it to be a sensitive historic environment, she acknowledged the area is not a "static museum piece"⁸¹ and that there are benefits from the redesigned proposal, not just for the site but for other parts of the Special Character Overlay area. She approved of the proposed architectural design of the new buildings and proposed conditions of consent (including proposed conditions 17 and 18 which require further information on final materials and developed design details selection to be certified by the Council at a later date). Ms Fogel concluded that the proposal, as now redesigned, will maintain and enhance the special character values of the Eden Valley area, with the adverse effects of subdivision, use and development on the identified special character values of the areas being avoided, remedied or mitigated (D18.2 Objectives (1) and (3)).

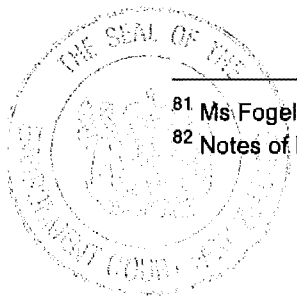
[228] Ms Fogel noted that, in terms of height, the top level of Building B is set back behind the street wall and is designed in a lightweight recessive manner which she considered would avoid visual dominance.⁸² She was also of the view that the height infringement of Building C would not have an appreciable effect on Dominion Road because of its placement set well back from the frontage of, and its minimal visibility from, Dominion Road. She referred to the further revisions (made by Mr de Graaf during the hearing) to the top level of Building C to flatten the roof form and align the architectural treatment of it with Buildings A and B. She considered this would further reduce any effects on the special character values of Dominion Road.

[229] In relation to the design of the new buildings fronting on to Valley Road, Ms Fogel considered that the proposed height and architectural treatment of them, including, specifically, more openings, a simpler roof form and especially the height sloping down towards the adjacent residential properties, have improved this frontage. In her view, the new buildings were, from a design perspective, less disruptive and provided more neutral elements to the streetscape.

[230] Mr Brown's opinion was that the designs of Buildings A and B employ a range of methods to respond positively to the Special Character Area, including division of the façade elements, the façade elements themselves and the materials used. Mr Brown concluded that the presence of Buildings C and D would have a minor adverse effect on the Special Character Overlay. Overall, Mr Brown's opinion was that the new design addressed the Commissioners'

⁸¹ Ms Fogel, evidence-in-chief, at [8.3].

⁸² Notes of Evidence, at page 500.



concerns. He concluded that the new design and proposed conditions (including recording and some interpretive material), adequately mitigated any potentially adverse effects of the new building on special character values.⁸³

[231] In terms of the AUP, Mr Brown's opinion was that the relevant policies in D18.3(8) to (14) were satisfactorily addressed by the proposal as a whole.⁸⁴ He considered that the updated design responded positively to the values of the Special Character Area, as required by Policy 18.3(8).⁸⁵ Also, his opinion was that the proposal satisfied Policy D18.3(10a and 10b).⁸⁶ The removal of the character-supporting Universal Building would not affect the group coherence of nearby character defining buildings, or erode the identified special character values associated with late 1800s to 1920s commercial development as stated in the Special Character Values Statement. Additionally, he considered the updated design provided adequate mitigation for the loss of the Universal Building, addressing Policy D18.3(12), which requires new buildings to maintain the integrity of the context of the area by providing quality design, materials, colour and decoration that respects and enhances the built form and streetscape of the area.

Findings

[232] Unlike the Commissioners, we were presented with a re-design of the proposed development paying greater attention to its special character values. We were provided with more evidence on the topic, and a more robust set of conditions designed to counteract the potential for adverse effects on the special character values of the area. In short, the case presented to us in relation to this topic was considerably different from that which had been presented to the Commissioners. Both Mr Brown and Ms Fogel agreed that the proposal including the demolition of the Universal Building would maintain the identified special character values of the Eden Valley area. In addition, both considered that any adverse special character effects would be adequately mitigated by the design and proposed conditions of consent.

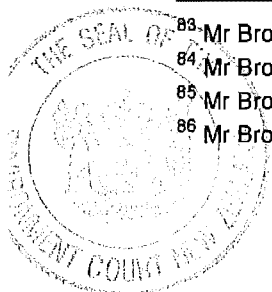
[233] We accept that the condition now agreed between Panuku and the Council for the timing of the demolition of the Universal Building goes some way towards trying to lock in the development as a prerequisite to demolition. We also accept that it does not provide complete

⁸³ Mr Brown, evidence-in-chief at [6.10-7.3].

⁸⁴ Mr Brown, evidence-in-chief at [4.6] – [4.8], [5.13], [5.28], [5.33]; rebuttal at [2.3].

⁸⁵ Mr Brown, evidence-in-chief at [5.31], [5.32].

⁸⁶ Mr Brown, evidence-in-chief at [5.33].



certainty that, once the building permits for the consented development are obtained, the development will proceed in the form relied on by Ms Fogel in reaching her opinion. This is because a consent is permissive, and there is nothing to stop an application for a variation or, indeed, a new (and different) proposal and required applications for a development being lodged with the Council.

Construction noise and vibration issues

Overview

[234] In this section we deal with Issue 3, namely are any adverse construction noise and vibration effects on s 274 parties' properties able to be adequately avoided, remedied or mitigated in terms of the relevant objectives, policies and assessment criteria in the AUP? To answer it, we need to analyse the evidence about the noise and vibration effects predicted to occur during construction, and how they relate to the relevant AUP provisions.

[235] When Mt Eden erupted some millions of years ago, lava flowed from the volcano and deposited a layer of very hard basalt rock across the site. This rock, which underlies overburden material, will need to be excavated using rock breakers and possibly blasting to form the building platform for the new development. A primary and legitimate concern of the s 274 parties was that they would have to endure highly annoying noise and vibration effects for many months while this excavation is being undertaken. This was a concern they had raised at the hearing before the Independent Commissioners.

[236] On the topic of construction noise and vibration, the Commissioners had before them evidence from two acoustic experts, Ms Siiri Wilkening for Panuku and Mr Peter Runcie for the Council. These experts also gave evidence before us. Mr Nicholas Speight (a geotechnical engineer) also assisted us to understand the volume of material (including rock) that would need to be excavated during construction.

[237] The Commissioners accepted the experts' evidence that the proposed construction activities could generally comply with the relevant construction noise and vibration criteria contained in the AUP. They did however note that rock breaking and blasting activities were predicted to exceed the performance criteria where they occurred in close proximity to neighbouring buildings and that the proposed rock breaking activities were predicted to exceed the cosmetic building damage criteria and the noise criteria at 15 Carrick Place (the retirement village), 109 and 111 Valley Road and 198 Dominion Road. We find the decision of the Commissioners confusing in its reference to noise and vibration 'criteria' when what appears



to be meant is compliance with 'standards' for permitted activity status for construction noise and vibration. Non-compliance with those standards is the reason for the need for a restricted discretionary activity consent.

[238] The Commissioners noted that the acoustic experts had identified the preparation of a Construction Noise and Vibration Management Plan (**CNVMP**) and its implementation as the primary mitigation and management measure to address the any adverse noise and vibration effects during the construction phase of the project. Their decision noted "the CNVMP is seen as a living document that will be expanded and updated as the project progresses, and work conditions become clearer".⁸⁷ Overall, the Commissioners agreed with Ms Wilkening and found that, subject to the imposition of conditions, construction noise and vibration effects would be minor.⁸⁸ We signal that we have reached a different view about the adequacy of what is proposed and the Commissioners' conclusion about this topic. We apprehend that we heard considerably more evidence about this topic than the Commissioners, but even if that is not the case, we do not agree that the proposal before the Commissioners enabled them to conclude that construction noise and vibration effects would be minor for the reasons we set out below.

[239] As well as the three versions of the proposed conditions we received during the hearing, we were given two versions of the draft CNVMP, an initial version dated 4 August 2019 (**CNVMP 1**) and an amended version dated 6 September 2019 that had been prepared by Panuku between the first and second hearing dates (**CNVMP 2**).

[240] We agree with the s 274 parties, who raised this as an issue, that the draft CNVMP and proposed conditions put to us in the evidence in chief for Panuku provided little certainty or comfort about potential exceedances of the relevant noise and vibration conditions during construction and raised issues about the use of the CNVMP to deal with some matters which might more properly have been required to be the subject of conditions. For this reason, we paid some attention to this topic during the hearing.

[241] Although trite to say so, the RMA requires that any adverse effects arising from a proposal are either avoided, remedied or mitigated and s 16 establishes a duty to avoid unreasonable noise. The approach we take to our analysis is to first set out the AUP and other relevant provisions (which is the framework for setting the noise and vibration limits),

⁸⁷ Commissioners' decision, dated 10 August 2018 at [309].

⁸⁸ Commissioners' decision, dated 10 August 2018 [307]-[311].



then we outline what is predicted in terms of effects, and then we evaluate aspects of the evidence including the measures proposed to avoid, remedy or mitigate them.

[242] We also record that, although by necessity this topic is one which requires considerable input from acoustic experts, their evidence is not the only evidence relevant to the topic. The evidence of those in the neighbourhood is also relevant. We signal our view that a more fine-grained approach to the topic is likely to be required in the future for proposed developments in intensified urban areas where there is an interface with residential and commercial activities that are likely to be impacted by adverse construction noise and vibration effects. While described as temporary, construction noise and vibration effects can only be regarded as such by reference to the fact that, at some point, they will cease. We address this and the general observations we make about the use of CNVMPs as a tool to assist in meeting outcomes set in conditions in our conclusion.

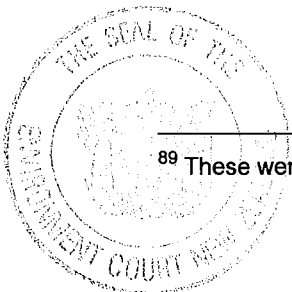
The framework for assessing noise and vibration

AUP provisions

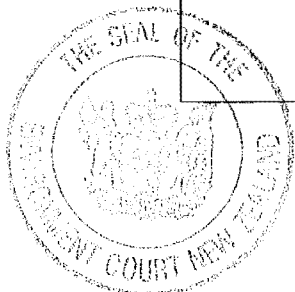
[243] A restricted discretionary activity consent is required for exceedance of internal sound level standards (E25.6.10). No party raised any concern in relation to this aspect of the development and we need not consider it further.

[244] The following AUP provisions are relevant to the restricted discretionary activity consents required for construction noise level exceedances for activities sensitive to noise (E25.6.27) and construction and demolition vibration limit exceedances (E25.6.30) arising from the development.⁸⁹

⁸⁹ These were identified by the planners in one of the flowcharts presented to us at the resumed hearing.



Matters of Discretion	
E25.8.1(1)	When assessing a restricted discretionary resource consent application, the Council's discretion is restricted to the effects on adjacent land uses and measures to avoid remedy or mitigate the adverse effects of noise
Assessment Criteria	
E25.8.2(1)	<p>The Council will consider the relevant assessment criteria for restricted discretionary activities from the list below for noise and vibration:</p> <ul style="list-style-type: none"> (a) whether activities can be managed so that they do not generate unreasonable noise and vibration levels on adjacent land uses particularly activities sensitive to noise; (b) the extent to which the noise or vibration generated by the activity: <ul style="list-style-type: none"> (i) will occur at times when disturbance to sleep can be avoided or minimised; and (ii) will be compatible with activities occurring or allowed to occur in the surrounding area; and (iii) will be limited in duration, or frequency or by hours of operation; and (iv) will exceed the existing background noise and vibration levels in that environment and the reasonableness of the cumulative levels; and (v) can be carried out during daylight hours, such as road works and works on public footpaths; (c) the extent to which the effects on amenity generated by vibration from construction activity: <ul style="list-style-type: none"> ... i. will be mitigated by written advice of the activity to adjacent land uses prior to the activity commencing; and ii. can be mitigated by monitoring of structures to determine risk of damage to reduce occupant concern; and iii. can be shown to have been minimised by the appropriate assessment of alternative options; and iv. are reasonable taking into account the level of vibration and the duration of the activity (where levels of 10mm/s peak particle velocity may be tolerated only for very brief periods). (d) whether the measures to minimise the noise or vibration generated by the activity represent the best practicable option.
Relevant Objectives and Policies	
E25.2 (1) – (4)	<ul style="list-style-type: none"> (1) People are protected from unreasonable levels of noise and vibration. (2) The amenity values of residential zones are protected from unreasonable noise and vibration, particularly at night. (3) Existing and authorised activities and infrastructure, which by their nature produce high levels of noise, are appropriately protected from reverse sensitivity effects where it is reasonable to do so.



Relevant Objectives and Policies (continued)	
continued	(4) Construction activities that cannot meet noise and vibration standards are enabled while controlling duration, frequency and timing to manage adverse effects.
E25.3 (1) – (4) and (10)	<p>(1) to (4) are general noise and vibration policies</p> <p>Construction, demolition and maintenance activities:</p> <p>...</p> <p>(10) Avoid, remedy or mitigate the adverse effects of noise and vibration from construction, maintenance and demolition activities while having regard to:</p> <p>(a) the sensitivity of the receiving environment; and</p> <p>(b) the proposed duration and hours of operation of the activity; and</p> <p>(c) the practicability of complying with permitted noise and vibration standards.</p>

Construction noise limits

[245] The construction noise limits to be measured and/or assessed at occupied buildings sensitive to noise prescribed in the proposed conditions are as follows:

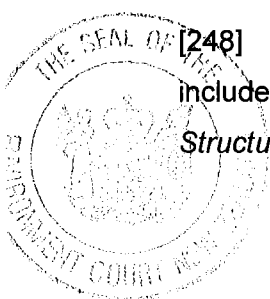
Time of Week	Time Period	Noise limit dBA	
		LAeq	LAm _{ax}
Weekdays	10.00pm -8.00am	45	70 (75)
	8.00am – 6.00pm	70	85
	6.00pm – 10.00pm	55	80
Saturdays	10.00pm – 8.00am	45	70
	8.00am – 1.00pm	70	85
	1.00pm – 10.00pm	55	80
Sundays and Public Holidays	7.30am - 6.00pm	55	80
	6.00pm – 7.30am	45	70

[246] Where effective acoustic screening cannot be provided, proposed condition 29C permits noise levels from works within 15m of receivers to exceed these limits by up to 5 dB (up to 75dBLAeq) for a total duration not exceeding 20 weeks.

[247] During rock breaking, condition 30 prescribes a noise limit of up to 85 dB LAeq when measured 1m from the façade of any occupied neighbouring building.

Construction vibration limits

[248] The cosmetic damage construction vibration guidelines provided for in the AUP and included in the conditions are based on the *German Industrial Standard DIN 4150-3 (1999) Structural Vibration – Part 3 Effects of Vibration on Structures*. Mr Runcie added that the



German Standard guidelines were significantly more stringent than the British Standard, which allows limits up to three times higher.⁹⁰

[249] The amenity vibration limits have been guided by a British Standard BS 5228-2:2009 "Code of practice for noise and vibration control of construction and open sites-Part 2: Vibration".

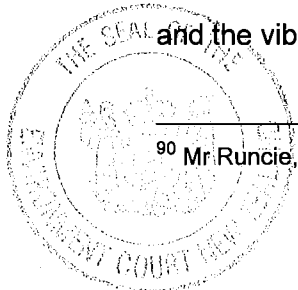
[250] Mr Runcie advised that rock-breaking and blasting are the only two construction activities expected to exceed the vibration limits set out in proposed condition 31 (the limits for construction generated vibration for cosmetic building damage) and proposed condition 32 (the vibration limits for the effects on people's amenity). This amenity condition sets a limit of 2mm/s peak particle velocity at defined locations within a building and is qualified with the words "as far as practicable".

[251] Mr Runcie advised also that exceedances of the cosmetic damage and amenity vibration condition limits are predicted to occur when works take place within 20m of a neighbouring property and that where no further physical mitigation measures are practicable (whatever that may mean), there must be regular communication with the surrounding receivers.

[252] Provision for this communication has been provided for under proposed conditions 32A to 32D. Proposed condition 32A requires the consent holder to request in writing the approval of identified adjoining property owners to undertake condition surveys of their buildings at the times listed in condition 32B, these being prior to construction commencing, during construction where vibration is measured to exceed the cosmetic building damage limits and/or in response to a reasonable claim of damage from construction vibration and at the completion of construction. This same condition defines the way in which the building condition survey is to be undertaken. If a survey demonstrates that damage has occurred as a result of construction activities, alternative construction methods are to be investigated and the consent holder is required to rectify the damage at the consent holder's cost.

[253] The CNVMP requires that where construction vibration from daytime works (8am to 6pm) is expected to exceed 2 mm/s PPV for more than 3 days, the occupants of all buildings within 100m must be advised of the works no less than 5 days prior to the works commencing and the vibration limit must not exceed 5mm/s. We are unclear as to what is required and the

⁹⁰ Mr Runcie, evidence-in-chief at [7.9].



basis for it. We direct further consideration of the approach later in this decision.

Predicted noise and vibration effects and how they are to be managed

[254] The excavation of rock from the site during construction is likely to be the noisiest construction effect and will also create the most vibration. Under this section we outline the evidence we heard about how long the excavation is anticipated to last and what the experience of it is likely to be with reference to similar developments. We then outline the measures proposed to mitigate any adverse noise and vibration effects, which are a combination of conditions setting requirements and a CNVMP condition addressing how those requirements are to be achieved.

Anticipated time for excavation

[255] Mr De Graaf advised that a key requirement of the design brief for the Panuku development was to avoid deep excavations in the rock so as to minimise the volume of rock excavation and the time required for this.⁹¹ As a result, the basement levels had been set as high as possible within the constraint of fitting the buildings within the AUP 13 metre height envelope for the site. This height limit constraint has been achieved (more or less) for Buildings A, B and D but not for Building C because of the extra floor proposed for this building.

[256] A key issue for us was to understand how long construction was anticipated to last, as it would be impossible to assess the adverse effects arising from it without understanding what was likely to be involved during the excavation process. One way of starting the analysis was to understand the volume of material that needed to be excavated on the site and the proportion of it that would be rock. Mr Kirkman helped us with this.

[257] While in his evidence-in-chief Mr Kirkman had stated that there would be about 15,000m³ of excavation,⁹² it emerged during the hearing that this figure had been considerably over-stated, with the correct volume being just under 9,000m³.⁹³ Having reviewed the site investigations data, Mr Speight said that he estimated about 20% of this total would be excavation in solid rock.⁹⁴

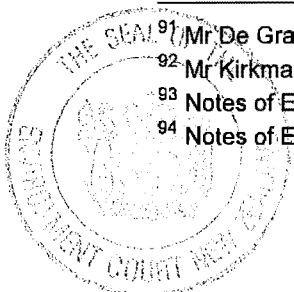
[258] When asked how long it might take to complete all of the excavation works,

⁹¹ Mr De Graaf, evidence-in-chief at [3.12].

⁹² Mr Kirkman, evidence-in-chief at [3.23].

⁹³ Notes of Evidence at page 278.

⁹⁴ Notes of Evidence at page 200.



Mr Speight said that this was difficult to assess, as it depended on the construction methodology employed by the contractor. He said that on a project he had been involved with, the excavation of about 4,000m³ took about 3 months, using a combination of heavy excavators and rock-breakers with no blasting. He said that he did not know the proportion of solid rock on that site.⁹⁵

[259] We note that section 2.2 of CNVMP 2 records that approximately 1,700m³ of rock excavation will be required, we presume based on about 20% of the overall excavation volume of 9,000m³. Given that the detention tanks have a volume of about 1,200m³, this would leave about 500m³ of rock to be excavated over the balance of the site. While this figure seems somewhat low, we find any slight increase not to be critical to our findings.

[260] Relying on the evidence of Mr Speight and Ms Wilkening, in his closing legal submission counsel for Panuku submitted that the excavation of the site could take around 6 to 7 months to complete, with rock breaking occurring for about half of this time as a worst-case scenario.⁹⁶

Experience from other sites

[261] To obtain an indication of the degree of adverse effects that could arise, at the Court's request Ms Wilkening obtained some statistics about a site which one of her colleagues had been involved with during 2015. Of the total 48,000m³ excavated on that site some 27,000m³ was solid basalt, which was removed using a combination of rock breaking and blasting. She said blasting had reduced the excavation period from an estimated 40 months (if only rock breaking had been used) to about 6 months.

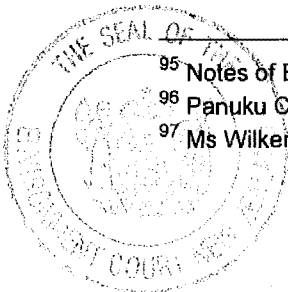
[262] We were told that this site was bordered on three sides by houses with a road on the fourth side. The nearest houses to the site were about 15 metres from the closest rock breaking and 25 metres from the closest drilling and blasting.

[263] Noise mitigation measures employed included the placement of a row of double stacked containers on three of the boundaries, delaying the demolition of an existing building until last (so that it served as a noise barrier) and surrounding the drilling and rock breaking activities with 3m-high plywood barriers.⁹⁷

⁹⁵ Notes of Evidence at page 197.

⁹⁶ Panuku Closing Submissions at [4.7] –[4.8].

⁹⁷ Ms Wilkening, copy of 22 August 2019 Marshall Day Internal Memo.



[264] While noise exceedances of up to 12dB over the specified limits had been predicted to occur at over 30 houses if there had been no mitigation, the mitigation measures which were adopted had limited exceedances to 4dB at 4 dwellings.

[265] In answer to a question from the Court about whether double height containers might be effective noise barriers on the Panuku site, Ms Wilkening said that she was unwilling to recommend containers because she did not know the way in which the contractor would undertake the construction operations. She agreed that if there was enough room, containers could be an option.

[266] While it provided background, we did not find this evidence substantially helpful, as it was too incomplete to be reliable. For example, there was no information about how many of the residents were home during the day during the construction period or any analysis of the complaints received. For these reasons we find that we cannot rely on this evidence to assist us with our evaluation of the effects of the rock excavation at the Panuku site.

Overview of the conditions and the CNVMP

[267] Under proposed condition 8 of the Version 3 condition set, it is CNVMP 2 that the consent holder must submit for certification by the Council.

[268] Ms Wilkening said that CNVMP 2 contained a series of recommended noise mitigation measures which included installing temporary barriers, limiting the time periods for undertaking rock breaking or blasting activities, pre and post construction building condition surveys and an active programme of communication with affected parties.

[269] During the hearing, the Court expressed concern that a number of the noise (and vibration) requirements in CNVMP 1 stated as being mandatory had not been included in Version 1 of the proposed conditions. We are pleased to note that Version 3 of the proposed conditions includes the following mandatory provisions replicated from CNVMP 2:

- proposed condition 30B requiring a 2m high acoustic barrier with a minimum surface weight/surface mass of 10 kilograms per square metre to be erected along the boundary of the site of 9-15 Carrick Place (the retirement village) prior to construction and to be in place until all construction is completed.
- proposed condition 32 E for noise and vibration monitoring to be undertaken at the first occurrence of rock breaking.



[270] Ms Wilkening agreed that the wording of proposed condition 30 of Version 3 should be consistent with that in proposed condition 29B, and that the words "sensitive to noise" should be inserted after "occupied buildings" in proposed condition 30. This amendment needs to be made as it does not yet appear in Version 3 of the proposed conditions.

[271] We also have a concern about the wording of condition 8(i) which refers to the CNVMP setting out 'details of the management and mitigation measures required to comply with the relevant noise and vibration criteria as set out in conditions 30, 31, 32'. The word 'criteria' is imprecise, misleading and unnecessary and the condition should be reworded to read:

Details of the management and mitigation measures required to comply with conditions 29A to 32E inclusive.

[272] We note that other conditions may need to be added and amended as a consequence of this decision and particularly the review of the approach to conditions we require.

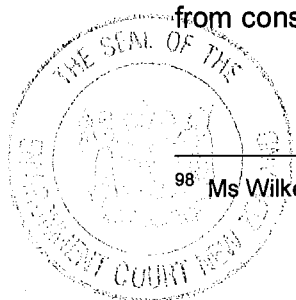
Noise and vibration monitoring and surveys

[273] Proposed condition 32E requires that noise and vibration monitoring is to be undertaken during the first occurrence of rock breaking, signature hole analysis (test blast), production blasting and any other activities that are predicted to exceed the noise or vibration limits. It then requires that the results of this monitoring are to be used to verify the appropriateness of the methodology to undertake the works within the noise and vibration limits prescribed in proposed conditions 29-32.

[274] Ms Wilkening's opinion was that the avoidance of cosmetic building damage (under AUP Rule E25.6.30) could be achieved if high-vibration works are undertaken no closer than 10 metres from neighbouring residential buildings nor more than 7 metres from commercial buildings.⁹⁸ If undertaken closer than these distances, she said that there would be the potential for cosmetic building damage such as plaster and paint cracking - although this should be repairable.

[275] In this context, proposed conditions 32A and 32B require building condition surveys to be undertaken prior to construction commencing, during construction if the measured vibration exceeds the cosmetic building limits and/or in response to any reasonable claim of damage from construction vibration and at the completion of construction.

⁹⁸ Ms Wilkening, evidence-in-chief at [3.8].



[276] Proposed condition 32C sets out the methodology for undertaking the building condition surveys and proposed condition 32D the procedure to be followed for undertaking repairs if there has been construction related damage.

[277] If they sought to have the building condition surveys peer reviewed, and if this resulted in a difference of views, the s 274 parties sought that there be a condition for arbitration or mediation for resolving any differences. Panuku responded that it did not consider that providing a condition for this was appropriate based on concerns about enforceability and the potential for Panuku to have to meet the costs of such a process.⁹⁹

[278] Mr Dexter sought reassurance from Ms Wilkening that vibration from the rock breaking or blasting on the site would not trigger the damage or in the extreme the collapse of the two very heavy chimneys in his house at 105 Valley Road.¹⁰⁰ Her response was that the vibration levels which would be received even at the closest houses would be relatively low and in her opinion from what she had seen and measured, these would not be high enough to cause a catastrophic failure. The predictions of the vibration levels included a 100% safety factor to account for variations in geology.¹⁰¹

Blasting

[279] The proposed conditions Version 3 and CNVMP 2 provide for blasting to be used to speed up excavation. Proposed condition 30A sets out the way in which blasting is to be measured and assessed with a peak sound pressure limit of 120 dB to apply. This condition is consistent with the blasting limits set down in AUP E25.6.31.

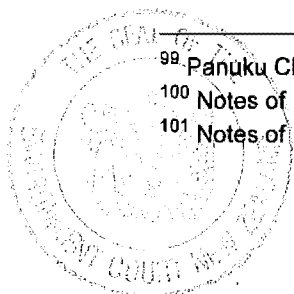
[280] Ms Wilkening advised that blasting could be managed to ensure that the AUP limit applies through the provision of suitable separation distances, limited charge weights and time delayed charge activation.

[281] Counsel for Panuku agreed that the mandatory hours restricting when blasting can be undertaken (in section 5.6 of the CNVMP 2) should also be replicated in Version 3 of the proposed conditions and we require this.

⁹⁹ Panuku Closing Legal Submissions at [2.17].

¹⁰⁰ Notes of Evidence at page 337.

¹⁰¹ Notes of Evidence at pages 337, 338.



Extent of acoustic protection

[282] In response to queries from some s 274 parties about why the Carrick Place acoustic barrier could not be made higher and thicker Ms Wilkening said that the barrier would be erected on top of an existing retaining wall which had the effect of making the wall 3 to 3.5m above the ground level of the adjoining retirement village properties. Her opinion was that a higher and thicker barrier would provide no additional benefit for these properties as the main path of the sound was over or around the barrier and not through it.¹⁰²

[283] Asked by Mr Lange about acoustic protection for those houses sited at higher levels on the opposite side of Carrick Place (including his own), Ms Wilkening said that it would be impractical to erect an acoustic barrier of sufficient height to protect these houses. She added that all of these properties were located at distances of 15m or more from the site¹⁰³ and while she had not recommended any form of acoustic protection for them, under CNVMP 2 the contractor would be required to incorporate customised acoustic protection to match the chosen construction methodology.

[284] In answer to a question from the Court about noise protection for the rock breaking equipment, Ms Wilkening said that fitting noise reduction shrouds to this equipment was well proven technology and that this option could be included in the CNVMP.¹⁰⁴

Health effects

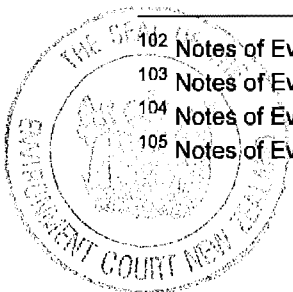
[285] Mrs Smith, a s 274 party and resident of the retirement village, asked Ms Wilkening whether there were any contingency plans for neighbours who might suffer serious stress and medical problems from the effects of construction noise and vibration.¹⁰⁵ Ms Wilkening replied that construction was never quiet, and that while there was a package of proposed mitigation measures, in the end there was only so much that could be done to reduce construction noise. She said that while the CNVMP included the option for temporarily relocating someone on a case by case basis, the effects of relocation on the individual needed to be very carefully assessed. In answer to a follow up question from the Court, Ms Wilkening confirmed that temporary relocation was an option on a case by case basis if it was shown that there was stress or serious health issues arising during construction.

¹⁰² Notes of Evidence at pages 396, 397.

¹⁰³ Notes of Evidence at page 450.

¹⁰⁴ Notes of Evidence at page 807.

¹⁰⁵ Notes of Evidence at page 345.



[286] Mr Lala was asked whether the proposed Community Liaison Group should be involved in assessments for temporary relocations in exceptional cases where all of the practicable noise and vibration management measures had been implemented and significant noise effects were still predicted.¹⁰⁶ He responded that the CNVMP required that advice on this be sought from an acoustic expert, and that while relocation could also be discussed with the Community Liaison Group, the final decision would be for the affected party and the consent holder to make.¹⁰⁷ We question his understanding of the position. While the affected party would certainly need to agree to relocation it would be up to the consent holder to support, fund and potentially arrange a suitable relocation.

Community Consultation

[287] Proposed condition 8(g) requires the CNVMP to include details as to when higher noise and vibration levels can be expected, the likely sources of noise and vibration, the methods for monitoring and reporting on noise and vibration, working hours, a contact phone number for registering concerns and the scheduling of works to avoid the worst of the effects for the receiver. These have been provided for in section 5.7 of CNVMP 2.

Evaluation against AUP provisions

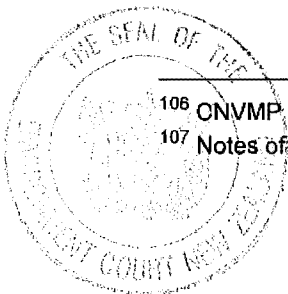
[288] As noted in the table at the start of this section, under AUP E25.8.2(1) the matters of discretion for noise and vibration are restricted to the noise and vibration effects on adjacent land uses particularly activities sensitive to noise and measures to avoid, remedy or mitigate the adverse effects of noise. These are broad matters of discretion.

[289] There are a number of assessment criteria (as set out in the table) to consider for noise and vibration to inform making a decision as to whether or not a restricted discretionary consent should be granted to enable the required site works to be undertaken for the proposed development. We deal with each of these in turn before considering relevant objectives and policies.

[290] We note that assessment criterion (a) refers to not generating 'unreasonable noise and vibration levels on adjacent land uses particularly activities sensitive to noise', with assessment criterion (b) elaborating on what might inform a decision on what is 'unreasonable' and assessment criterion (c) referring specifically referring to the effects on amenity generated

¹⁰⁶ CNVMP section 6.1, final bullet point.

¹⁰⁷ Notes of Evidence at page 783.



by vibration.

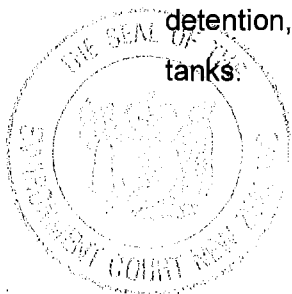
[291] Considering (b)(i) the extent to which the noise or vibration generated by the activity will occur at times when disturbance to sleep can be avoided or minimised, the hours when noisy activities can be undertaken are outside of sleeping times for most people. For (b)(v) physical works are to be largely carried out during daylight hours, with an accepted exception for transport onto and off the site of oversize plant equipment such as cranes and large machinery, and building elements such as pre-cast steel with the approval of the Council.

[292] In terms of (b)(ii) there is the potential for noise to be incompatible with activities occurring in the surrounding area, such as for those in the retirement village living close to the site. That is the reason for conditions limiting and dealing with unacceptable incompatibilities for residential activities and for strengthening the conditions for residents of the retirement village.

[293] For (b)(iii) effects will be limited in duration, or frequency or by hours of operation in conditions as we have found. Under (b)(iv) the noise and vibration will exceed the existing background noise and vibration levels in that environment. The proposed conditions require considerable amendment to bring the cumulative levels to a reasonable level.

[294] Assessment criterion (c) deals with (the extent to which the effects on amenity generated by vibration from construction activity are to be addressed. For (c)(i) under proposed condition 12(b) the consent holder is required to provide the neighbours with written advice to include a brief overview of the construction works, the mitigation to be implemented, details of the monitoring to be undertaken where concerns about noise or vibration are raised, the working hours, a contact phone number for any concerns regarding noise and vibration, construction traffic or any other matter associated with the works and copies of the CNVMP, CMP and CTMP.

[295] Concerning whether the vibration effects can be shown to have been minimised by the appropriate assessment of alternatives under (c)(iii), we were told that the design of the development has been based on keeping the basement level providing for stormwater detention and car parking as high as possible so as to minimise the volume of excavation required. An alternative design without car parking would still have had to provide stormwater detention, which would involve considerable vibration during the excavation of the detention tanks.



[296] Assessment criterion (d) is 'whether the measures to minimise the noise or vibration generated by the activity represent the best practicable option'. We note that the RMA (and the AUP) defines the 'best practicable option' as:

Best practicable option, in relation to ... an emission of noise, means the best method for preventing or minimizing the adverse effects on the environment having regard, among other things, to –

- (a) The nature of the ... emission and the sensitivity of the receiving environment to adverse effects; and
- (b) The financial implications, and the effects on the environment, of that option when compared with other options; and
- (c) The current state of technical knowledge and the likelihood that the option can be successfully applied.

We did not have sufficient certainty about the construction methodology and any evidence about comparators that would provide the basis for a reliable finding in relation to the 'best practicable option'.

Overall Finding

[297] There is no disagreement that in order to form the building platform, rock breaking (and most likely blasting) will be required and that the construction noise and vibration levels when these activities are undertaken will not meet the relevant AUP noise and vibration standards for quite extended periods at a number of the neighbouring properties.

[298] In consequence, a range of measures have been proposed to mitigate the adverse effects of non-compliances. We summarise these as follows:

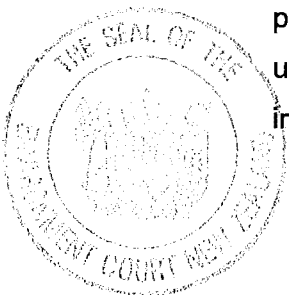
- The times when rock-breaking can be undertaken are to be restricted to the hours of 8am to 6pm on weekdays and from 8am to 1pm on Saturdays and blasting between the hours of 9am and 5pm Monday to Friday and at set times.
- A key requirement of the design brief has been to minimise the volume of rock to be excavated by setting the basement levels as high as possible.
- It is not possible to reduce the volume of rock to be excavated for the detention tanks as the volume and levels of these tanks are fixed by the stormwater requirements for the site.
- An acoustic barrier is to be erected along the boundary with 9-15 Carrick Place (the retirement village).



- Where effective acoustic screening cannot be provided for other properties on Carrick Place, proposed condition 29C allowing the noise limits to be exceeded by 5dB will not apply as these properties are all further than 15m from the site boundary.
- As detailed in section 5.5 of CNVMP 2, initial rock breaking is to be undertaken at the perimeter of the site to enable monitoring of the highest vibration levels and to mitigate the vibration transfer from subsequent rock breaking.
- A community liaison group (CLG) is to be established (under proposed conditions 4 and 5) and there is a notification requirement (under proposed condition 12) for the consent holder to provide progressive information to the neighbours when rock breaking and/or blasting.
- Under proposed conditions 32B, 32C and 32D, there is a requirement for pre and post condition surveys to be undertaken for neighbouring buildings and dwellings, with the consent holder to be responsible for making good any damage caused by the site works.

[299] Having identified the key mitigation measures proposed, we make the following findings about the adverse effects of construction noise and vibration:

- (a) In order to form the building platform, rock breaking (and most likely blasting) cannot be avoided;
- (b) The noise and vibration levels from these activities will not meet the relevant AUP construction noise and vibration standards for permitted activities;
- (c) The hours when noisy activities can be undertaken are outside of sleeping times for most people, and are a compromise over the alternative of having longer hours and a lesser overall construction period;
- (d) The chosen design minimises the volume of rock to be excavated and the time required for this excavation;
- (e) The CNVMP requirement for the initial rock excavation to be undertaken at the perimeter of the site to limit vibration on neighboring properties when excavation is undertaken over the balance of the site needs to be reinforced through its replication in the proposed conditions;



- (f) Contingent on the conditions which require a 5-day notice period for informing neighbouring residents and for prior Council approval to be obtained on each occasion that such activity is planned, in order to limit disruption to daytime traffic movements on the surrounding road network, oversize plant and equipment may be brought onto and taken off the site outside of normal construction hours;
- (g) There would be no additional benefit gained from increasing the height or density of the acoustic barrier to be erected along the boundary with 9-15 Carrick Place (the retirement village) over that provided for in proposed condition 30B;
- (h) Customised noise protection measures which match the chosen construction methodology are to be provided by the contractor in accordance with the requirements prescribed in section 5.4 to 5.6 of the CNVMP;
- (i) There are to be defined procedures for keeping local residents informed about planned construction activity with details to be provided for residents to contact the responsible person on site;
- (j) The s 274 parties' request for the inclusion of an arbitration or mediation condition for an owner to have a building condition survey peer reviewed is not supported;
- (k) As the volume of rock to be excavated and the contractor's construction methodology are both unknown at this time, limited reliance can be placed on the estimates of how long rock breaking and blasting might take;

[300] As already indicated we are unclear about what is intended by proposed condition 32 (we assume the vibration limits for the effects on people's amenity). That states:

Vibration levels arising from construction activity on the site shall not exceed, as far as practicable, 2 mm/s peak particle velocity in buildings in any axis when measured in the corner of the floor of the storey of interest for multi-storey buildings, or within 500mm of ground level at the foundation of a single-storey building as specified in AUP (OP) E25.6.30(1)(b).

[301] We are aware that CNVMP section 3.3 Vibration states:

Where construction vibration from daytime works (8am to 6pm) is predicted to exceed 2 mm/s PPV for more than three days, the occupants of all buildings within 100m must be advised of the works no less than 5 days prior to the works commencing and the vibration level must not exceed 5 mm/s (Section 5.7).

[302] That comes after a description of guidance in Section 3.2 British Standard BS 5228-2:2009 "*Code of practice for noise and vibration control on construction and open sites – Part 2: Vibration*" as providing guidance on the amenity effects of vibration as follows:



- 0.14 mm/s PPV Just perceptible in the particularly sensitive environments
- 0.3 mm/s PPV Just perceptible in normal residential environments
- 1 mm/s PPV Typically acceptable with prior notification
- 10 mms/ PPV Likely to be intolerable for any more than a very brief period.

[303] We note that assessment criterion E25.8.2(1)(c)(iv) is:

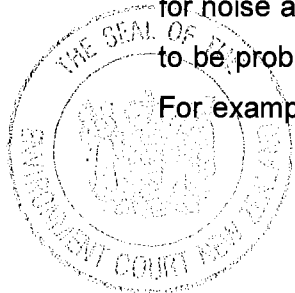
the extent to which the effects on amenity generated by vibration from construction activity ... are reasonable taking into account the level of vibration and the duration of the activity (where levels of 10mm/s peak particle velocity may be tolerated only for very brief periods).

[304] We question what the qualification 'as far as practicable' is intended to cover, given its lack of certainty and why it is needed. A vibration limit of 5 mm/s (if that is justified) should be in proposed condition 32 and not just in the CNVMP. We require further consideration of these points.

[305] We are not persuaded that the conditions proposed to deal with construction noise and vibration will mitigate them to an acceptable degree to avoid adverse effects on the neighbours, particularly those in the retirement village. This difficulty has arisen because consents are being sought by Panuku as landowner rather than as the developer of the project. If Panuku was the developer, the construction methodology is likely to have been more carefully thought through and we are likely to have received a more detailed plan about what could be achieved in terms of mitigation. Although it is always a matter for an applicant, in our view where, as in this case there are sensitive receivers very near to a proposed development, it may be preferable for a more detailed construction methodology to be presented with the application rather than leaving it to be determined at a later date through a CNVMP process.

[306] By its nature a management plan is designed to be adaptive in its approach to meeting bottom line requirements. This is desirable given the need for a flexible and responsive approach to be taken during construction. The degree of flexibility provided is however always the issue and the question must also be asked, who does this flexibility benefit?

[307] As it was presented to us, the CNMVP in this case, while containing reference to limits for noise and vibration, was short on what would be done if noise and vibration effects prove to be problematic for the neighbouring residents, particularly those in the retirement village. For example, what if the ongoing effect of construction noise and vibration causes distress



and impacts on the health and wellbeing of the retirement village residents? In our view, the measures signaled as options in the CNVMP were insufficiently detailed and certain to satisfy us that such measures would adequately deal with any adverse noise and vibration effects on residents.

[308] In this case, the best estimate is that construction will occur over a 6-7 month period and it may (and we consider mostly likely) will include blasting. There was little definitive information provided about how long this process would last or how long noisy equipment would be operating each day within the specified daily hours set out in the conditions. All of this is left until the detailed design stage of the project.

[309] As well as this lack of detail, we received very little evidence about the residents of the retirement village as no social impact assessment was presented to us by either Panuku or the Council. This need not have been an expensive exercise given that the village is small. We do not know for example if any of the residents are housebound, whether any have special health needs or whether they have other places to go during the day when particularly noisy parts of the construction programme are likely take place. The example of the Campbell Road project provided by Ms Wilkening, while informative was not particularly useful because there was not enough detail provided about it for us to make a valid comparison with projected excavation at the Dominion Road site.

[310] The other submission we had was from Mr Lange who described the excavation that took place recently next door to him as follows:¹⁰⁸

... it probably went on for a month, probably about 10 truckloads of rock came out They needed to get a drive-through so they had to remove that whole small hill of solid basalt so they brought in quite a substantial digger they kept some of the rocks for themselves.

And it's one of those things ... but the fact is that it just became quite – I mean on one level you kind of got used to it, but on another level you realized it's a bit like hitting your head on a wall, it's so nice when it stops ... I took a walk to the top of Mount Eden one day and you could hear it up there, it's quite a loud noise. ...

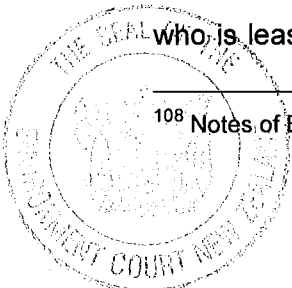
They were there for a good six hours every day ... but they certainly weren't there on Sundays ... And Saturdays maybe not so much ...

...

[The real issue was] mostly the noise [as opposed to the vibration].

[311] The proposed mitigation measures in the CNVMP in the main leaves the decisions about whether to implement them to the developer (albeit in conjunction with the Council). In our view this places the "power" of the decision about mitigation in the hands of the person who is least affected by it and correspondingly provides no certainty to those who are most

¹⁰⁸ Notes of Evidence at pages 746-749.



likely to be affected by the potentially adverse effect.

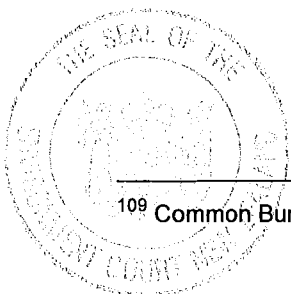
[312] In our view, a situation could well arise where because of noise and vibration effects residents from the retirement village should have the option of being relocated during the day for some of the construction period. The CNVMP provision about this is, for the reasons we express above inadequate. Given this is a significant area of concern to us, we have decided to allow the parties further time to see if they can come up with an acceptable resolution or if not, proposals upon which we can make a final determination about the matter. To provide some guidance, in our view it is reasonable for affected parties to engage in some "self-help." If for example they have options to leave their homes during the day for some of the time at no cost to themselves, then it is reasonable for them to do so. If however, this is not an option or the nature of the very noisy construction activities is longer than several weeks, then it would be reasonable to expect Panuku to relocate them and/or compensate them in a meaningful way. The expectation is that whatever is offered is certain and not reliant on the developers sole approval at a later date.

Flood hazard risks and stormwater

[313] In this and the following section we deal with Issue 4, namely are any other potentially adverse effects relating to flooding and stormwater and those relating to ground contamination and earthworks able to be avoided, remedied or appropriately mitigated in line with the matters discretion is restricted to and considering the relevant objectives, policies and assessment criteria in the AUP?

[314] The issue of concern to the s 274 parties about flooding and stormwater was raised by Mr Dexter who questioned whether the new development would divert stormwater from the site onto neighbouring properties.

[315] Evidence about the way in which natural hazards, flooding and stormwater are to be managed in the completed development was provided by Mr JM Kirkman, a senior civil engineer with Beca Ltd. We were also referred to the supporting Beca Civil Infrastructure Report which was also prepared by Mr Kirkman.¹⁰⁹

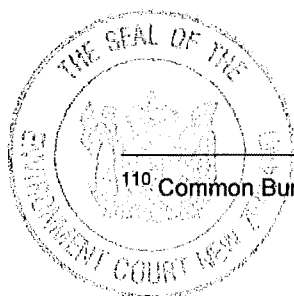


Flooding hazard risk

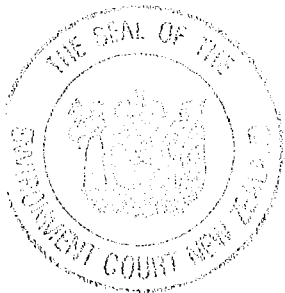
The AUP provisions

[316] The *Flow Chart* prepared by Mr Lala and Mr Pope identified the following natural hazard and flooding provisions in the AUP as being relevant to the restricted discretionary assessment of natural hazards and flooding for the development.¹¹⁰ The table outlined below sets out the relevant activities arising from the proposed development that require this issue to be addressed, as well as the relevant matters of discretion and assessment criteria that apply.

Activities in the 1 per cent exceedance probability (AEP) floodplain	
E36.4.1 (A26)	Below ground parking.
E36.4.1 (A38)	Use of new buildings to accommodate more vulnerable activities
E36.4.1 (A42)	Any other buildings or other structures including retaining walls...
Relevant matters of discretion	
E36.8.1 (5)	<p>For below ground parking...</p> <p>(a) the effects of the location of the structures and building platforms</p> <p>...</p> <p>(d) the effects of the location and design of roads, accessways and parking areas....</p> <p>(f) the effects of potential changes in flood depth, velocity and frequency on adjoining sites, including upstream and downstream from buildings and structures....</p> <p>(g) the extent to which methods for long term maintenance of areas affected by flooding such as easements are provided for ...</p>
E36.8.1 (9)	<p>For new structures and buildings..</p> <p>(a) the effects of the location of the structures and building platforms</p> <p>...</p> <p>(d) the effects of the location and design of roads, accessways and parking areas</p> <p>...</p> <p>(f) the effects of potential changes in flood depth, velocity and frequency on adjoining sites, including upstream and downstream from buildings and structures....</p> <p>(g) the extent to which methods for long term maintenance of areas affected by flooding such as easements are provided for</p>



Relevant matters of discretion (continued)	
E36.8.1 (13)	For any buildings or structures located in an overland flow path ... (c) the extent to which the design of the building allows for safe access..
Relevant assessment criteria	
E36.8.2(5)	For below ground parking... (a) whether the parking can be located outside of the 1%AEP floodplain so as to not block or impede the flood hazard (b)...how the parking area can be designed and managed to minimise any increase in flood related risks to people and property on the site and to other properties upstream or downstream of the site...
E36.8.2(9)	For new structures and buildings.. (b) where the building cannot be practically located outside or above the floodplain, how the building can be designed to minimise increase in flood related risks experienced by other properties... (c) whether buildings likely to be affected by flood waters should be wet proofed or dry proofed...
E36.8.2(12)	For diverting the entry or exit point (a) the extent to which the continuity of the overland flow paths both within the site and upstream will be maintained; (b) the extent to which and how the effects on other properties from the diversion or alteration of the overland flow path will be avoided or mitigated; ... (e) the extent of long term maintenance proposed, ensuring that, when appropriate, an easement in favour of the Council is created to limit further changes to the overland flow path.
Relevant objectives and policies	
E36.2(1) (Objective)	This Objective refers to subdivision outside of urban areas and is not relevant
E36.2(2) (Objective)	Subdivision use and development including redevelopment in urban areas only occurs where the risks of adverse effects from natural hazards to people, buildings infrastructure and the environment are not increased overall and where practicable are reduced taking into account the likely long-term effects of climate change.
E36.2(5) (Objective)	Subdivision use and development including redevelopment is managed to safely maintain the conveyance function of floodplains and overland flow paths.
E36.3 (Policies) General, Floodplains in urban areas, Floodplains General	The General Policies are (1) (a) to (d), 2, 3 (a) to (k), 4 (a) to (d) The Urban Floodplain Policies are (13) (a) and (b), 14 (a) to (e) and 15 The relevant content of each of these policies is addressed in detail in the Matters of Discretion and Assessment Criteria listed above.



What is proposed to deal with flood hazards?

[317] As will be evident from the AUP flood hazard provisions identified by Mr Lala and Mr Pope, the site is located within a 1% AEP floodplain. Overland flow-paths enter the site from the north and east before combining and flowing out onto Valley Road and from there along Valley Road towards Dominion Road.

[318] Proposed condition 61 requires that the development does not result in any increase in peak flows from the site during a 1% AEP event and proposed condition 62 provides that the development does not increase peak flows and water levels of overland flow paths on other properties in the vicinity of the site including Dominion and Valley Roads.

[319] Our understanding from the Beca Infrastructure Report is that in preparing his assessment of these flood hazards, Mr Kirkman reframed the AUP assessment criteria E36.8.2(12) (a) and (b) to read:

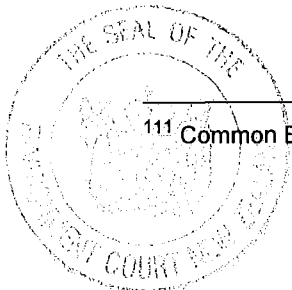
The 1% AEP flood works must¹¹¹:

- maintain the same entry and exit point of the overland flow path(s) at the site boundaries;
- must not alter the volume and velocity of water flow at the boundaries;
- must not cause additional adverse flooding effects on neighbouring sites; and
- that alterations are permitted to the overland flow path(s) within the site.

We accept that this reframing is a reasonable interpretation of E36.8.2(12).

[320] The new development will displace some 1,211 cubic metres of floodwater storage currently provided in a more or less bowl-shaped depression located in the middle of the existing site. With Mr Kirkman's reframed assessment criteria requiring that the volume and velocity of the water leaving the site must be maintained, two underground stormwater detention tanks are to be constructed on the site. The combined volume of these tanks will be the same as the displaced volume (1,211 cubic metres).

[321] The northern overland flow-path will be collected at the northern boundary of the site and conveyed in a channel along the line of the northern boundary to the first flood detention tank. Once this tank is full, water will flow through a pipe to the second detention tank. When both tanks are full, stormwater will then discharge from the second tank into Valley Road. After a storm has passed, the water in the detention tanks will empty through soak holes drilled



¹¹¹ Common Bundle at page 1068.

under each tank into the underlying fractured basalt.¹¹²

[322] The eastern flow-path travels along open space between residential buildings before it enters the site. From here, the new development has been designed to redirect this flow-path south in an open channel to exit onto Valley Road approximately 40m upstream from the current exit location. Mr Kirkman said that this 40m length of Valley Road can accommodate the additional 1%AEP flow without adversely affecting flood risks to existing buildings. The flow-path will then re-join its original path at the corner of Dominion and Valley Roads.

[323] The Beca Infrastructure Report records that the design of the new development has been based on the interpretation of E36.8.2(12) that the exit point may be anywhere on Valley Road and Dominion Road.¹¹³

[324] A bund which will provide 140mm of freeboard above the 1% AEP flood level is proposed to be formed at the entry to the basement carpark to prevent floodwater from the eastern flow path from entering the carpark.

[325] The podium level has been set a minimum of 500mm above the 1% AEP flood level.

Findings - flood hazard risk

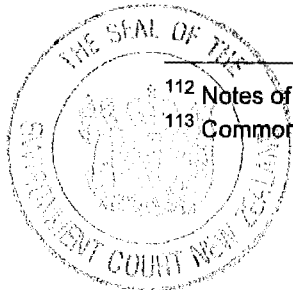
[326] Mr Kirkman's uncontested evidence was that the proposed stormwater design for the site meets assessment criteria E36.8.2(12) as he reframed it. We accept his evidence that:

- the existing entry and exit points of the overland flow path(s) at the site boundaries have been maintained;
- the volume and velocity of water flow at the boundaries have not been altered;
- there will be no additional adverse flooding effects on neighbouring sites;
- all alterations to the existing overland flow path(s) have been contained within the site.

[327] In terms of the other assessment criteria in E36.8.2, we accept that if car-parking is to be provided in the development, it will need to be located in a below ground car-park which is

¹¹² Notes of Evidence at page 299.

¹¹³ Common Bundle at page 1068.



located within the flood plain.

[328] We find that adequate consideration has been given to the management and minimisation of flood related risks to people and property on the site. This includes the requirement for the bund to be constructed at the entrance to the car-park and the minimum clearance to be provided between the podium level and the 1% AEP flood level.

[329] We were not provided with any evidence about assessment criteria E38.8.12 (c) concerning the extent of any long-term maintenance proposed and whether there should be an easement in favour of the Council to limit further changes to the overland flow path. We leave this for the consent holder to resolve directly with the Council.

[330] Taken overall, we are satisfied that the design of the natural hazard and flooding components of the proposed development will satisfy the relevant AUP objectives, policies, matters of discretion and assessment criteria and will meet the requirements of proposed conditions 61 and 62 and in doing so approve the granting of a restricted discretionary consent for this activity.

[331] Having said this we note that proposed condition 40 as currently worded provides:

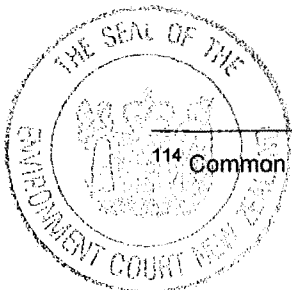
Stormwater: The consent holder shall ensure that the required freeboard to finished floor levels from overland flow paths within and adjacent to the site is maintained.

This condition should be reworded to specify what is required as it is too uncertain as drafted.

What is proposed to deal with stormwater from the site?

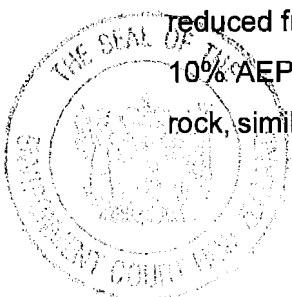
[332] As well, in the flow chart Mr Lala and Mr Pope identified the following stormwater provisions in the AUP as being relevant to the controlled activity consent requirements for the development.¹¹⁴

Stormwater – discharge and diversion	
E8.4.1 (A9)	Diversion and discharge of stormwater runoff from impervious areas greater than 1,000m ² and up to 5,000m ² within an urban area that complies with Standard E8.6.1 and Standard E8.6.3.1 is a controlled activity



Relevant matters of control	
E8.7.1(1)	(a) management of adverse effects on receiving environment buildings and property ... (d) location of discharge points and method of discharge and disposal (e) operation and maintenance requirements; (f) monitoring and reporting; and (g) duration of consent and the timing and nature of reviews of consent conditions.
Assessment criteria	
E8.7.2(1)	(a) whether adverse effects on the environment including buildings and property have been avoided or otherwise managed and mitigated through management practices; (b) whether the proposal has considered any relevant stormwater network discharge consent and/or precinct plan provisions; (c) whether stormwater flows and contaminants have been minimised or managed by using stormwater management devices; ... (e) whether any requirements for soakage, where this is a stormwater run-off disposal method are met
Relevant objectives and policies	
E1.2(3) Objective	Stormwater and wastewater networks are managed to protect public health and safety and to prevent or minimise adverse effects of contaminants on freshwater and coastal water quality
E1.3 (8)-(16) Policies	(8) Avoid as far as practicable, or otherwise minimise or mitigate, adverse effects of stormwater runoff.....(a) to (e) (9) Minimise or mitigate new adverse effects of stormwater runoff....(a) to (e) (10) In taking an integrated stormwater management approach have regard to(a) to (e) (11) Avoid as far as practicable, or otherwise minimise or mitigate adverse effects of stormwater diversions and discharges, having particular regard to....(a) to (f) (12) Manage contaminants in stormwater runoff from high contaminant generating carparks.... (13) Require stormwater quality or flow management to be achieved on site.... (14) Adopt the best practicable option to minimise the adverse effects of stormwater discharges from stormwater network and infrastructure... (15) Utilise stormwater discharge to ground soakage in areas underlain by shallow or highly permeable aquifers...(a) to (d) ...

[333] Mr Kirkman's evidence was that the greenspaces proposed to be included in the new development will reduce the impervious nature of the site from the current 100% to 90%. This reduction means that the associated run-off from the site in a 10% AEP storm event will be reduced from 123 l/sec to 114 l/sec. Soakage capacity testing has established that all of this 10% AEP run-off can be disposed of through 5 on-site soak holes drilled into the underlying rock, similar to those currently installed. Stormwater run-off from the site will, therefore, reduce



slightly from that which currently exists.

[334] Proposed conditions 68 to 72 prescribe the way in which stormwater from the site is to be managed. They address the requirements for the soakage and treatment devices, confirmation that the design will not affect the capacity or performance of the stormwater management system, require a pre-construction meeting to be held with the Council and outline the information that is to be provided to the Council ahead of this meeting.

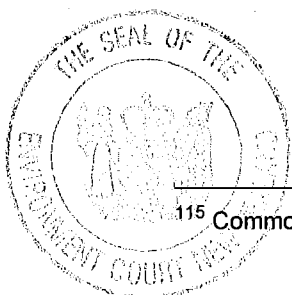
[335] We accept Mr Kirkman's evidence that stormwater from the site will not create any additional load on downstream systems or divert on to adjoining properties. Relying on this evidence, we find that, provided the proposed system is designed, constructed and operated in accordance with the prescribed conditions, the controlled activity consent requirements of the AUP will have been satisfied.

Ground contamination and earthworks issues

[336] A preliminary site investigation undertaken by Tonkin and Taylor in July 2015¹¹⁵ identified that activities that have the potential to cause land contamination as defined by the Ministry for the Environment in the Hazardous Activities and Industries List (**HAIL**) are and have been undertaken on the site. These include the placement of uncontrolled fill, automotive industrial activities, underground storage tanks, above ground storage tanks and buildings containing asbestos products.

[337] Two resource consents are required for dealing with this contaminated land, a restricted discretionary activity consent under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (**NES Soil**) for soil disturbance and a controlled activity consent under the AUP to disturb soil on land containing elevated levels of contaminants.

[338] The planners' flow charts identified the following AUP provisions that need to be addressed.



Restricted Discretionary Consent	
Potentially Contaminated Soil under NES Regulation 10(1) and 10(2)	Under 10(2): (a) a detailed site investigation report must exist (b) the report must state that the soil contamination exceeds the applicable standard in regulation 7; (c) the consent authority must have the report
Regulation 10(3) Matters of discretion	(a) the adequacy of the site investigation; (b) the suitability of the land (c) the approach to remediation (d) the adequacy of the site management plan/validation report (e) the proposed disposal process (f) the requirements for a financial bond (g) the timing and nature of the review of the conditions (h) the duration of the resource consent.
Controlled Activity Consent	
E30.4.1(A6)	Discharges of contamination into air, or into water or onto land not meeting permitted activity Standard A30.6.1.1 to E30.6.1.5
Matters of Control	
E30.7.1	The Council will reserve its control to all of the following matters when assessing a controlled activity resource consent application...[there is a long list of matters, including the adequacy of the detailed site investigation report including risk assessment and the need for and adequacy of a site management plan (contaminated land)].
Assessment Criteria	
E30.7.2	The Council will consider (1) whether the reports and information adequately address the effects of discharge into air, or into water, or onto or into water from contaminated land
Objectives and Policies	
E30.2(1)	The discharge of contaminants from contaminated land into air, or into water or onto or into land are managed to protect the environment and human health and to enable land to be used for suitable activities now and in the future



Objectives and Policies (continued)	
E30.3(2)	Require any use or development of land containing elevated levels of contaminants resulting in discharges to air, land or water to manage or remediate the contamination to a level that: (a) allows contaminants to remain in the ground/groundwater, where it can be demonstrated that the level of residual contamination is not reasonably likely to pose a significant adverse effect on human health or the environment; ... while taking into account (a number of matters including the use of best practice contaminated land management)

[339] Tonkin and Taylor prepared three reports, *Preliminary Site Investigation* dated May 2016, *Detailed Site Investigation* dated April 2017 and *Site Management Plan for Ground Contamination* dated April 2017 (**the SMP**).

[340] Under proposed conditions 42 to 47, the consent holder is required to implement the SMP contained in the April 2017 Tonkin and Taylor report which sets out the procedures for managing potential ground contamination-related effects on human health and the environment during the earthworks phase of the construction. These procedures address earthworks, soil characterization, soil disposal, site management and health and safety during soil disturbance works and compliance documentation after the works.¹¹⁶

[341] Relying on the Tonkin and Taylor reports, the SMP and the conditions and in the absence of any evidence to the contrary, we find that there is no barrier to granting consents required under the NES and the AUP for the management of contaminated soil during the development of the site.

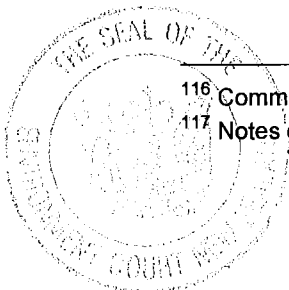
[342] As identified by Mr Bannan the reference in condition 44 should be to section 5 of the 2016 edition of the Good Practice Guide.¹¹⁷

Traffic issues

[343] In this section we deal with Issue 5, namely are the parking provisions and traffic effects adequately dealt with and consistent with the relevant objectives, policies and assessment criteria in the AUP?

¹¹⁶ Common Bundle at page 1239.

¹¹⁷ Notes of Evidence page 786, Reply submissions on behalf of Panuku, dated 24 September 2019 at [4.19].



[344] On the basis that the proposed new development was fully operational, the key traffic and parking issues raised by s 274 parties were:

- the adequacy of the carparking on the site;
- safety and congestion concerns for the Valley Road access;
- safety and congestion concerns for the Carrick Place access.

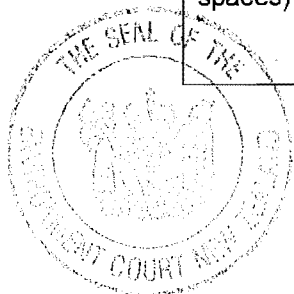
[345] Expert evidence on these issues was provided by Mr DJ McKenzie for Panuku and Mr TP Church for the Council, but the evidence of the s 274 parties on the last two issues were also important as they experience the local traffic environment on a daily basis, and most have observed these changes over a number of years.

AUP provisions

[346] The Flow Chart prepared by Mr Lala and Mr Pope identified the following AUP provisions as being relevant to the restricted discretionary assessment of transport (traffic and parking) for the development.

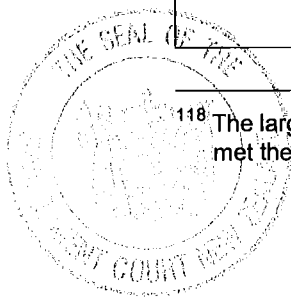
[347] However, by the end of the hearing the traffic experts had modified the proposal to incorporate the required minimum number of parking spaces and to meet the standards for the design of parking and loading spaces for all but seven parks.

Size, Number and Location – Parking/Loading, Vehicle Access	
E27.6.2.1	The Flow Chart has identified this provision which applies to the Business-City Centre Zone. This is incorrect as the correct zone identified under E27.6.2.2 (4) (c) is the Business - Local Centre Zone. For this zone, the applicable parking rates are set out in Table E27.6.2.3 as identified by the traffic experts. This table has no controls for residential parking and a requirement of one space per 30m ² GFA.
E27.6.3.1.1 (Size and location of parking spaces)	This provision includes a table and diagram which set out the minimum parking space and manoeuvring dimensions.
E27.6.3.2 (Size and location of loading spaces)	(1) Every loading space must: (a) comply with the minimum dimensions given in Table E27.6.3.2.1 and (b) be located on the same site ...and be available at all times... Table E27.6.3.2.1 requires a loading space with a minimum length of 18 m and a minimum width of 3.5m



Size, Number and Location – Parking/Loading, Vehicle Access (continued)	
E27.6.4.1(3)(c) (Vehicle access restrictions)	Sufficient space must be provided on the site so vehicles do not need to reverse off site or onto or off the road from any site where....access would be from an arterial road or otherwise within a Vehicle Access Restriction covered by Standard E27.6.4.1. This standard applies to this zone.
Relevant matters of discretion	
E27.8.1 (6), (9), (12)	<p>(6) any activity or development which provides fewer than the required number of parking spaces ...</p> <p>(9) any activity which infringes the standards for the design of parking and loading spaces:</p> <ul style="list-style-type: none"> (a) adequacy for the site and the proposal; (b) design of parking, loading and access; (c) effects on pedestrian and streetscape amenity; and (d) effects on the transport network. <p>(12) construction or use of a vehicle crossing where a Vehicle Access Restriction applies under Standard E27.6.4.1(2) and Standard E26.6.4.1(3);</p> <ul style="list-style-type: none"> (a) adequacy for the site and the proposal; (b) design and location of the access; (c) effects on pedestrian and streetscape network; and (d) effects on the transport network.
Assessment criteria	
E27.8.2 (5), (8), (11)	<p>(5) any activity or development which provides fewer than the required minimum number of parking spaces¹¹⁸ ...</p> <p>(8) any activity which infringes the standards for the design of parking and loading spaces:</p> <ul style="list-style-type: none"> (a) effects on the safe and efficient operation of the adjacent transport network ; (b) effects on pedestrian amenity or the amenity of the streetscape ... (c) the practicality and adequacy of parking, loading and access arrangements ... <p>[with (a) – (c) particularising considerations to have regard to and only referenced in our decision where necessary]</p> <p>(11) construction of a new vehicle crossing where a Vehicle Access Restriction applies:</p> <ul style="list-style-type: none"> (i) effects of the location and design of the access on the safe and efficient operation of the adjacent transport network having regard to: (ii) the effects on the continuity of activities and pedestrian movement at street level in the Local Centre Zone; (iii) the practicality and adequacy of the access arrangements considering site limitations, arrangement of buildings and activities, user requirements and operational requirements, proximity to and operation of intersections, having regard to: [particularised considerations and only referenced in our decision where necessary].

¹¹⁸ The large number of matters referred to are not included given the number of parking spaces in the final design met the AUP standard.



Relevant objectives and policies	
E27.2(1) – (5) Objectives	<p>(1) Land use and all modes of transport are integrated in a manner that enables:</p> <p>(a) the benefits of an integrated transport network to be realised;</p> <p>(b) the adverse effects of traffic generation on the transport network to be managed.</p> <p>(2) An integrated transport network including public transport, walking, cycling, private vehicles and freight, is provided for.</p> <p>(3) Parking and loading support urban growth and the quality compact urban form.</p> <p>(4) The provision of safe and efficient parking, loading and access is commensurate with the character, scale and intensity of the zone</p> <p>(5) Pedestrian safety and amenity along public footpaths is prioritised.</p>
E27.3 (1), (3), (6), (6A), (8), (9), (14) – (18), (20) – (22) Policies	Those policies of particular relevance are referred to where necessary in the decision.

Is the parking provided on the site adequate?

Carparks

[348] At the start of the hearing we were told that a total of 108 carparks had been provided for in the new development comprising 104 residential spaces at basement level, three retail spaces “at grade” accessed from Carrick Place and one “at grade” loading space also accessed from Carrick Place.

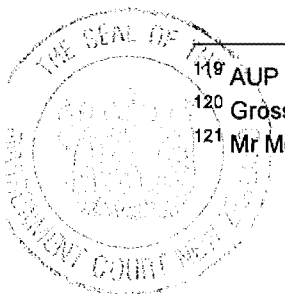
[349] Mr McKenzie confirmed that the AUP had no controls for residential parking¹¹⁹ at this location, whereas for retail activities, 1 parking space was required for each 30m² of GFA.¹²⁰ While this retail requirement would equate to 11 carparks, in his opinion the three carparks provided for the retail spaces proposed by Panuku were reasonable and appropriate because of the prime location of the site adjacent to Dominion Road and its transport links. While he said that this under-provision would be a “technical non-compliance” with the AUP, in his opinion it would not result in any significant, noticeable or measurable adverse effects.¹²¹

[350] Mr Church supported Mr McKenzie’s rationale for limiting the number of retail parking spaces to three. He said that Dominion Road had a high frequency bus route, there were a number of time-managed on-street parking spaces, and three spaces could operate in a complementary manner to the surrounding retail spaces.

¹¹⁹ AUP Table E27.6.2.3.

¹²⁰ Gross Floor Area.

¹²¹ Mr McKenzie, evidence-in-chief at [3.4].



[351] Notwithstanding this evidence, following the questioning of Mr McKenzie by the s 274 parties about the adequacy of the car parks proposed to be part of the development, the Court requested both experts to reconsider their evidence about the scale of the resident and retail parking to be provided on the site.

[352] In response, from his review of a number of residential developments in Auckland which he and his firm had been involved with over recent years, Mr McKenzie said that consents had been granted for on-site parking ratios of between 0.8 and 1.1 spaces per unit inclusive of resident and visitor parking. He referred to an industry standard which was based on the *New South Wales Roads and Maritime Services Guide to Traffic Generating Development*. For a high density residential development with ready public transport services available, the advice in this guide was to provide 0.6 spaces per 1-bedroom unit, 0.9 spaces per 2-bedroom unit, 1.5 spaces per 3-bedroom unit and 1 visitor space for every 5 units. For the proposed development, this would result in 87 resident spaces and 19 visitor spaces, or a total of 106 spaces averaging at 1.15 spaces per unit.

[353] Because of the ready availability of public transport services on Dominion Road, Mr McKenzie considered that an average of 1 space per unit would be more appropriate (a total of 92 spaces) and further, because the AUP did not set a maximum or minimum ratio, he said that a reasonable target would be an on-site ratio of 0.9 spaces inclusive of resident and visitor parking (or a total of 83 spaces).¹²²

[354] Mr Church provided us with a quite lengthy and somewhat discursive statement about parking provisions without listing any specific recommendations.¹²³ He said that an advantage of reducing the number of residential carparks would be to free up spaces for retail staff parking.¹²⁴

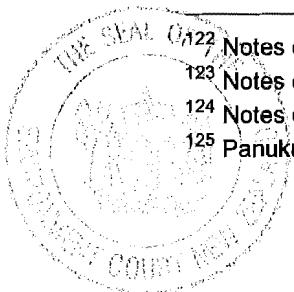
[355] Following these reviews by the two traffic experts, in his closing legal submissions, counsel for Panuku advised that as now prescribed in proposed condition 33, the number of residential spaces in the basement had been reduced from 104 to 93, with 11 spaces to be provided for staff and retail activities.¹²⁵ In addition, the three carparks on the site at the end of Carrick Place had been removed and, commensurately, the size of the loading bay at this location had been increased.

¹²² Notes of Evidence at pages 424-426.

¹²³ Notes of Evidence at pages 460-471.

¹²⁴ Notes of Evidence at page 465.

¹²⁵ Panuku Closing Legal submissions at [2.8]-[2.11].



[356] Accordingly, with these amendments to the design, both the number of retail parking spaces and the size of the loading bay now comply with the relevant provisions of the AUP.¹²⁶ Overall, the changes have resulted in the number of car parks in the development being reduced from 108 (as originally proposed) to 104.

[357] As the number of retail parking spaces now complies with the requirement of E27.6.2.2(4) (c) of the AUP, specific consent for this aspect of the carparking is no longer required.

[358] As the size of the loading bay now complies with the dimensions in Table E27.6.3.2.1, specific consent for the loading bay is no longer required.

Carpark design and operation

[359] Mr McKenzie pointed out that, while most of the perpendicular parking spaces and the manoeuvring aisles in the basement satisfied the relevant AUP requirements, seven of the spaces did not because there was only 6.1m of aisle manoeuvring space compared with the AUP requirement of 6.8m.¹²⁷ He said that he had undertaken a specific vehicle tracking assessment of the usability and practicality of these spaces and that this had shown that they were all workable and suitable for the development.

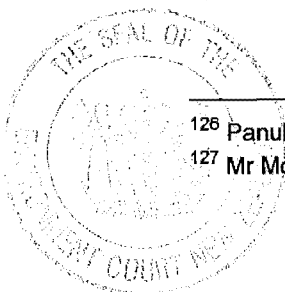
[360] While there would be a number of "blind aisles", he considered these to be acceptable as each space would be assigned to a specific apartment with adequate room for manoeuvring provided through a combination of the use of the parking space and the aisle.

[361] Apart from seven car parks, the remaining 86 car parks in the basement comply with the minimum carparking space and manoeuvring dimensions required under Table E27.6.3.1.1 of the AUP, and specific consent is not required for these.

[362] For the other seven parks which have a small under-provision of manoeuvring space, we accept the evidence of Mr McKenzie that, based on his vehicle tracking assessments, the operation of these spaces will be workable and suitable as will the operation of the spaces at the end of the blind aisles.

¹²⁶ Panuku Closing Legal Submissions at [5.3].

¹²⁷ Mr McKenzie, evidence-in-chief at [3.8].



Cycle parking

[363] To meet the requirements of the AUP, Mr Church assessed that a total of 102 cycle parking spaces would need to be provided comprising 95 secure spaces (92 for residents and 3 for retail users), 5 spaces for residential visitors and 2 spaces for retail visitors.

[364] Proposed condition 34 prescribes that 95 long-term spaces are to be provided internal to the development in a secure location and proposed condition 35 provides that 7 visitor spaces are to be provided at podium level making up the total of 102 spaces,¹²⁸ all consistent with the AUP.

Are there safety and congestion concerns for the access to and from Valley Road and Carrick Place?

Accessways

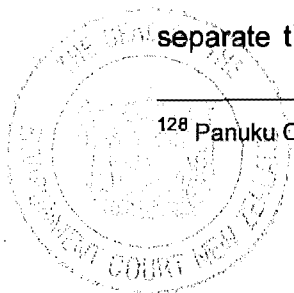
[365] There are to be two vehicle accessways to the site, a two-way driveway from Valley Road located about 60m from Dominion Road and an access from Carrick Place for rubbish collection and the delivery of retail goods and services.

[366] Mr Dexter raised concerns about the safety for children using the footpath to cross the Valley Road accessway on their way to and from school and the residents of Carrick Place had concerns about congestion and safety arising from the proposed use of this accessway by commercial vehicles.

[367] Mr McKenzie advised that the Land Transport Safety Authority (now NZTA) (RTS-6 document) Guidelines for Visibility at Driveways is commonly used in the design of accessways to calculate recommended sight distances, based on operating speed and the classification of the frontage road and the amount of traffic using the accessway. This guideline had been used in the design of the Valley Road accessway which would be 6m wide with the ramp to the basement having a maximum gradient of 1:8 flattening to 1:20 where it meets Valley Road. He said that all of these dimensions met the gradient requirements in the AUP.

[368] The visibility splay recommended in the guideline had also been adopted on the right-hand side for exiting vehicles and on the left-hand side a low wall less than 0.5 m high would separate the driveway from the buffer area and would not restrict visibility for drivers and

¹²⁸ Panuku Opening Legal Submissions at [4.27].



pedestrians.

[369] There would also be a 5m long stopping space on the site to accommodate at least one vehicle between the footpath and the card-controlled access gate to avoid blocking the footpath and the gate would limit the speed of vehicles accessing the site.¹²⁹

[370] Proposed condition 11 requires a Construction Traffic Management Plan (CTMP) to be prepared for certification by the Council. The objective of the CTMP is to ensure that during construction the surrounding road network including the footpaths operate safely and efficiently for all road users, residents and pedestrians.

[371] In proposed condition 11 there is also a requirement that the CTMP provide that construction traffic must not use this access between 8 am and 9am and 3pm and 6pm on weekdays. Also that this access is not be used by construction vehicles between 6pm and 8am apart from night-time deliveries of oversize plant and equipment and building elements. Even though the proposed conditions do not restrict construction traffic from using this access between 8am and 6pm on weekends, this traffic would still need to comply with the lower construction noise and vibration limits which apply after 1 pm on Saturdays and on Sundays.

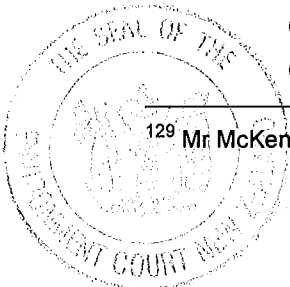
[372] The requirements in condition 11(h) should be a stand-alone condition, with the CTMP only a vehicle for identifying the actions the consent holder needs to ensure that these requirements are met. A new and standalone condition (before Construction condition 11 'Traffic Management Plan') needs to specify the limits on truck movements (such as under a heading 'Restriction on truck movements for construction' as follows:

Truck movements associated with the construction of the development (including the removal of existing buildings and fill) shall not queue to enter, enter or leave the site during the busy commuter peak hours of 8am to 9am and 3pm to 6pm weekdays; and shall not enter or leave the site between the hours of 6pm to 8am. Oversize plant, equipment (such as cranes and large machinery) and building elements (such as pre-cast steel) that would cause significant disruption to the surrounding road network may be brought onto, or taken off, site outside the above times, subject to at least 5 working days' advice to the owners and occupiers of the properties listed below and the approval of the Auckland Council Team Leader Central Monitoring.

The property owners and occupiers to be advised are:

- (i) all units at 9-15 Carrick Place;
- (ii) 111 Valley Road;
- (iii) 109 Valley Road;
- (iv) 107 and 107A Valley Road
- (v) 105 Valley Road;
- (vi) 21A, 21B and 21C Carrick Place;
- (vii) 18 Carrick Place;

¹²⁹ Mr McKenzie, evidence-in-chief at [3.14] – [3.15].



- (viii) 16 Carrick Place;
- (ix) 14 and 14A Carrick Place;
- (x) 12 Carrick Place;
- (xi) All Units at 236, 240 and 242 Dominion Road

[373] Mr Peters raised a concern about trucks forming a queue on Valley Road prior to entering the site to pick up excavated material from the site development works. Mr McKenzie agreed that controls on truck queueing should be provided for in the CTMP and provision for this needs to be included in the proposed condition 11 list of matters to be addressed in the CTMP.

[374] With respect to resident concerns about safety and congestion for the Carrick Place access, Mr McKenzie said that even with the originally proposed four parking spaces off Carrick Place, there would have been less than 10 individual traffic movements per hour at most and in his opinion, these movements would not affect traffic congestion nor safety for this access.¹³⁰

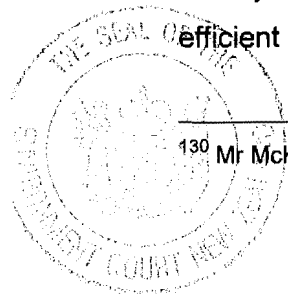
[375] Under proposed condition 13, Panuku is required to provide the Council with details of any agreements reached with Auckland Transport for the Valley Road and Carrick Place accessways onto the site.

[376] With respect to the Valley Road accessway, Mr McKenzie has confirmed that the gradient of this accessway meets the gradient requirement of the AUP E27.6.3.6 (which we note was not identified in the Flow Chart) and therefore a specific consent will not be required for this.

[377] Apart from this, there was no evidence as to whether consent(s) were required for any other aspects of the two vehicle accessways although we do note that locating the loading bay at the end of Carrick Place is consistent with AUP Policy E27.3 (15), which requires "access to loading facilities ...to minimise disruption on the adjacent transport network."

[378] Our finding on the accessways then is that, in terms of Policy E27.3(20), the accessways have been "...designed and located to provide for the safe, effective and efficient movement to and from the site and minimise potential conflicts between vehicles, pedestrians and cyclists on the adjacent road network to a standard which will provide for the safe and efficient operation of vehicles entering and exiting the site". In terms of Policy E27.3(21) "the

¹³⁰ Mr McKenzie, evidence-in-chief at [4.1].



location, number, and design of vehicle crossings and associated access (for the site) provides for the efficient movement of people and goods on the road network." We therefore conclude that the proposed design and conditions appropriately deal with safety and congestion concerns in relation to access to and from the development at Valley Road and Carrick Place.

Traffic Congestion

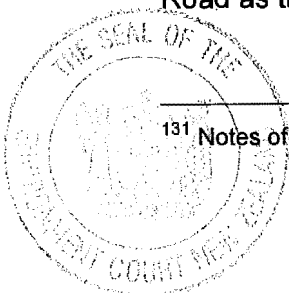
[379] Mr Dexter said that he was concerned about vehicles from the new development adding to the existing congestion in the 7.30am to 9.00am morning peak. In particular, during these hours he had observed a complex set of interactions at the Dominion Road/Valley Road intersection. These included city-bound traffic turning right from Valley Road into Dominion Road and parents driving their children to the Mount Eden Primary School turning right from Dominion Road into Valley Road.

[380] As a resident living opposite the Countdown supermarket, he had observed also that the peak time for traffic using the supermarket was in the evenings between 6pm and 7 30pm when the carpark was full. At these times Valley Road became completely clogged up and traffic turning into Valley Road from Dominion Road often needed to brake suddenly to avoid the line of cars waiting to turn into the supermarket carpark.¹³¹ He asked Mr McKenzie if he had undertaken traffic modelling for this 6pm to 7 30pm period.

[381] Mr McKenzie advised that he had had not undertaken traffic modelling for the early evening times when Mr Dexter said the traffic entering and leaving the Countdown carpark opposite his property in Valley Road was at its worst. The reason for this was that he was satisfied that there would be less traffic on the surrounding network at these times than during the modelled morning and late afternoon peaks.

[382] The peak traffic periods were between 7.30am to 9am in the mornings and in the afternoons, typically from 4pm to 6pm. He said that the collection of traffic data during the times of these peak traffic flows had formed the basis of his assessments of queueing and delays. During the 4pm – 6pm afternoon peak period, the Dominion Road/Valley Road traffic lights were phased to facilitate the passage of the high volumes of traffic using Dominion Road. He said that this phasing had the advantage of allowing relatively unimpeded movements for traffic turning left into Valley Road and at this time there would be few cars parked on Valley Road as their owners would still be at work.

¹³¹ Notes of Evidence at page 230.



[383] His traffic modelling had shown that the additional traffic from the new development would have a minor or less than minor effect on the operation of the adjacent road network including the Dominion Road/Valley Road intersection.¹³² He added that the residents living in the new development would most likely adjust their travel behaviours to respond to the prevailing traffic conditions with, for example, some choosing to use cars and others public transport.

[384] Mr McKenzie's overall conclusions (supported by Mr Church) were that the additional traffic generated by the new development would have minimal impact on the existing levels of traffic on the adjacent road network.

[385] There was no evidence as to whether the traffic effects from the development on the surrounding roading network required consents. On the basis that no specific consent(s) are required and having considered his evidence and responses to questioning from the s 274 parties, we accept Mr McKenzie's conclusion that the operational traffic effects of the Project will be no more than minor and well within the operating capacity of the adjacent road network.¹³³

Conditions

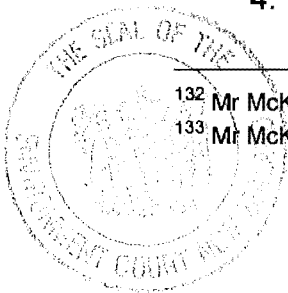
[386] Set out below are the amendments or additions we direct are to be made to Panuku's 12 September 2019 condition set. If it appears that the Court has either misinterpreted or misunderstood the meaning or intent of any particular condition, Panuku and the Council may make a submission about this.

1. Dates are to be added to the covers of the final set of Resource Consent Drawings and the Closing Design Mediation Summary Report. The dates are to be 24 May 2019 as shown in table in Condition 1.
2. A new condition is to be inserted in an appropriate location as follows:

Construction vibration is to be limited to the hours of 8am to 6pm on weekdays and from 8am to 1pm on Saturdays.
3. The wording of condition 30 should be consistent with that in condition 29B with the words "sensitive to noise" being inserted after "occupied buildings" in condition 30.
4. Reword condition 8 (i) to read:

¹³² Mr McKenzie, evidence-in-chief at [3.28-3.29].

¹³³ Mr McKenzie, evidence-in-chief, at [3.29].



Details of the management and mitigation measures required to comply with conditions 29A to 32E inclusive.

5. Amend condition 32E by replacing the words "conditions 29-32" with "conditions 30 and 30A" and add to this condition "Blasting shall be undertaken only between the hours of 9am and 5pm Monday to Fridays and at set times."

6. Consistent with section 5.5 of the CNVMP, a new condition is to be inserted after condition 30 as follows:

In order to enable monitoring of the highest vibration levels at nearby buildings, and to mitigate vibration transfer from subsequent breaking, initial rock breaking is to be undertaken at the perimeter of the rock excavation area"

7. For noise shrouds:

- (a) a condition is to be included requiring the contractor to fit noise reduction shrouds on all rock breaking equipment;
- (b) section 5.4.1 of the CNVMP is to be amended to include a provision for the contractor to attach noise shielding shrouds on all rock breaking equipment

8. Condition 40 as currently worded is:

Stormwater: The consent holder shall ensure that the required freeboard to finished floor levels from overland flow within and adjacent to the site is maintained.

The condition is too uncertain as drafted and should be reworded to specify what is required.

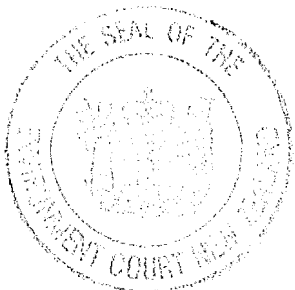
[387] Condition 44 is to be amended to refer to section of the 2016 edition of the Good Practice Guide.

[388] A new condition before condition 11 is to specify the limits on truck movements (such as under a heading 'Restriction on truck movements for construction)' as follows:

Truck movements associated with the construction of the development (including the removal of existing buildings and fill) shall not queue to enter, enter or leave the site during the busy commuter peak hours of 8am to 9am and 3pm to 6pm weekdays; and shall not enter or leave the site between the hours of 6pm to 8am. Oversize plant, equipment (such as cranes and large machinery) and building elements (such as pre-cast steel_ that would cause significant disruption to the surrounding road network may be brought onto, or taken off, site outside the above times, subject to at least 5 working days' advice to the owners and occupiers of the properties listed below and the approval of the Auckland Council Team Leader Central Monitoring.

The property owners and occupiers to be advised are:

- (i) all units at 9-15 Carrick Place;
- (ii) 111 Valley Road;



- (iii) 109 Valley Road;
- (iv) 107 and 107A Valley Road
- (v) 105 Valley Road;
- (vi) 21A, 21B and 21C Carrick Place;
- (vii) 18 Carrick Place;
- (viii) 16 Carrick Place;
- (ix) 14 and 14A Carrick Place;
- (x) 12 Carrick Place;
- (xi) All Units at 236, 240 and 242 Dominion Road.

The new condition will need to be referenced in condition 8(i).

[389] In reviewing the conditions and the Construction Noise and Vibration Management Plan we have concerns further to those we raised on specific conditions during the hearing. We find the approach to conditions and the management plans not in line with good practice. In particular, we find that there are insufficient stand-alone conditions that set out requirements that must be achieved, with many such requirements buried in the list of items to be covered in a yet to be prepared management plan such as the Construction Traffic Management Plan or in the Construction Noise and Vibration Management Plan.

[390] We are not prepared to sign off on the conditions as drafted. A full and considered review of those conditions is required to:

- (a) Ensure requirements are set out in stand-alone conditions;
- (b) Recognise that the proper function and purpose of management plans, to be certified by named Council officers, is to set out how the requirements of those conditions are to be met;
- (c) Redraft the Construction Noise and Vibration Management Plan referred to in the conditions to align with the above approach.

Conclusion

[391] Earlier in this decision we set out the main issues we needed to determine. We answer them as follows:



Issue 1

[392] Does the height, bulk and form of the buildings create adverse effects on the s 274 parties' properties that are to be considered as restricted discretionary activity matters for the Local Centre Zone and THAB Zone, and are these consistent with the relevant objectives, policies and assessment criteria in the AUP?

Yes.

Issue 2

[393] Should the Universal Building be demolished, and if so do the proposed conditions mitigate any adverse effects caused by its loss including in relation to the timing of its demolition and the construction of the proposed development?

Yes.

Issue 3

[394] Are any adverse construction noise and vibration effects on s 274 parties' properties able to be adequately avoided, remedied or mitigated in terms of the relevant objectives, policies and assessment criteria in the AUP?

No.

Issue 4

[395] Are any other potentially adverse effects relating to flooding and stormwater and those relating to ground contamination and earthworks able to be avoided, remedied or appropriately mitigated in line with the matters discretion is restricted to and considering the relevant objectives, policies and assessment criteria in the AUP?

Yes.

Issue 5

[396] Are the parking provision and traffic effects adequately dealt with and consistent with the relevant objectives, policies and assessment criteria in the AUP?

Yes.




Interim Decision

[397] We have decided to issue this decision on an interim basis. As will be evident from our decision, except in relation to construction noise and vibration, we conclude that the appeal could be granted subject to revised conditions.

[398] We have decided that the parties should be given an opportunity to reconsider what is proposed to avoid, remedy or mitigate adverse construction noise and vibration effects in line with what we have identified as problematic in the section on this topic in this decision to see if they can reach agreement about them. If it is thought to be of assistance and the parties agree to it, we will consider making an Environment Commissioner, (not either of the Commissioners involved in this case), available to facilitate and/or mediate a session on the topic.

[399] If the parties are unable to agree, they are to provide memoranda to the Court **no later than Friday 24 April 2020** setting out their respective positions, following which we will consider whether a final decision can issue on the papers or whether the hearing should be reconvened to deal with the remaining issues.

For the Court


M Harland
Environment Court Judge



BEFORE THE ENVIRONMENT COURT

I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2020] NZEnvC 186

IN THE MATTER of the Resource Management Act 1991
AND of an appeal pursuant to s 120 of the Act

BETWEEN PANUKU DEVELOPMENT AUCKLAND
LIMITED

(ENV-2018-AKL-000176)

Appellant

AND AUCKLAND COUNCIL

Respondent

AND R Peters and R Bannan
R Dexter and A Modrow
N Smith
P Lange
L Whiley

s 274 parties

Court: Environment Judge M Harland
Commissioner K Edmonds
Commissioner D Bunting

Hearing: On the papers
Submissions received 12 August, 21 August, 25 August, 26 August,
27 August, 28 August and 2 September 2020

Counsel: D J Minhinnick and S H Pilkington for the Appellant
D Hartley, A Buchanan and B Ford for the Respondent
Mr R Peters, Mr R Bannan, Mr R Dexter, Ms A Modrow, Mrs N Smith,
Mr P Lange and Mr L Whiley – s 274 parties – for themselves

Date of Decision: 2 November 2020

Date of Issue: 2 November 2020

SECOND INTERIM DECISION OF THE ENVIRONMENT COURT



- A: Panuku is to address and respond to the matters at [99] and [142] of this decision no later than 27 November 2020.
- B. Panuku is also directed to provide the Court with an updated set of conditions responding to the issues on the other conditions identified by the Court in this further interim decision no later than 27 November 2020.
- C. Having considered Panuku's responses on this requested information and updated conditions, the Court should then be in a position to reach a final decision on the outcome of this appeal.

REASONS

Introduction

[1] This case concerns an appeal by Panuku Development Auckland Limited (**Panuku**) against the decision of Auckland Council (**the Council**) refusing its application for resource consents to construct a new multi-level mixed-use development on eight adjoining sites located in Dominion Road and Valley Road, Mount Eden, Auckland.

[2] In our Interim Reserved Decision dated 6 March 2020,¹ we set out our findings on the five main issues we had identified we were required to determine on appeal,² one of which was whether any adverse construction noise and vibration effects on the s 274 parties' properties were able to be avoided, remedied or mitigated in terms of the relevant objectives, policies and assessment criteria in the AUP.

[3] In relation to this issue, we noted the overall lack of detail provided to us about the proposed measures to avoid, remedy and mitigate construction noise and vibration effects. This included a lack of definitive information about how long rock-breaking and blasting might be required to excavate the site and how long noisy equipment would be operating each day within the hours specified in the conditions. The number of sensitive receivers living close by in the retirement village at 9-15 Carrick Place also warranted a more detailed construction methodology being provided with the application rather than leaving this to be determined later through the Construction Noise and Vibration Management Plan (**CNVMP**).

[4] In the absence of any form of social impact assessment having been undertaken,

¹ *Panuku Development Auckland Limited v Auckland Council* [2020] NZEnvC 024.

² The issues for us to determine were set out at paragraphs [56] and [57] of the Interim Reserved Decision



we found there was also a lack of evidence about the potential effects of construction noise and vibration on the residents of the retirement village. Such an assessment could have established whether any of the residents were house-bound, whether any had special health needs or whether there were places they might be able to go to during the day when the noise and vibration effects were predicted to be at their worst.

[5] We did not reach a final decision about whether the appeal should be granted. We said:

[397] We have decided to issue this decision on an interim basis. As will be evident from our decision, except in relation to construction noise and vibration, we conclude that the appeal could be granted subject to revised conditions.

[398] We have decided that the parties should be given an opportunity to reconsider what is proposed to avoid, remedy or mitigate adverse construction noise and vibration effects in line with what we have identified as problematic in the section on this topic in this decision to see if they can reach agreement about them. If it is thought to be of assistance and the parties agree to it, we will consider making an Environment Commissioner (not either of the Commissioners involved in this case), available to facilitate and/or mediate a session on the topic.

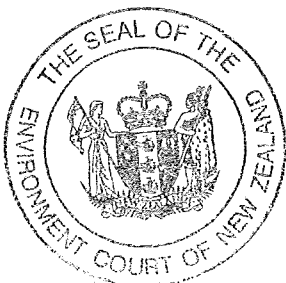
[6] We also directed a full and considered review of the conditions (not just those related to noise and vibration).³ At paragraphs [389] and [390] of the Interim Reserved Decision, we said:

[389] In reviewing the conditions and the Construction Noise and Vibration Management Plan we have concerns further to those we raised on specific conditions during the hearing. We find the approach to conditions and the management plans not in line with good practice. In particular, we find that there are insufficient stand-alone conditions that set out requirements that must be achieved, with many such requirements buried in the list of items to be covered in a yet to be prepared management plan such as the Construction Traffic Management Plan or in the Construction Noise and Vibration Management Plan.

[390] We are not prepared to sign off on the conditions as drafted. A full and considered review of those conditions is required to:

- (a) Ensure requirements are set out in stand-alone conditions;
- (b) Recognise that the proper function and purpose of management plans, to be certified by named Council officers, is to set out how the requirements of those conditions are to be met;
- (c) Redraft the Construction Noise and Vibration Management Plan referred to in the conditions to align with the above approach.

[7] In this decision we also address the set of conditions that is to apply to the consents as a whole, upon which we have not yet made a final decision, notwithstanding our indication that four of the issues we were required to address in our Interim Reserved Decision could be satisfactorily dealt with through conditions. This is because the conditions need to be read as a package and any problems and inconsistencies rectified.



³ We note that Panuku has taken a narrow view of what the Court required in relation to reviewing the conditions. Its submission states that its understanding of the Court's direction in the Interim Decision is that further amendments to the conditions were only required for noise and vibration.

[8] The parties requested the assistance of an Environment Commissioner. Facilitated meetings and expert conferencing⁴ took place as follows:

- 23 June 2020 – Commissioner-facilitated meeting;⁵
- 1 July 2020 – Acoustics and planning expert witness conferencing;
- 21 and 22 July 2020 – Acoustics expert witness conferencing;
- 23 July 2020 – Acoustics expert witness conferencing;
- 4 August 2020 – Commissioner-facilitated meeting.

[9] Following the sessions convened before the Environment Commissioner when it became apparent that an agreed resolution would not be possible, counsel for Panuku helpfully collated and filed the following documents to respond to the matters we had reserved in our interim decision.

- A Statement of Outcomes from the facilitated meetings held between the parties, finalised on 12 August 2020. This document also attaches the Joint Witness Statement of the Noise and Vibration Experts (**JWS**);
- Submissions from Panuku dated 21 August 2020, attaching the following:
 - Appendix A – Panuku’s final proposed conditions;
 - Appendix B – Panuku’s final proposed draft CNVMP;
- Submissions from all other parties, being:
 - Submissions of Richard Peters and Roger Bannan dated 25 August 2020;
 - Submissions of Nancy Smith dated 26 August 2020;
 - Submissions of Peter Lange dated 27 August 2020;
 - Submissions of Auckland Council dated 28 August 2020;



⁴ The noise and vibration experts who were engaged by the parties were Ms Siiri Wilkenning for Panuku, Mr Peter Runcie for the Council and Mr Jon Styles for the s 274 parties.

⁵ The meetings were attended by counsel, representatives from Panuku and the Council, s 274 parties, the acoustic experts and the planning expert for Panuku. Unfortunately, the COVID-19 pandemic delayed the ability to convene these sessions at an earlier date.

- Submissions of Astrid Modrow dated 28 August 2020;
- Submissions of Julie Singh dated 28 August 2020;
- Submissions of Robert Dexter dated 28 August 2020;
- Reply submissions from Panuku dated 2 September 2020.

[10] Having carefully considered the above, we determined that a further hearing was not necessary as the issues for each party were clearly expressed in their written submissions. We have, therefore, dealt with them on the papers to avoid further delay.

[11] As will be evident from our conclusion, further work needs to be done to ensure that the proposed conditions are clear, certain and enforceable, however we are satisfied that, subject to this, consent can be granted.

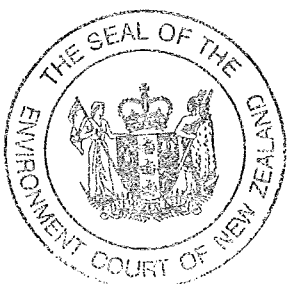
[12] In this decision, we first address the proposed construction noise and vibration conditions. We then address Panuku's proposed final set of conditions.

The proposed construction noise and vibration conditions

Panuku's proposal

[13] The amended construction noise and vibration (and other) measures proposed by Panuku following the facilitated meetings were as follows.⁶

- A 3.6m high acoustic barrier to be erected along the boundaries with residential properties for the duration of the construction period (unless there is already a concrete wall on the boundary);
- A 2.4m high acoustic barrier to be erected along the boundaries with other properties, including road boundaries, except when access is required, for the duration of the construction period (unless there is already a concrete wall on the boundary);
- A standard shipping container barrier two high, to be located approximately 500mm inside the site along the boundary with 9-15 Carrick Place (as depicted in Figure 1⁷);



⁶ Statement of Outcomes at [4].

⁷ A copy of Figure 1 is appended to this decision.

- A social needs survey to be undertaken of the 9-15 Carrick Place occupiers prior to construction commencing;
- A requirement for the consent holder to offer temporary relocation of the occupiers of 9-15 Carrick Place for the duration of rock-breaking and / or blasting within 20m of the boundary with 9-15 Carrick Place. This is to be offered pre-construction, and to remain open during the period when rock-breaking is occurring within 20m of the boundary;
- Rock breakers to be fitted with shrouds at all times to minimise noise;
- A requirement for independent determination of building damage disputes, with the costs of that process to be met by the consent holder and for the independent building surveyor to be selected by the Community Liaison Group (**CLG**);
- Updated conditions and the CNVMP to reflect the agreements reached by the noise and vibration experts as set out in their JWS, and;
- An additional dust condition to be included, (condition 69) in the updated conditions.

Section 274 parties' concerns

[14] Notwithstanding the additional measures proposed by Panuku, in their submissions the s 274 parties identified a range of issues that were still of concern to them. We summarise these concerns below.

Richard Peters and Roger Bannan (co-owners of 21B Carrick Place)

[15] Mr Peters and Mr Bannan raised three issues:

- (a) potential building damage;
- (b) the predicted volume of excavation and the associated time to carry out the excavation; and
- (c) the steps to be taken to meet the needs of the residents of 9-15 Carrick Place.



[16] For the first issue, they sought that following condition be included:⁸

At their cost the property owner may wish to seek their own technical specialist advice, and this must be provided to the consent holder prior to the determination process commencing. Should the consent holder and the property owner fail to reach agreement on damage rectification measures and/or their cost the matter shall be referred to an independent building professional for a determination. This determination shall be final and binding on both the consent holder and the property owner. The costs associated with engaging the independent building professional shall be shared by the consent holder and the property owner

[17] On the second issue, Mr Peters and Mr Bannan advised that they had been unsuccessful in their attempts to find out whether anyone (such as the Council) held reliable information on volumes and excavation times for previous developments which could have been used to provide a more reliable estimate of the excavation time for the Panuku site. They suggested that the Council be required to establish a database to record the predicted volume and time to excavate the site, and later the actual volume and time taken. Their reasoning for this was so that this information and equivalent information from other sites could be used on future developments for providing more informed decisions on volumes and times.

[18] For the third issue, while acknowledging the additional measures agreed to by Panuku for mitigating noise and vibration effects for the residents of 9-15 Carrick Place, Mr Peters and Mr Bannan sought that the offer to relocate the residents should apply when rock-breaking or blasting was being undertaken within 40m of the boundary of 9-15 Carrick Place as opposed to 20m. In seeking this amendment, they said that they were relying on the experts' JWS⁹ that deeper excavations would be required in the north-western corner of the site and in the 25m wide strip close to the boundary.

Nancy Smith (resident at 9 Carrick Place retirement village)

[19] Ms Smith lives immediately adjacent to the site at 9 Carrick Place. In her submission she noted that there had been mention of relocation for the residents of 9-15 Carrick Place when rock-breaking was being undertaken "within 20m and 40m of the boundary". Her request was that the residents of 9-15 Carrick Place be given the option of relocating for the entire time that rock-breaking is being undertaken.



⁸ Submissions of Richard Peters and Roger Bannan (co-owners of 21B Carrick Place), dated 25 August 2020 at [6].

⁹ JWS at [11].

Peter Lange (resident at 16 Carrick Place)

[20] Mr Lange is concerned about the uncertainties associated with Panuku's estimates of the volume of rock to be excavated and the predicted time for the excavation. He requested that a more comprehensive geological survey be undertaken to enable the time taken to excavate the site to be predicted more accurately. He said that this would allow more definitive planning to be undertaken for the care of the retirement home residents and would give them a higher degree of certainty than currently exists.

[21] He considered also that the relocation offer should apply for any of the s 274 parties who requested it at the times when rock-breaking was being undertaken within 30m of their dwellings. He also sought that real-time information on vibration should be sourced from vulnerable s 274 dwellings throughout the entire excavation period.

Robert Dexter (resident and co-owner of 105 Valley Road)

[22] Mr Dexter listed a series of concerns including:

- Only 8 boreholes had been drilled on the site and the interpolation of rock levels across the site from these was scientifically dubious;
- It was questionable to rely on the foundation data obtained from only 8 boreholes to predict with any degree of accuracy the volume of rock to be excavated and the time to undertake this work;
- If the predicted excavation time frame has been underestimated, this would have a significant impact on the amenity of the retirement village residents;
- A higher degree of surety on the time frame should be central to the evaluation of the impact of the rock-breaking on the retirement village residents;
- Even though the residents of the retirement village have been recognised as sensitive receivers, this does not mean that other neighbours are not;
- The decision on the consenting should not be made until:
 - the volumes of rock to be excavated and the days on which rock-breaking is to be undertaken are clarified;



- expert evidence has been obtained on the health effects of noise and vibration on the residents of the retirement village (and other s 274 parties);
- any standards in the CNVMP not already contained in the conditions have been relocated/replicated in the conditions.

Astrid Morrow (resident and co-owner of 105 Valley Road)

[23] Ms Morrow's concerns were that:

- Additional boreholes should be drilled to allow a more accurate determination of excavation volumes and timeframes;
- It should be the consent holder's responsibility to offer and if accepted find suitable relocation options for affected residents;
- The relocation offer should be extended to include other impacted neighbours;
- A social needs study should have been undertaken;
- The condition allowing the exceedance of the 2mm/s vibration limit for up to three days needs to be clarified in the context of the gap to apply between three-day periods;
- Additional real time vibration monitoring should be undertaken;
- Ventilation/cooling should be installed in neighbouring homes if windows need to be kept closed for extended periods to provide acoustic protection.

Julie Singh (resident of retirement village)

[24] Although she is not identified as a s 274 party, Ms Singh also made a submission.¹⁰ She said that the residents of the village were a group of vulnerable people with real concerns about the lack of clarity around noise levels and projected timetables. She also considered that there was an inconsistency between the wording of condition 42 and clause 2.2 of the CNVMP when in her opinion they should have the same

¹⁰ Panuku and the Council have, in our view appropriately, not taken any issue with this. We also note that they took the same constructive approach to Ms Kelland's attendance at the facilitated sessions.



meaning. In particular she noted that (her underlining) condition 42 refers to “all noise generating activities associated with the implementation of this resource consent...” whereas CNVMP clause 2.2 refers to “Construction works causing high noise levels...”.

The Council's response

[25] In a memorandum in response to the submissions filed by Panuku, the Council confirmed its support for consent being granted as now being sought by Panuku on the basis that the 21 August 2020 set of conditions and CNVMP reflect the recommendations made by the planning and acoustic experts at their expert conferencing.¹¹

Panuku's reply submissions

[26] Panuku responded¹² to two substantive issues raised in the submissions:

- the building survey process;
- the impacts of the predicted time for excavation on the conclusions of the noise and vibration experts in their JWS.

The building survey process

[27] Mr Peters and Mr Bannan have sought the inclusion of a condition under which a property owner would be entitled to seek separate technical advice if there was a disagreement between them and the consent holder on the damage assessment for their building. The disagreement would be referred to an independent building professional for determination.

[28] Under the condition proposed by Panuku, an independent surveyor paid for by the consent holder would be appointed from the outset by the Community Liaison Group to represent all property owners. Panuku's position was that this provided a fair and transparent process for the selection of an independent surveyor, whereas the condition proposed by Mr Peters and Mr Bannan was less certain. We accept Panuku's reasoning in support of its condition adding that selection by the Community Liaison Group representing the wider community removes the potential for any alleged bias if selections were to be undertaken on a case by case basis by individual property owners.

¹¹ Memorandum of counsel for the Council, 28 August 2020.

¹² Reply submissions, 2 September 2020.



Excavation timeline

[29] On the second issue, Panuku sought to clarify a matter raised by Mr Dexter in the context of his suggestion that the conclusions of the JWS would change if the timeline for excavation was to change. Panuku's response was that the JWS¹³ clearly sets out the assumptions which the noise and vibration experts had made regarding the potential timeframes for excavation and the uncertainties about these. Its position was that:¹⁴

the JWS can be relied on in relation to these assumptions as well as its general finding of broad compliance with the noise and vibration effects from rock-breaking at the site.

[30] Although it is not entirely clear to us what is meant by the references to 'broad compliance' and the use of 'effects' rather than recognising the 'limits' that the conditions must meet, we note that Panuku did add in its submission that there was nothing in the JWS to suggest that materially different conclusions would have been reached by the noise and vibration experts if the timeline was to change.

[31] We accept Panuku's position on this issue noting in particular the advice of the experts who wrote in their JWS that:¹⁵

There is no reliable way of predicting ahead of a contract being let what method the contractor would use to remove the rock, so modelling cannot assist at this time. The experts consider that the appropriate control is the requirement to meet the noise and vibration limits set in the Conditions.

emphasis added

[32] Our finding on this issue is that we accept that the noise and vibration conditions agreed by the experts in their JWS have accounted for the likelihood that the actual timeline for excavating the rock could well be different from that estimated by Mr Speight.¹⁶ Issues identified in residents' submissions

[33] The issues raised by submitters can be encapsulated in the following questions:

- Should further geological investigations be undertaken to provide a better understanding of the volume of solid basalt to be excavated and therefore a better understanding of the time required to undertake this excavation?
- Should the relocation offer which is to apply when rock-breaking is being undertaken within 20 m of the boundary of 9-15 Carrick Place be extended to



¹³ See para 13.

¹⁴ Reply Submissions on behalf of Panuku 2 September 2020 at [7].

¹⁵ JWS at [13(f)].

¹⁶ Mr Speight is the engineer who provided the experts with estimates of the predicted times for rock breaking on the site.

a distance of 40m (or some other distance) or for all of the time that rock-breaking is being undertaken?

- Should the offer to relocate residents of the retirement village at 9-15 Carrick Place be extended to include residents of other neighbouring properties?
- Should there be real-time vibration monitoring at neighbouring properties when rock-breaking is being undertaken?
- Should Panuku be required to install ventilation/cooling in neighbouring homes if windows need to be kept closed to provide acoustic protection?
- Should expert evidence be obtained on the health effects of noise and vibration on the residents of the retirement village (and other s 274 parties)?
- Is there an inconsistency between the wording of condition 42 and clause 2.2 of the CNVMP?
- Should there be a condition requiring the Council to establish a database for recording the predicted volume and time to excavate the Panuku site compared with the actual volume and time, and for other developments as well

[34] We discuss each of these issues in turn before making a finding on each.

Should further geological investigations be undertaken to provide a better understanding of the volume of solid basalt to be excavated and therefore a better understanding of the time required to undertake the excavation?

[35] Mr Dexter and Mr Lange considered that, as only 8 boreholes had been drilled on the site,¹⁷ the interpolation of rock levels across the site, and the volumes to be excavated, were therefore scientifically dubious. The Tonkin and Taylor report referred to by them (which was authored by Mr Speight¹⁸) noted that *"the nature and continuity of subsoil away from the investigation locations are inferred but it must be appreciated that actual conditions could vary from the assumed model."*¹⁹

[36] The report recommended that supplementary investigations be undertaken in the context of providing more reliable information for the design of slope stabilisation measures along the excavation boundaries.

¹⁷ Tonkin and Taylor Geotechnical Investigation Report at [6.1] (CB1128).

¹⁸ Mr Speight gave geotechnical evidence at the hearing.

¹⁹ CB1129 at [7.1].



[37] Panuku and its experts did not respond to Mr Lange's and Mr Peters' suggestion that further geological investigations would lead to a higher degree of confidence in the assessment of the volume of rock to be excavated and therefore greater certainty in the estimate of the time required to complete this excavation.

[38] Mr Speight, in his updated advice to the acoustic experts (in the JWS), pointed out that the time required to complete the excavation would depend very much on the methodology and plant used by the contractor selected to undertake this work.²⁰ Based on the geological information which was available, his estimate of the time required for rock-breaking was 1 to 2 months, with the entire bulk excavation taking 3 to 4 months.

[39] We note that these times are significantly less (a little over half) compared with those provided by counsel for Panuku in his closing legal submissions (relying on the evidence of Ms Wilkening and Mr Speight).²¹ Mr Speight did not provide any explanation for this difference.

[40] We considered requiring an explanation from Mr Speight as to the basis upon which he has updated the estimates, but we have concluded that this is unnecessary given it is possible to provide adequate protection for the retirement village residents during rock-breaking through soundly based and clear requirements in additional conditions. We have, however, concluded that the condition proposed by Panuku requiring the consent holder to offer relocation for retirement village residents within the trigger distance for rock-breaking only goes part of the way. On top of that, as discussed below, new requirements are to be included for validating and monitoring the trigger distance and if necessary increasing this distance to where compliance with the 2mm/s PPV level is achieved.

[41] While it would seem intuitive that further geological investigations would assist in refining the volumes of rock to be excavated, we have seen no expert evidence to support this contention, and as Mr Speight has advised, the time to excavate the site will be heavily influenced by the chosen contractor's construction methodology.

[42] Given these factors, we consider that it would be inappropriate for us to direct Panuku to commit to further geological investigations at this time.



²⁰ JWS at [11].

²¹ Interim Decision at [260].

Should the relocation offer which is to apply when rock-breaking is being undertaken within 20 m of the boundary of 9-15 Carrick Place be extended to a distance of 40m (or some other distance) or for all of the time that rock-breaking is being undertaken?

[43] The basis for choosing a distance of 20m from the boundary is outlined at paragraphs [52] and [53] of the JWS which we now summarise.

[44] Ms Wilkening has predicted that the AUP 2mm/s PPV permitted activity vibration limit can be complied with for all rock-breaking undertaken at distances greater than 20m from the northern boundary of the site. She said that this was the basis agreed to by the experts in recommending the 20m trigger distance for the offer of relocation to apply. The exception to this will be during the period when it is necessary to remove the containers to provide access for excavation close to the boundary. The time predicted to excavate this perimeter rock is about one week.

[45] Mr Lange asked what the changes would be to the noise and vibration effects if the trigger distance was 25m from Units 1 and 2 of the retirement village. To assist, he provided a plan showing the area of the site which would be covered by this 25m distance.²² Mr Speight's advice about this to the acoustic experts was that the excavation depth over most of the northern end of the site adjacent to 9-15 Carrick Place would be relatively modest, with the expectation that the material would be either surface fill and/or fractured/rubbly rock.²³ He said that some deeper excavation would be required locally in the north west corner of the site (which is about 25m from Units 1 and 2) although this was a relatively small area with only nominal volumes to be excavated and an estimated time to complete of one week if excavation was undertaken continuously.

[46] The experts agreed that the predicted vibration levels at the retirement village for excavation at this location would be about 1mm/s PPV compared with the AUP permitted activity level of 2mm/s PPV which had been used to set the 20m trigger distance.²⁴

[47] The experts also advised that the conditions of consent should provide for the 20m trigger distance, with this to be confirmed or adjusted once rock-breaking commences and onsite vibration measurements have been made.²⁵

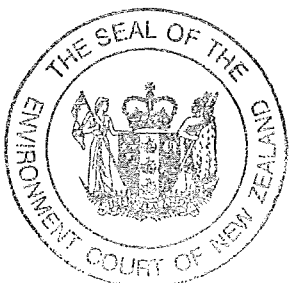
[48] The experts agreed that there was a very low likelihood that the 2mm/s PPV limit

²² JWS Attachment A.

²³ JWS at [11].

²⁴ JWS at [99] and [147].

²⁵ JWS at [53].



would be exceeded other than at 9-15 Carrick Place and 109 and 111 Valley Road, the Dominion site and the Westpac Building. We discuss this further below.

[49] To provide for the low likelihood of the 2mm/s PPV limit being exceeded, the experts recommended the following wording for condition 58:²⁶

If measured or predicted vibration from construction activities exceeds 2mm/s PPV at occupied buildings, the Consent Holder shall consult with the affected receiver to:

- (a) Discuss the nature of the work and the anticipated days and hours when exceedances are likely to occur; and
- (b) Determine whether the exceedances could be timed or managed to reduce the effects on receivers

The Consent Holder shall maintain a record of discussions and make them available to the Council on request.

A level of 2mm/s PPV cannot be exceeded for more than 3 days at any one occupied building, and must not exceed 5mm/s PPV, unless agreed in writing with the owner and/or occupier. Any such agreement shall be available to the Council on request.

[50] Mr Styles recommended that this condition should apply only to the immediately adjacent occupied buildings with an upper limit of 2mm/s PPV to apply for all other neighbouring buildings. Ms Wilkening and Mr Runcie did not agree with Mr Styles on the basis that if the increase for the vibration limit for these other buildings was not provided for, it could have the perverse effect of increasing the duration of the rock-breaking.

[51] As noted above, the 20-metre trigger distance has been chosen by the experts based on the vibration limit of 2mm/s PPV not being exceeded at the retirement village and that under condition 15, the residents of the retirement village would be offered relocation on this basis. If however, the measured vibration level at the retirement village was to exceed the 2mm/s PPV limit the experts have said that this distance might need to be increased to achieve compliance.

[52] This vibration level is to be measured at the commencement of rock-breaking, and if the level exceeds 2mm/s PPV limit, the 20-metre distance is to be increased to a distance at which compliance with the 2mm/s PPV level can be achieved.

[53] What is required to verify the 20m trigger distance before (insofar as that it possible) and by monitoring during rock-breaking? We note that the conditions do not provide for that and they should. Conditions 15 and 58 as currently drafted are to be amended accordingly.

²⁶ JWS at page 52.



[54] With respect to Ms Smith's request that relocation be offered for the entire time that rock-breaking is being undertaken, provided that the trigger distance is set such that the measured vibration level at the retirement village does not exceed the AUP permitted activity level of 2mm/s PPV, vibration levels for rock-breaking undertaken at greater distances should always be less than this AUP permitted level.

[55] We accept that setting 2mm/s PPV as the vibration level not to be exceeded is a reasonable basis for relocation. We therefore do not support relocation being extended to include the entire time that rock-breaking is being undertaken as this complies with the AUP as per the above circumstances.

Should the offer to relocate be extended to include residents of other neighbouring properties?

[56] In Panuku's submission, we did not find any reference to this submitter request although we do note that in the CNVMP, the last bullet point of section 7.2 states that:

In addition to the relocation requirement set out in section 7.1, temporary relocation shall be considered for other sensitive receivers where all practicable noise and vibration management and mitigation measures have been implemented and significant adverse effects are predicted beyond those authorised. This will be in exceptional circumstances only and advice from the Acoustic Specialist and other specialists (eg health) will be sought prior.

[57] We note that this CNVMP provision sets a very high bar for relocation to be considered for non-retirement village residents and also that it has not been replicated in the conditions.

[58] We have therefore undertaken our own assessment to decide whether the offer of relocation should be extended to residents of other neighbouring properties.

[59] Two tables prepared by the experts in their JWS list the predicted rock-breaking noise levels at the retirement village and at other neighbouring properties which either adjoin or are close to the site.²⁷ These noise levels have been predicted based on two shrouded rock breakers operating concurrently with the closest of these at distances of 5m (Table 1) and 20m (Table 2) from the retirement village boundary. In these tables, noise levels have been predicted for the options of the retirement village boundary having no noise barrier, a 3.6m high barrier, a one container high barrier and a two-container high barrier.



²⁷ Tables 1 and 2 in JWS at [23].

[60] The experts advised that their reason for considering a 5m separation distance for (one) or two shrouded rock breakers was that 5m is the minimum distance required to accommodate a container barrier.

[61] A third table was also prepared (Table 3) for one of the two rock breakers excavating in the gap between the two commercial buildings located at 111 and 109 Valley Road both just outside of the eastern boundary of the site.

[62] The experts confirmed in their JWS that the AUP permitted activity construction noise limits between 7 30am and 6 00pm Monday to Friday and 8 00am to 1 00pm on Saturdays are 70 dB_{LAeq} and 85 dB_{LAF Max} when measured 1m from the façade of any building that contains an activity sensitive to noise that is occupied during the works²⁸. These include a 5dB reduction in the AUP permitted noise limits as the construction of this project will extend for a total duration exceeding 20 weeks. There is also a condition (discussed below) which provides for a 75 dB_{LAeq} limit to apply for one 20-week period during the construction of the project.

[63] All of the predictions include a 2dB allowance for uncertainty.

[64] If there was only one rock breaker operating, the predicted noise levels would reduce by between 1 and 2 dB.

[65] The predicted rock-breaking noise levels at Units 1 and 2 of the retirement village at a 20m separation distance with a two-container high barrier on the boundary are 64 dB_{LAeq} (Unit 1) and 61 dB_{LAeq} (Unit 2). For comparison, with the same separation distance and a 3.6m high barrier and no containers, the predicted levels at the two units are 74 dB_{LAeq} and 70 dB_{LAeq} respectively.

[66] The maximum predicted rock-breaking noise level for all other neighbouring properties is at 21 Carrick Place which for a 20m separation distance is 71 dB_{LAeq} at the first-floor level with a 3.6m barrier (with containers making no difference). The next highest predicted level is at 16 Carrick Place, being 68 dB_{LAeq} with a 3.6m barrier and 66 dB_{LAeq} with two containers.

[67] The noise levels for all other neighbouring properties based on a 5m separation distance are all predicted to be less than the predicted levels for a 20m separation

²⁸ The Saturday times of 8 00am to 1 00pm are those provided for in the conditions. The AUP Saturday permitted times start earlier and finish later than these times.



distance.

[68] For a single rock breaker excavating on the development site in the gap between the buildings at 111 and 109 Valley Road with a 3.6m barrier as well as with two containers in place along the retirement village boundary, the maximum predicted noise level for all properties (including the retirement village) is 69 dB_{LAeq} at the first-floor levels of both 21 Carrick Place and 107A Valley Road.

[69] In summary:

- The property most affected by noise from rock-breaking apart from the retirement village is 21 Carrick Place where the predicted noise level is 71 dB for a 20m separation distance (1 dB above the permitted activity level).
- Under this same configuration the next highest predicted noise level is 68 dB at 16 Carrick Place with lesser levels at all other neighbouring properties.
- The noise levels for all other neighbouring properties based on a 5m separation distance are all predicted to be less than those for a 20m separation distance.
- The predicted noise levels with one of the rock breakers excavating between the buildings at 111 and 109 Valley Road with a 3.6m barrier in place on the retirement village boundary is 69 dB_{LAeq} at the first-floor levels of both 21 Carrick Place and 107A Valley Road.

[70] In Chapter J “Definitions” in the AUP “*activities sensitive to noise*” include “*any dwelling*”... and... “*retirement villages*”. This means that as well as the retirement village, the dwellings of all of the s 274 parties to this appeal would be captured under the definition of “*activities sensitive to noise*”.

[71] Notwithstanding, in terms of the effects of noise and vibration on people, the experts advised that the outcomes recorded in the JWS had been based on the response of the majority of people or those in the “*middle of the bell curve*”. They said that the AUP provisions had been prepared on the same basis.

[72] In their JWS the experts also wrote that:²⁹

In some circumstances where there are particularly sensitive people, an assessment of noise and vibration effects on them may require consideration of other factors such as personal

²⁹ JWS at [8].



health and medical matters which are outside the expertise of acoustic experts and would require input from other relevant experts.

[73] There appears to be no disagreement among the parties that the sensitivities of residents of the retirement village are such that these residents fall “outside the middle of the bell curve” and therefore are entitled to the relocation consideration being offered by Panuku.

[74] Conversely, we have not been made aware of any particular sensitivities for other neighbouring residents and particularly for those who own/or live at the properties at 21 Carrick Place and 107A Valley Road, the two properties where the rock-breaking noise levels are predicted to be at or close to the AUP permitted activity limit. Sensitivity was not raised by either Mr Peters nor Mr Bannon who own 21 Carrick Place.

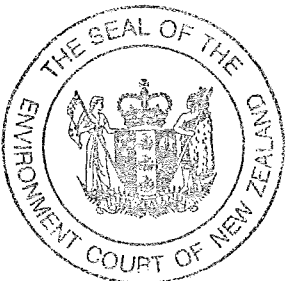
[75] Based on these considerations, irrespective of the relocation provision in section 7.2 of the CNVMP, we have decided that the offer of relocation under condition 14 should be restricted to the residents of the retirement village at 9-15 Carrick Place. We note that relocation may be a possible course of action the consent holder pursues to meet the hard limits in the conditions if the predictions prove to be inaccurate and do not accord with reality.

Should there be real time noise and vibration monitoring at neighbouring properties at times when rock-breaking is being undertaken?

[76] With respect to noise monitoring, as provided for in condition 66, at least one semi-permanent monitor is to be provided and moved between various receiver locations throughout the duration of demolition, rock-breaking, earthworks and the 20-week period where the conditions provide for a construction noise limit of 75 dB LAeq. The JWS suggests that if this is shown to be insufficient then additional monitoring provisions should be considered including attended monitoring. This has not been carried forward into the conditions. It should be.

[77] The experts’ advice is that vibration monitoring on urban construction sites would typically involve operator attended measurements at specific locations for short durations during key vibration generating activities.³⁰ They agreed that a combination of attended monitoring and the use of semi-permanent vibration monitoring equipment should be used during rock-breaking and blasting with a monitor being installed on the foundation of any occupied building where rock-breaking is predicted to generate vibration levels at

³⁰ JWS at [118].



or above 2mm/s PPV.

[78] These requirements are reflected in condition 67 under which unattended continuous vibration monitoring is to be undertaken during the excavation phase of the works by placing at least one semi-permanent vibration logging device at a building agreed with the CLG, with this device able to be moved to other buildings as agreed with the CLG.

[79] The experts agreed that there was a very low likelihood of the 2mm/s PPV limit being exceeded at buildings other than 9-15 Carrick Place and 109 and 111 Valley (two commercial properties). If verification identified that buildings other than these might experience vibrations in excess of 2mm/s PPV, these could be added to the monitoring programme as provided for in condition 67.

[80] While we accept the experts' advice that the noise and vibration monitoring should be undertaken in accordance with conditions 65-67, as we have noted in their JWS, they have identified that these conditions may need to be amended if they prove to be insufficient in practice. The conditions as currently drafted need to be amended accordingly.

Should Panuku be required to install ventilation/cooling in neighbouring homes if windows need to be kept closed to provide acoustic protection?

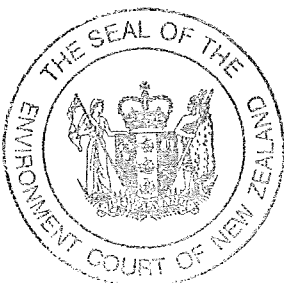
[81] The experts acknowledged that most people would close their windows when construction noise levels are at the permitted AUP limits above. Having agreed that closed windows can result in uncomfortable temperatures in warmer months, they advised that the provision of cooling/ventilation was not a matter for them to comment on as cooling/ventilation was not an acoustic issue.

[82] We could not find any response from Panuku about whether it would agree to provide cooling/ventilation if the AUP permitted construction noise limits were reached or exceeded. It is directed to do so in its response to this further interim decision.

Should expert evidence be obtained about the health effects of noise and vibration on the residents of the retirement village (and other s 274 parties)?

[83] Condition 14 is a new condition which requires the consent holder to undertake a social needs assessment of the residents of the retirement village:

9-15 Carrick Place: Social Needs



14 No later than two months prior to the commencement of construction the consent holder shall contact the occupiers of all of the units at 9-15 Carrick Place and seek information on the following:

- (a) Whether any residents are house-bound, have any special needs or whether they have other places to go during the day when rock-breaking occurs; and
- (b) Whether any resident has any health or medical issue that renders them more sensitive to the effects of construction noise and vibration?

[84] While it would have been preferable for a social needs assessment to have been undertaken from the outset, we are satisfied that what has been provided under this condition responds to the health concerns raised in the submissions about rock-breaking. Having said this, we require that the intended outcomes of the social needs' assessment to be added to the condition.

Should there be a condition under which a property owner would be entitled to seek separate technical advice if there was a disagreement between them and the consent holder on the damage assessment for their building?

[85] As noted above we agree with Panuku's reasoning that the proposed condition for the appointment of an independent surveyor by the CLG provides a fair and transparent process to meet this issue.

Is there an inconsistency between the wording of condition 42 and clause 2.2 of the CNVMP?

[86] From our review of the wording of condition 42 and clause 2.2, the difference being referred to between the two documents is that condition 42 refers to "All Noise generating activities..." whereas CNVMP clause 2.2 refers to "Construction works causing high noise levels...".

[87] If the Court grants consent for a development such as this, the consent includes the Court's approval of the conditions under which the development must be undertaken.

[88] For this development, having been provided with a copy of the draft CNVMP prepared at the time of the hearing, we noted that it included a range of standards that should have been included in the conditions. Panuku was, therefore, directed to review the content of the two documents to ensure that standards contained only in the CNVMP were relocated or replicated in the conditions. Panuku (and the Council) consider that this task has now been undertaken, as reflected in the extensive amendments incorporated in the 21 August 2020 condition set, however as we observe later in this decision, we are not yet satisfied that this task is complete. We note, however, that the Court's decision in respect of the conditions will finalise the requirements under which a



CNVMP is to be prepared and certified by the Council. It will then be up to the consent holder to prepare and submit a CNVMP to the Council for this certification.

[89] Coming back to the concern raised about the inconsistency between the wording of condition 42 and CNVMP clause 2.2, we note that the wording of condition 42 is all embracing with respect to noise whereas CNVMP clause 2.2 refers only to "high noise". The wording of condition 42 (which we are to approve) sets a higher standard than that that provided for in CNVMP clause 2.2.

[90] It is for Panuku to amend the wording of CNVMP clause 2.2 to ensure that there is consistency between the two documents and for the Council in its certification role to be similarly satisfied.

Should there be a condition requiring the Council to establish a database for recording the predicted volume and time to excavate the Panuku site compared with the actual volume and time with this to be used for other developments as well?

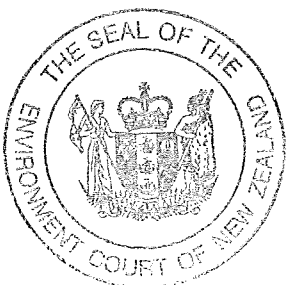
[91] While we can see merit in what is proposed by Mr Peters and Mr Bannan, we do not consider that this should be a requirement in the conditions for this development. Instead we leave it to the Council to consider the merits of establishing such a database. We observe, however, that using volumes and times of completed developments on their own might be overly simplistic for predicting excavation times for new developments.

Further Issue about relocation

[92] With respect to the 21 August 2020 conditions of consent, condition 43 lists the daytime and night-time construction noise limits which are to apply on weekdays, Saturdays and Sundays - in particular a daytime limit of 70_{L_{Aeq}} to apply between 8 00am and 6 00pm on weekdays and between 8 00am and 1 00pm on Saturdays.

[93] As we have noted above, there are exceptions to these limits set out in conditions 42, 44, 45 and 46. In particular, condition 44 provides for the 70 dB_{L_{Aeq}} noise limit to be raised to 75 dB_{L_{Aeq}} when measured at 1m from the façade of any occupied building within 15m of the site boundary for a single continuous period of 20 weeks noting that this limit does not apply to noise from rock-breaking or blasting.

[94] Ms Wilkening advised that this higher limit is to provide for activities such as steel works, powder activated tools and concrete vibrators typically undertaken at a height



within 15m of the boundary where boundary screening cannot reduce effects.³¹ This higher noise limit would apply only at Unit 1 and possibly Unit 2 of 9-15 Carrick Place and is for a single block of 20 weeks.³²

[95] The experts note that while the wording of condition 44 has been amended from the earlier version to provide greater clarity, it does not increase the noise level for receivers compared with the originally proposed condition.³³

[96] The clarification in the JWS that this higher than AUP permitted activity noise limit would affect Unit 1 and possibly Unit 2 of 9-15 Carrick Place raises a concern for us as to whether the relocation offer should be extended to include this 20-week period for the occupiers of these two units.

[97] We have decided that it should.

Summary of findings on submitter issues

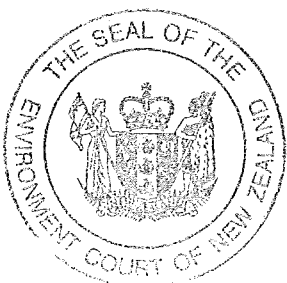
[98] Drawing together in one place our findings on the issues raised by submitters in the context of construction noise and vibration:

- The Court does not require Panuku to undertake further geological investigations on the site although it acknowledges that it may of its own volition choose to do so prior to starting construction.
- The Court recognises that condition 15 proposing relocation of the retirement village residents at a trigger distance of 20-metres during rock-breaking has been based on the vibration level at the retirement village not exceeding 2mm/s PPV, however, the following requirements are to be included in the condition:
 - If the level exceeds the 2mm/s PPV limit, the 20-metre distance is to be increased to the distance at which compliance with the 2mm/s PPV level is achieved.
 - Measures to verify the 20m trigger distance before commencing a programme of rock-breaking (insofar as that is possible) and by monitoring at the commencement of and during rock-breaking.

³¹ JWS at [64]

³² JWS at [65].

³³ JWS at [67].



- In accepting condition 15 with these amendments, the Court has declined to accept Ms Smith's request for relocation to be offered to the residents of the retirement village for the entire period of rock-breaking.
- There is no need to extend the offer of relocation under condition 15 beyond the residents of the retirement village at 9-15 Carrick Place.
- There is to be a new noise condition specifying the requirements of the offer of relocation to the occupants of Units 1 and 2 of the retirement village during the 20-week period nominated for the exemption from noise limits in Condition 44.
- There is to be further consideration of the noise and vibration monitoring requirements proposed in conditions 65-67 in line with this decision.
- The independent building condition surveyor is to be appointed by the Community Liaison Group, as provided for in conditions 9-12.
- The noise and vibration conditions agreed by the experts in their JWS have accounted for the likelihood that the actual timeline for excavating the rock could well be different from that estimated by Mr Speight.
- We leave it for the Council to respond to the submitter request for the establishment of a database for recording predicted and actual excavation volumes on this and other development sites in whatever way it sees fit.

[99] In addition, we require Panuku to respond to the Court:

- advising about its position on the submitter request for ventilation/cooling to be provided in neighbouring homes during the warmer months when windows need to be closed to provide acoustic mitigation of construction noise; and
- outlining what is intended by condition 14 to appropriately deal with potential health effects from noise and vibration on the residents of the retirement village and to amend the condition to make that clear.

Other conditions concerning noise and vibration effects

[100] We now work through other aspects of the conditions put forward by Panuku for noise and vibration, detailing where we require amendments to these conditions.



Community Liaison Group

Condition	Amendment Required
8	Add a requirement in this condition for the written advice to include all updates of the CNVMP following certification of these updates by the Council
8(e)	Add BMP to list
9	It is unclear in the wording for a number of the conditions as to whether a distinction is intended between cosmetic damage and structural damage. Both types of damage are to be considered by the Building Surveyor. In any condition where "damage" is referenced (including condition 9), "damage" should be prefixed with "cosmetic and structural".

9-15 Carrick Place Residents: social needs (new conditions 14 and 15)

Condition	Amendment Required
14(a)	Insert "and blasting" after "rock-breaking".
15	In line 2 after "resident" add "of 9-15 Carrick Place". In line 3 add "and blasting" after "rock-breaking". Add "This offer shall remain open for acceptance until such time as all rock-breaking and blasting has been completed on the site".

Construction Noise and Vibration Management Plan (CNVMP)

[101] Our interim decision set out concerns about the approach to management plans in the set of conditions that was then in front of us.

[102] Drawing from *Summerset*,³⁴ a decision dealing with consent conditions:

As a general principle it is important that the conditions of a consent set out the outcomes required and how these outcomes are to be achieved. Management plans provide a way to identify what steps are to be taken to ensure that clear, certain and enforceable outcomes contained in conditions of consent are achieved. They are not a substitute for conditions locking in the standards that are to be met to ensure environmental effects are kept within an acceptable level. ...

[103] Condition 17(a) refers to an objective being to 'identify the Best Practicable Option' and define procedures to 'manage' and 'minimise' construction noise and vibration effects. That does not clearly establish that the objective or purpose of the CNVMP is to set out the steps to be taken to ensure that any construction noise and vibration complies with the conditions of the consent. Any consideration of Best Practicable Option must be within the limits in the conditions.



³⁴ *Summerset Villages (Lower Hutt) Limited v Hutt City Council* [2020] NZEnvC 31 at [156] and *Summerset Villages (Lower Hutt) Limited v Hutt City Council* [2020] NZEnvC 114 at [10].

[104] Condition 16 states: The CNVMP shall be in accordance with the draft CNVMP prepared by Marshall Day Acoustics (referred to in condition 2). Condition 2 refers to a report by that name dated 13 June 2017.

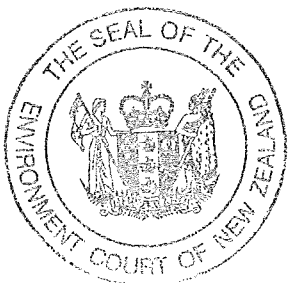
[105] That draft CNVMP is, in our view, outdated. It is not based on the requirements of the conditions, and particularly those substantive conditions added and amended during the hearing and in line with our interim decision and our further directions.

[106] There should be no requirement for the CNVMP to be in accordance with the (or any) draft. The purpose of the CNVMP is to set out the procedures to be followed to ensure compliance with the conditions setting out limits on construction noise and vibration with the certification process as a double check. There is also the ability for the consent holder to seek amendments to that CNVMP if it proves necessary but only within the limits of the conditions. If complying with those limits poses an intractable problem the consent holder has the ability to apply to vary the conditions of consent under the RMA.

Condition	Amendment required
18 (f)	There needs to be cross referencing of this condition with the relevant conditions under the heading <i>Construction Vibration</i> .
18(i)	Include "during" between "pre" and "post".

[107] We also note that there are matters in the draft CNVMP that need to be the subject of outcome based substantive conditions setting clear, certain and enforceable construction requirements, and not left to the management plan, as follows:

Draft CNVMP	Amendment to Conditions Required
3.3	This includes requirements below Table 4 which are not in the conditions.
6.4.1	This section sets out a requirement for temporary noise barriers to be investigated. This requirement should be included in the conditions.
6.7	All of this section should be included in the conditions.
7.2	Last bullet point. See body of decision. All of this section is to be included in the conditions.
7.3	Parameters for dealing with concerns/complaints, including response times and actions to follow up on individual concerns/complaints received by the consent holder to be added into the conditions.
8.1, 8.2	All requirements in these two sections should be reviewed to ensure that if they are standards to be achieved, they have been incorporated in the conditions.



Notification of works commencing to neighbours

Condition	Amendment Required
23 (b) (iii)	Include reference to condition(s) which detail monitoring requirements
23 (b) (v)	Add BMP to this list.
23 (d) and (e)	The references in these conditions to Condition 12 (a) should be renumbered condition 23 (a).

Construction noise

Condition	Amendment Required
44	An amendment to this condition is discussed in the main body of the decision. As well as the requirement for the start/finish dates of the 20-week period to be advised to the Council, this same advice should also be provided to the occupiers and the CLG.
45(b)	For the avoidance of doubt, definitions should be provided for the terms "occupied" and "unoccupied" buildings.

Noise barriers

Condition	Amendment Required
53(a) (i)	Should the words "above the existing ground level on the Panuku side of the boundary" be added to this condition to account for any level differences between the two properties?

Amenity limits

[108] Condition 58 contains the following amenity limit on vibration levels:

Except as provided for below, vibration levels arising from construction activity on the site shall not exceed, 2 mm/s peak particle velocity in occupied buildings in any axis when measured in the corner of the floor of the storey of interest for multi-storey buildings, or within 500 mm of ground level at the foundation of a single storey building as specified in AUP (OP) E25.6.30(1)(b).

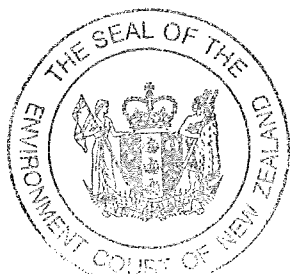
...

A level of 2 mm/s PPV cannot be exceeded for more than three days at any one occupied building, and must not exceed 5 mm/s PPV, unless agreed in writing with the owner and/or occupier. Any such agreement shall be available to Council on request.

[109] It is unclear as to whether the limit is intended to apply for one 3-day period or multiple 3-day periods and if more than one, what time gap is to apply between each 3-day period? We note that this question was also raised in one of the resident's submissions.

[110] The JWS refers to this limit as drawn from the AUP and there being no guidance in the Plan as to how it is to be applied.

[111] We require that the condition on a resource consent is clear even if the AUP is not, with supporting reasons for the approach proposed.



[112] We also require consideration of what is to happen if limit(s) are exceeded. That could include ceasing work immediately.

[113] We note the following AUP provisions are relevant to these questions.

Objective E25.2(2):

The amenity values of residential zones are protected from unreasonable noise and vibration, particularly at night.

Policy (1) under the heading of Construction, demolition and maintenance activities:

(10) Avoid, remedy or mitigate the adverse effects of noise and vibration from construction, maintenance and demolition activities while having regard to:

- (a) the sensitivity of the receiving environment; and
- (b) the proposed duration and hours of operation of the activity; and
- (c) the practicability of complying with permitted noise and vibration standards.

Assessment criteria E25.8.2(1)(c) include:

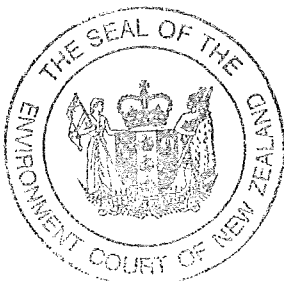
- i. will be mitigated by written advice of the activity to adjacent land uses prior to the activity commencing; and
- ii. can be mitigated by monitoring of structures to determine risk of damage to reduce occupant concern; and
- iii. can be shown to have been minimised by the appropriate assessment of alternative options; and
- iv. are reasonable taking into account the level of vibration and the duration of the activity (where levels of 10mm/s peak particle velocity may be tolerated only for very brief periods).

Building condition survey

Condition	Amendment Required
60	The last bullet point "At the completion of construction" has been deleted. This is to be reinstated.
61 (e)	The last line of the condition should be reworded to read "...taken into account in the preparation of the building condition survey."
62, 63	Line 4 of condition 62 refers to "alternative construction methods". If such are available and these would provide an enhanced level of mitigation, should these be identified now and provided for in the conditions? Should Conditions 62 and 63 be combined to include both cosmetic and structural damage and include a requirement that all completed repairs must be certified by the Building Surveyor as having been undertaken in accordance with the remedial measures set out in the building survey?

Other conditions on all consents

[114] We now address other conditions proposed in relation to all of the consents.



General conditions

Condition 2

[115] An important step in the revision of conditions process is to address condition 2. That condition should be clear on what the proposal is and how it is to be carried out, not simply list all the documentation that was involved in the application process, particularly given the considerable difference of the proposal as it now compared with what was applied for.

[116] The material listed under “Application Form and Assessment of Environmental Effects” would be better in a separate list of documents, as would the material under the heading “Other additional information”.

Specific conditions – LUC60303721

Construction Management Plan (CMP)

[117] Condition 19 states:

The consent holder shall undertake all necessary measures to ensure that adverse effects associated with construction activities are minimised as far as practicable.

[118] There are conditions that set out requirements that do not have the qualification “minimised as far as practicable”.

[119] Condition 20 states that “without limiting the generality of the foregoing” a CMP is to be prepared and submitted to a Council Officer for approval in a certifying capacity, and to be implemented and maintained throughout the entire demolition and construction period.

[120] As written (and even with the Advice Note) it is not completely clear what the CMP is to contain and what the Council Officer would certify it against. The Advice Note states it “should contain sufficient detail to address the following matters: measures to address dust, stockpiling, rubbish disposal etc” (along with other matters that at least refer to the standard of a “tidy condition”).



[121] We note that Panuku now propose a new condition 69 relating to dust and we comment further on this below.

Conditions	Amendment required
20	In Advice Note, Line 1 condition 10 should be condition 20. However, such matters should be part of the requirements in the condition and not an Advice Note.

Construction Traffic Management Plan (CTMP)

[122] Condition 22 refers to an objective and specific details relating to avoiding, remedying or mitigating adverse effects on the environment. It does not refer to the requirement that the CTMP set out procedures to be followed to ensure compliance with the substantive conditions, such as to achieve condition 21 dealing with restriction on truck movements for construction and during specified hours.

Dust

[123] Panuku offered an additional condition 69 relating to dust, stating that this now reflects the current standard construction dust condition required by the Council.³⁵ Panuku submits that it has offered this condition in good faith to provide additional protections for the neighbours to the site and was largely supported by the parties.

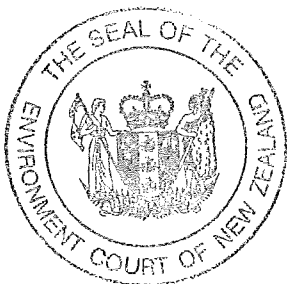
[124] Condition 69 reads:

During earthworks all necessary action shall be taken to minimise dust generation and sufficient water shall be available and shall be used where needed to dampen exposed soil, and/or other dust suppressing measures shall be available to minimise dust formation. The consent holder shall ensure that dust management during the excavation works comply with the relevant provisions of the Good Practice Guide for Assessing and Managing Dust (Ministry for the Environment 2016).

[125] The outcome required under this condition is to minimise dust generation with the dictionary definition of "minimise".³⁶

reduce to the smallest possible amount, extent, or degree.

[126] This is an appropriate standard to set and achieve as protection from effects on the neighbouring properties, however, it is hard to see how a condition requiring compliance with the relevant provisions of the Good Practice Guide for Assessing and Managing Dust is clear, reasonable and enforceable as that document is a guideline and not a standard.



³⁵ 21 August submissions at [2.21]

³⁶ Lesley Brown (ed) *The New Shorter Oxford English Dictionary on Historical Principles* (Clarendon Press, Oxford, 1993).

[127] Interestingly, the Good Practice Guide for Assessing and Managing the Environmental Effects of Dust Emissions, MfE (2016) states:

Management plans can be used to show how an activity will comply with the conditions of resource consent and manage adverse effects.

[128] We note that the Good Practice Guide promotes dust management plans, with Appendix 4 outlining the issues that should be included in a management plan designed to address dust. These include key personnel and contact details, a complaints process, methods of mitigation and operating procedures, monitoring, staff training and system review and reporting procedures. Moreover we have already commented on the deficiency of the CMP which refers to dust.

General Earthworks

[129] Condition 77 is:

The consent holder shall undertake all erosion and sediment control in accordance with Council publication GD05.

[130] This is not a performance standard, with the most recent version being a 301 page *Auckland Council* Guideline Document GD2016/005 entitled *Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region*. What is the outcome to be achieved by following the approach and measures in the guideline document? The outcome should be stated as a requirement in a condition. It may be appropriate for the conditions to contain an Erosion and Sediment Control Plan process to inform the measures that need to be taken to achieve that outcome, as is common practice in many conditions. If so, there may be a need to establish the relationship between such a management plan and the CMP in the conditions.

NES CS (Earthworks)

[131] Condition 80 requires the consent holder to implement all measures identified in the Site Management Plan for Contaminated Land (including the Remediation Action Plan (RAP)) prepared by Tonkin & Taylor Ltd August 2017, during remediation and earthworks on the site. Any substantial revisions to the RAP are to be certified by the Council.

[132] Condition 82 specifies:

The consent holder shall ensure that the earthworks do not result in any airborne and deposited dust beyond the property boundary of the site that is determined to be noxious, objectionable or offensive. Good practice measures, such as those described in Section 8 of the Good Practice Guide for Assessing and Managing the Environmental Effects of Dust



Emissions, Ministry for the Environment (2016), shall be adopted at all times.

[133] Adopting good practice measures, such as those described in the above Good Practice Guide, can inform the measures that need to be followed to meet the required outcome or performance standard in this condition, however the guidance in the document referred to is not a performance standard that compliance can be measured against.

[134] Also there is no "Section 8" in the Good Practice Guide for Assessing and Managing the Environmental Effects of Dust Emissions, Ministry for the Environment (2016). There was a "Section 8 Dust Control Methods and Technologies" in the Good Practice Guide for Assessing and Managing the Environmental Effects of Dust Emissions, Ministry for the Environment (2001) version. A correction was made to update the version reference during the hearing³⁷ but clearly there is a need for Panuku to look further at what might be required as requirements in this condition as well as conditions 19, 20 and 69.

[135] Condition 84 requires work is to immediately cease if unexpected soil contamination or presence of asbestos is discovered during excavation, to notify the Council, and to provide a site contamination report and a remedial action plan to the Council if necessary.

[136] There are also specific conditions on the contamination discharge permit – DIS60303722 (see below). Are these consistent? Are these conditions consistent with the general conditions? If not, which conditions are to take precedence (the more stringent ones)?

Specific conditions – stormwater discharge permit – DIS60303722

[137] We have no comments on the specific conditions for the stormwater discharge permit but Panuku need to be mindful of any consequential amendments that might be needed in responding to the points we raise in this decision on related conditions.

Specific conditions – contamination discharge permit – DIS60303722

[138] There are also specific conditions for NEC CS for consent LUC60303721 as



³⁷ Interim Decision [342]: As identified by Mr Bannan the reference in condition 44 should be to section 5 of the 2016 edition of the Good Practice Guide' with a footnote to Notes of Evidence page 786, Reply submissions on behalf of Panuku, dated 24 September 2019 at [4.19].

covered above (conditions 80-82).

[139] Condition 124 requires the discharge of contaminants to land and water from the proposed remedial works to be carried out in accordance with the revised Site Management Plan titled "Site Management Plan for Ground Contamination Valley Road Apartments, Mt Eden", prepared by Tonkin & Taylor Ltd dated August 2017, and to the satisfaction of the Council. There is an Advice Note that the plan may need to be further updated, and any updates should be limited to the scope of the consent and consistent with the conditions of the consent.

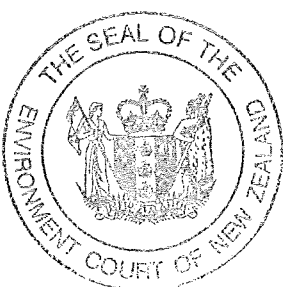
[140] There are substantive conditions that relate to excavation, erosion and sediment control, off-site disposal, treatment of perched groundwater or surface water requiring removal, sampling and testing, imported fill and unexpected contamination (conditions 125-128). Under condition 131 where unexpected contamination is identified work is to cease and the Council and neighbouring properties (in condition 18(h)) advised. Relevant contingency procedures outlined in the Site Management Plan referenced in condition 124 (not 125 as referred to in condition 131) are to be implemented.

[141] Are the conditions consistent with the specific conditions for NEC CS? Are these conditions consistent with the general conditions? If not, which conditions are to take precedence (i.e. the more stringent ones)?

Directions

[142] Panuku is directed to advise the Court about the following matters including any revisions required to the relevant conditions as follows:

- the process to be followed for the initial verification of the 20m trigger distance and if a greater distance is identified as being required through this process, how this will be reflected in the conditions;
- its position on the submitter request for ventilation/cooling to be provided in neighbouring homes during warmer summer months when windows need to be closed to provide acoustic mitigation of construction noise;
- further consideration of the noise and vibration monitoring requirements in conditions 65-67;



- what is intended under condition 14 for dealing with potential health effects from noise and vibration on the residents of the retirement village;
- a new noise condition specifying requirements for the offer of relocation of the occupants of Units 1 and 2 of the retirement village during the 20-week period nominated for the exemption from noise limits in Condition 44.
- with reasons, whether the 3 day period for exceedance of the 2mm/s PPV vibration level in condition 58 is intended to apply for a single 3-day period or multiple 3-day periods and if more than one, what time gap is proposed to apply between each 3-day period - the relevant condition must be clear on this even if the AUP is not.

[143] Panuku is also directed to provide an updated set of conditions responding to the issues on the other conditions identified by the Court in this further interim decision.

[144] Having considered Panuku's responses on this requested information and updated conditions, the Court should then be in a position to reach a final decision on the outcome of this appeal.

For the Court



M Harland
Environment Judge



Figure 1



Figure 1 – rock breaker, receiver and barrier locations used for noise modelling



BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

I MUA I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision No. [2020] NZEnvC 211

IN THE MATTER	of the Resource Management Act 1991 (the Act)
AND	of an appeal pursuant to s 120 of the Act
BETWEEN	PANUKU DEVELOPMENT AUCKLAND LIMITED
	(ENV-2018-AKL-000176)
	Appellant
AND	AUCKLAND COUNCIL
	Respondent
AND	R Peters and R Bannan R Dexter and A Modrow N Smith P Lange L Whiley
	s 274 parties

Court: Environment Judge M Harland
Commissioner K Edmonds
Commissioner D Bunting

Hearing: On the papers

Date of Decision: 16 December 2020

Date of Issue:

17 DEC 2020

FINAL DECISION OF THE ENVIRONMENT COURT



A: The Court grants the following land use consents and discharge permits authorising the construction of a new multi-level mixed use development on 8 adjoining sites at 198-202, 214-222 Dominion Road and 113-117 Valley Road, Mt Eden subject to the conditions of consent set out in **Appendix A** to this decision:

- (a) Land use consent (section 9(1)) - LUC60303721;
- (b) Land use consent (section 9(3)) – LUC60303721;
- (c) Diversion and discharge permit (sections 14 and 15) – DIS60303722; and
- (d) Discharge permit (section 15) – DIS60303722.

B: The issue of costs is reserved.

REASONS

Introduction

[1] This case concerns an appeal by Panuku Development Auckland Limited (**Panuku**) against the decision of Auckland Council (**the Council**) refusing its application for resource consents to construct a new multi-level mixed-use development on eight adjoining sites located in Dominion Road and Valley Road, Mount Eden, Auckland.

First interim decision

[2] In our Interim Reserved Decision dated 6 March 2020,¹ we set out our findings on the five main issues we had identified we were required to determine on appeal, one of which was whether any adverse construction noise and vibration effects on the s 274 parties' properties were able to be avoided, remedied or mitigated in terms of the relevant objectives, policies and assessment criteria in the Auckland Unitary Plan.

[3] In the absence of any form of social impact assessment having been undertaken, we found there was also a lack of evidence about the potential effects of construction noise and vibration on the residents of the retirement village.



¹ *Panuku Development Auckland Limited v Auckland Council* [2020] NZEnvC 024.

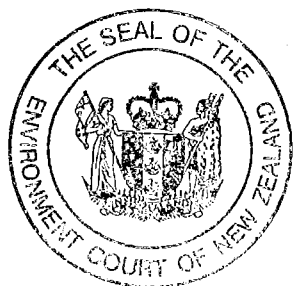
[4] We did not reach a final decision about whether the appeal should be allowed but concluded that consent could be granted subject to revised conditions.² We decided that the parties should be given an opportunity to reconsider what was proposed to avoid, remedy or mitigate adverse construction noise and vibration effects and to see if they could reach agreement about them.³

[5] We also directed a full and considered review of the proposed conditions (not just those related to noise and vibration).

Second interim decision

[6] In our second interim decision⁴ we addressed the conditions proposed to apply to the consents as a whole. Panuku was directed to advise the Court about the following matters including any revisions required to the relevant conditions as follows:⁵

- the process to be followed for the initial verification of the 20m trigger distance and if a greater distance is identified as being required through this process, how this will be reflected in the conditions;
- its position on the submitter request for ventilation/cooling to be provided in neighbouring homes during warmer summer months when windows need to be closed to provide acoustic mitigation of construction noise;
- further consideration of the noise and vibration monitoring requirements in conditions 65-67;
- what is intended under condition 14 for dealing with potential health effects from noise and vibration on the residents of the retirement village;
- a new noise condition specifying requirements for the offer of relocation of the occupants of Units 1 and 2 of the retirement village during the 20-week period nominated for the exemption from noise limits in Condition 44.
- with reasons, whether the 3-day period for exceedance of the 2mm/s PPV vibration level in condition 58 is intended to apply for a single 3-day period or multiple 3-day periods and if more than one, what time gap is proposed to apply between each 3-day period - the relevant condition must be clear on this even if the AUP is not.



² *Panuku Development Auckland Limited v Auckland Council* [2020] NZEnvC 024 at [397].

³ *Panuku Development Auckland Limited v Auckland Council* [2020] NZEnvC 024 at [398].

⁴ *Panuku Development Auckland Limited v Auckland Council* [2020] NZEnvC 186.

⁵ *Panuku Development Auckland Limited v Auckland Council* [2020] NZEnvC 186 at [142].

[7] Panuku was also directed to provide an updated set of conditions responding to the issues about the other proposed conditions that had been identified by the Court.

Proposed conditions of consent

[8] On 27 November 2020 Panuku filed an updated set of draft proposed conditions of consent for the Court's consideration. After careful consideration of them, the Court issued a Minute dated 4 December 2020 setting out the following:

[2] The Court concludes that there are conditions that still require attention in line with the second interim decision¹ and on further consideration of the Panuku review and revision.

[3] Condition 15(a) does not carry through the requirement (not a discretion) in our second interim decision. The third clause is to be amended to read:

The 20m distance shall be increased if the initial vibration monitoring under condition 70 finds that vibration at any of the units of 9-15 Carrick Place is expected to be greater than the 2mm/s peak particle velocity limit set out in condition 62.

[4] Condition 16 is a new condition added by Panuku and brought over from the draft CNVMP. In our second interim decision we intended to make it clear that this is not required by the Court. ³ Given the condition as worded is not clear, certain and enforceable we propose to delete it.

[5] In relation to condition 17 in our second interim decision, we made it clear that there should be no requirement for the CNVMP to be in accordance with the (or any draft). We find the reworded second sentence in the condition to be unnecessary and potentially misleading given the draft CNVMP is likely to need amendment to be in line with the approved conditions.

[6] Conditions 18(a) and 21(a) should refer to 'the' and not 'these' conditions to clarify it references the set of conditions of consent and not any individual condition.

[7] For condition 26(c) the word 'reasonable' is unnecessary and should be deleted given the reference to the building survey process detailed at conditions 64 to 69.

[8] For condition 63 for clarity and certainty the first clause is to be reworded to read:

A level of 2 mm/s PPV shall not be exceeded for more than three days in any 14 day period at any one occupied building, and must not exceed 5 mm/s PPV, unless agreed in writing with the owner and/or occupier. Those exceedance days are to be made known to the owner and/or occupier of the building, unless agreed in writing with the owner and/or occupier. Any such agreements shall be available to Council on request.

[9] The Court accepts the reasons given in Panuku's submission that a condition on ventilation or cooling in neighbouring homes to the site is not required.

[9] On 7 December 2020 Panuku filed revised proposed conditions of consent that addressed the issues raised by the Court above.

Decision

[10] The Court has received and considered the further information provided by the parties at various times throughout the proceeding and the proposed conditions of consent supplied by Panuku. All the issues raised by the Court in the Minute of



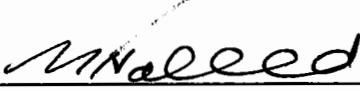
4 December have been addressed, and the Court is satisfied that the further information provided gives the conditions of consent certainty and clarity.

[11] On this basis, and in accordance with the reasons set out in our earlier decisions, the appeal is allowed and consent is granted for land use consents and discharge permits authorising the construction of a new multi-level mixed use development on 8 adjoining sites at 198-202, 214-222 Dominion Road and 113-117 Valley Road, Mt Eden. The consents granted are listed below, and are subject to the conditions of consent set out in **Appendix A** to this decision:

- (a) Land use consent (section 9(1)) - LUC60303721;
- (b) Land use consent (section 9(3)) – LUC60303721;
- (c) Diversion and discharge permit (sections 14 and 15) – DIS60303722; and
- (d) Discharge permit (section 15) – DIS60303722.

For the Court




M Harland
Environment Judge

Appendix A

Conditions of consent

Land use consents and discharge permits are granted authorising the construction of a new multi-level mixed use development on 8 adjoining sites at 198-202, 214-222 Dominion Road and 113-117 Valley Road, Mt Eden. The proposal involves the demolition of all existing buildings on site, including two character supporting buildings, associated earthworks, development that will result in 92 residential units, and 9 retail units at ground floor, 104 basement car parks, an on-site loading bay accessible from Carrick Place, and 102 cycle parks.

The proposal requires the following resource consents:

- Land use consent under section 9(1) of the RMA
- Land use consent under section 9(3) of the RMA
- Diversion and discharge permit under sections 14 and 15 of the RMA
- Discharge permit under section 15 of the RMA

The above resource consents are required for the following reasons:

Land use consent (section 9(1)) - LUC60303721

National Environmental Standard for assessing and managing contaminants in soil to protect human health

Regulation 10	Status
(a) Restricted discretionary activity resource consent is required under the NES:CS regulation 10(1) for work associated with potentially contaminated soil.	RD

Land use consent (section 9(3)) – LUC60303721

Auckland Unitary Plan (Operative in Part)

Local Centre Zone	Status
(b) Restricted discretionary activity consent is required for four new buildings in the Local Centre zone (H11.4.1 (A44))	RD



<p>(c) Restricted discretionary activity consent is required under rule C1.9(2) for the parts of the development that exceed the 13m (11m occupiable plus 2m for roof form) Building Height - Height Variation Control Standard for the Local Centre Zone (H11.6.1.2 and 3). The degree of exceedance for each building is outlined below:</p> <ul style="list-style-type: none"> (i) Buildings A and B are between three and four storeys in height. While parts of the buildings comply with this height standard, the maximum height of building protrusion through this height plane is approximately 3.99m along its southern elevation. (ii) Building C varies between 3-5 levels in height. While parts of this building comply with the height standard, the maximum height of building protrusion through this height plane is approximately 7.5m on the central portions of its eastern and western elevations. (iii) Building D is three storeys in height and while parts of the building comply with the height standard, the maximum height of building protrusion through this height plane is 0.4m on the eastern elevation. 	RD
<p>(d) Restricted discretionary activity consent is required under rule C1.9(2) for infringement of standard H11.6.4 (Yards).</p> <p>The Local Centre Zone portion of the site to the east of Building A adjoins the THAB zone site of 9-15 Carrick Place. There is a side/rear yard requirement of 3m for any building on this boundary. The proposed carpark basement and podium above is located 1.5m from the common boundary and approximately 1.5m above ground level.</p>	RD
<p>(e) Restricted discretionary activity consent is required under rule C1.9(2) for infringement of standard H11.6.8 (Outlook Space). The standard is not met in relation to the following parts of the development:</p> <ul style="list-style-type: none"> a. Unit B201 Bedroom (3m x 3m required, 1.8m x 3m proposed), B301 Bedroom (3m x 3m required, 1.8m x 4.9m proposed), B401 Bedroom (3m x 3m required, 1.8m x 4.9m proposed). b. Unit C303, C304, C305, C403 Living (6m x 4m required, 4m x 4.5m proposed). c. Unit C502 Living (6m x 4m required, 4m x 5.6m proposed). d. Unit D102, D103, D104 Bedroom (3m x 3m required, 1.2m x 3m proposed). 	RD



Terrace House and Apartment Building Zone	
(f) Restricted discretionary activity consent is required for dwellings within the Terrace Housing and Apartment Building ("THAB") zone and for new buildings (H6.4.1 (A3 + A35)).	RD
(g) Restricted discretionary activity consent is required for the utilisation of the Alternative Height in Relation to Boundary Standard within the THAB zone (H6.6.7) under (A34). Note, compliance is not required with H6.6.6 (the 3m + 45 degree height in relation to boundary control).	RD
(h) Restricted discretionary activity consent is required for modification of the Yard (side) standard for the THAB Zone (H6.6.9.1) to accommodate a roofed pergola structure within the 1m side yard on the northern boundary where it adjoins the THAB zone site (C1.9(2)).	RD

Special Character Area – Business Overlay	
(i) Restricted discretionary activity consent is required for the removal of two character supporting buildings and for other buildings within the Special Character Areas Overlay Residential and Business - Business Eden Valley (D18.4.2(A18 + A26)).	RD
(j) Restricted discretionary activity consent is required for new buildings in place of character supporting buildings and other new buildings within the Special Character Areas Overlay - Business - Eden Valley (D18.4.2(A20 + A27)).	RD
Other Consent Requirements	
(k) Restricted discretionary activity consent is required for modification of the Size and Location of Parking Spaces Standard within the Transportation Section (E27.6.3.1.1).	RD



(l) Restricted discretionary activity consent is required for modification of the Minimum Loading Space Standard within the Transportation Section (E27.6.2.7 (T109)).	RD
(m) Restricted discretionary activity consent is required for modification of the number of retail carparking spaces required for the Valley Road retail units within the Transportation Section (E27.6.2.1).	RD
(n) Restricted discretionary activity consent is required for a vehicle crossing within a Vehicle Access Restriction Area within the Transportation Section (E27.6.4.1(3)(c)).	RD
(o) Restricted discretionary activity consent is required for earthworks greater than 2500m ² in the Land Disturbance- District Section (E12.4.1 (A6)).	RD
(p) Restricted discretionary activity consent is required for a volume of earthworks greater than 2500m ³ in the Land Disturbance District Section (E12.4.1 (A10)).	RD
(q) Restricted discretionary activity resource consent is required for development in the 1% AEP area (E36.4.1 (A26) + (A38)) and building within an overland flow path (E36.4.1(A42)).	RD
(r) Restricted discretionary activity consent is required for the proposal exceeding the Construction Noise Standards in the Noise and Vibration Section (E25.6.27).	RD
(s) Restricted discretionary activity consent is required for the proposal potentially exceeding the Vibration Standards in the Noise and Vibration Section (E25.6.30).	RD
(t) Restricted discretionary activity consent is required for the proposal exceeding the Internal Sound Level Standards in the Noise and Vibration Section (E25.6.10).	RD



(u) Restricted discretionary activity consent is required for removal of a street tree greater than 4m in height (E17.4.1(A10)).	RD
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Diversion and discharge permit (sections 14 and 15) – DIS60303722

Auckland Unitary Plan (Operative in Part)

Stormwater – Discharge and diversion	Status
(v) Controlled activity consent is required for diversion of stormwater into land in urban areas between 1000m ² and 5000m ² in the Stormwater-Discharge and Diversion Section (E8.4.1(A9)).	C

Discharge permit (section 15) – DIS60303722

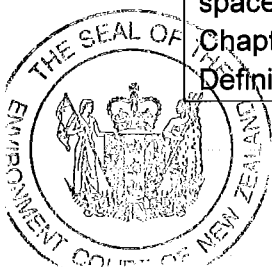
Auckland Unitary Plan (Operative in Part)

Contaminated land	Status
(w) Controlled activity consent is required for the volume of land disturbance of potentially contaminated soil exceeding 200m ³ in the Contamination Section (E30.4.1(A6)).	C

Definitions

The following definitions apply to the conditions below.

Term	Definition
Activities sensitive to noise (from Chapter J Definitions of Auckland Unitary Plan)	Any dwelling, visitor accommodation, boarding house, marae, papakainga, integrated residential development, retirement village, supported residential care, care centres, lecture theatres in tertiary education facilities, classrooms in education facilities and healthcare facilities with an overnight stay facility.
Blasting	The process that includes drilling the holes into the rock, loading the holes with explosive and the firing of the blast itself
Noise sensitive space (from Chapter J Definitions of	Any indoor space within an activity sensitive to noise excluding any bathroom, water closet, laundry, pantry, walk in wardrobe, corridor, hallway, lobby, stairwell, clothes drying area, kitchens not part of a dwelling, garage or other space of a specialised nature occupied



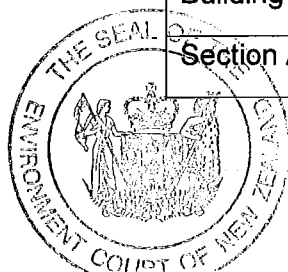
Auckland Unitary Plan)	neither frequently nor for extended periods.
Rock breaking	The activity involving one or more excavators working with hydraulic breaking attachments to fracture rock.
Occupied building	It will be assumed that all buildings are occupied by persons at the time of works for the purpose of these conditions, except where specific engagement or consultation with occupiers of properties under condition 25(d) indicates that the building will be unoccupied during the relevant works.

General conditions

These conditions apply to all resource consents.

- The proposed activity (being a new mixed-use development comprising of four buildings of between 3 and 5 storeys at 198-202 Dominion Road, 214-222 Dominion Road and 113-117 Valley Road) shall be carried out in accordance with the final plans as modified through the Environment Court process being:

Table 1: Final plans			
Plan title	Ref	Author	Dated
Site Location Plan	1.3 Rev L	Isthmus	06/09/19
Existing Site Plan	1.4 Rev L	Isthmus	06/09/19
Proposed Site Plan	1.5 Rev L	Isthmus	06/09/19
Basement Plan	2.1 Rev L	Isthmus	06/09/19
Level 1 Floor Plan	2.2 Rev L	Isthmus	06/09/19
Level 2 Floor Plan	2.3 Rev L	Isthmus	06/09/19
Level 3 Floor Plan	2.4 Rev L	Isthmus	06/09/19
Level 4 Floor Plan	2.5 Rev L	Isthmus	06/09/19
Level 5 Floor Plan	2.6 Rev L	Isthmus	06/09/19
Existing Façade	3.0 Rev L	Isthmus	06/09/19
Street elevations	3.1 Rev L	Isthmus	06/09/19
Street elevations	3.2 Rev L	Isthmus	06/09/19
Buildings A & B Elevations	3.3 Rev L	Isthmus	06/09/19
Building C Elevations	3.4 Rev L	Isthmus	06/09/19
Building D Elevations	3.5 Rev L	Isthmus	06/09/19
Section A1 and A2	4.1 Rev L	Isthmus	06/09/19



Section A3 and A4	4.2 Rev L	Isthmus	06/09/19
Section A5 and A6	4.3 Rev L	Isthmus	06/09/19
Section A9 and A12	4.4 Rev L	Isthmus	06/09/19

2. The proposed activity shall also be carried out in accordance with the information included in the application documents, subject to any updated plans and reports outlined in Table 3 below, or as otherwise modified by these conditions of consent:

Table 2: Application documents			
Report title	Author	Ref	Dated
Application Form, and Assessment of Environmental Effects	Tattico Ltd		June 2017
Panuku Development Auckland Resource Consent – Acoustics	Marshall Day Acoustics	Rp 001 r10 2015475A	13 June 2017
Arboricultural Assessment	Peers Brown Miller Ltd		06.06.2017
Geotechnical Investigation Report	Tonkin & Taylor Ltd	30717.001.v5	June 2017
Preliminary Site Investigation	Tonkin & Taylor Ltd	30717.001.v4	May 2016
Detailed Site Investigation	Tonkin & Taylor Ltd	30717.002.v4	April 2017
Proposed Apartments, Dominion Road And Valley Road, Mt Eden, Auckland: Archaeological Assessment	Clough & Associates Ltd		June 2016
Proposed Mixed Use Development 198 – 222 Dominion Road & 113 – 117 Valley Road Mount Eden, Auckland Special Character Assessment	Plan.Heritage		June 2017
Dominion Road/Valley Road Development – Civil Infrastructure Report	Beca Ltd		7 June 2017
Design Report	Isthmus		8 June 2017
Site Management Plan for Ground Contamination	Tonkin & Taylor Ltd	30717.002.vF	April 2017
Transportation Assessment Report	TDG Ltd	13437 TA 170619.Docx	June 2017
Urban Design / Landscape / Visual Assessment Report	Isthmus		June 2017

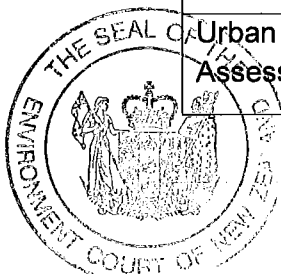


Table 3: Updated plans and reports which supersede application documents

Other additional information	Author	Ref	Dated
Residential Complex – Valley Road, Mt Eden Section 92 response	TDG Ltd	13437	30 November 2017
Site Management Plan for Ground Contamination	Tonkin & Taylor Ltd	30717.002.vG	August 2017
Valley Road Apartments – Section 92 Response	Marshall Day Acoustics	Lt 002 2015475A mjm (S92 Response).docx	23 August 2017
Updated Mediation Summary Report (Closing Design)	Isthmus		6 September 2020
Panuku Development Auckland Construction Noise And Vibration Management Plan	Marshall Day Acoustics	Rp 002 r06 2015475A	21 August 2020

3. Under section 125 of the RMA, this consent lapses five years after the date it is granted unless:
 - (a) The consent is given effect to; or
 - (b) The council extends the period after which the consent lapses.
4. The consent holder shall pay the council an initial consent compliance monitoring charge of \$990 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to this consent/s.

Advice note: *The initial monitoring deposit is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent. In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge. Only after all conditions of the resource consent have been met, will the council issue a letter confirming compliance on request of the consent holder.*

Specific conditions – LUC60303721

Pre-construction conditions

Community Liaison Group

5. No later than 3 months prior to the commencement of construction the consent holder shall establish a Community Liaison Group (CLG) and hold the first meeting in accordance with condition 8.

6. The consent holder shall invite each of the following parties to have a representative on the CLG: Auckland Council, Auckland Transport and each of the s274 parties.



7. The objectives of the CLG are to:
 - (a) Provide a means for all parties to give and receive regular updates on progress with the construction of the project;
 - (b) Provide a regular forum through which information about the construction of the project can be provided by the consent holder;
 - (c) Enable opportunities for concerns and issues to be reported and responded to by the consent holder; and
 - (d) Provide feedback on the development of the Construction Noise and Vibration Management Plan (CNVMP), Blasting Management Plan (BMP), Construction Management Plan (CMP) and Construction Traffic Management Plan (CTMP).
8. The consent holder shall:
 - (a) Consult with the CLG on the development and content of the CNVMP, BMP, CMP, and CTMP, including providing a copy of the draft CNVMP, BMP, CMP and CTMP (including indicative provisions for oversized vehicles entering and leaving the site) for feedback in advance of lodging with the Council.
 - (b) Arrange a regular monthly meeting on the same day of the week, which shall be agreed with the members of the CLG.
 - (c) Provide information at least 5 working days in advance of the meeting at which that information is to be discussed.
 - (d) Provide reasonable administrative support for the CLG including:
 - (i) Organising meetings at a local venue;
 - (ii) Inviting all members of the CLG to meetings at least 5 working day before that meeting is to be held.
 - (e) Provide an update at least every month (or as otherwise agreed by the CLG) during construction of the project setting out noise and vibration monitoring results and associated compliance with the consent conditions and any other relevant requirements of the CNVMP, BMP, CMP and CTMP, including responses to compliance concerns raised by CLG members at the previous meeting.
 - (f) Provide all updates to the CNVMP following certification of these updates by the Council.
 - (g) Respond to all issues/queries/requests raised by the CLG and advise how their issues/queries/requests have been resolved and if not resolved, the reasons why. The speed of the response shall be determined by the urgency of the matter as determined by the council.
 - (h) Attend all CLG meetings.
9. At the first meeting of the CLG, the consent holder shall provide a list of six registered members of the New Zealand Institute of Building Surveyors Inc who are suitably qualified to undertake cosmetic and structural damage assessment and reporting. All listed persons shall have provided confirmation of their availability to undertake the work required by conditions 64 - 68.
10. The purpose of the list is to provide the CLG an opportunity to agree (by majority) upon and nominate one of the listed Building Surveyors as an independent assessor of any building damage that may occur as a result of the construction activity.



11. The CLG shall, within 10 working days of the first meeting, advise the consent holder of the nominated Building Surveyor.
12. The consent holder shall, at the consent holder's expense, engage the nominated Building Surveyor for the duration of the construction activity until such time as the requirements of conditions 64 – 69 have been completed to the satisfaction of the Auckland Council Team Leader Central Monitoring.
13. The CLG shall continue until construction works including final inspections of neighbouring properties for damage are completed on the site, and Council sign-off has been provided confirming that all construction-related consent conditions have been met, including conditions 64 - 69.

9-15 Carrick Place Residents: Social Needs

14. No later than 2 months prior to the commencement of construction the consent holder shall contact the occupiers of all the units at 9-15 Carrick Place and seek information on the following:
 - (a) Whether any residents are house-bound, have any special health needs or whether they have other places to go to during the day when rock breaking or blasting occurs; and
 - (b) Whether any resident has any health or medical issue that renders them more sensitive to the effects of construction noise and vibration.

Advice Note

The information received as part of the social needs assessment is relevant to conditions 15, 18-19 and 21-22.

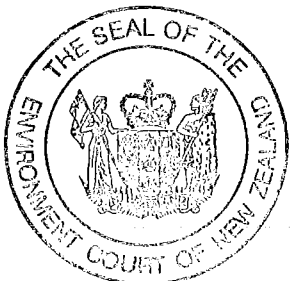
15. The consent holder shall make an offer of relocation no later than 4 weeks in advance of the following circumstances:
 - (a) Any proposed rock-breaking or blasting within 20m of the boundary of 9-15 Carrick Place. The consent holder shall offer to relocate any resident of 9-15 Carrick Place for the duration of rock breaking or blasting within 20m of the boundary of 9-15 Carrick Place. The 20m distance shall be increased if the initial vibration monitoring under condition 70 finds that vibration at any of the units of 9 – 15 Carrick Place is expected to be greater than the 2mm/s peak particle velocity limit set out in condition 62. This offer shall remain open for acceptance until such time as all rock-breaking and blasting has been completed on the site.
 - (b) The 20-week period provided for in condition 47. The consent holder shall offer to relocate the residents of Units 1 and 2 of 9-15 Carrick Place for the duration of the 20-week period. This offer shall remain open for acceptance for the duration of the 20-week period.

Where an offer of relocation is accepted in the above circumstances, the consent holder shall pay for the reasonable costs of relocation to a place which is generally equivalent to the relocating resident's current standard of accommodation, taking into account any relevant information obtained under condition 14.



Construction Noise and Vibration Management Plan (CNVMP)

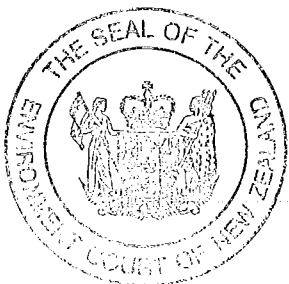
16. Prior to commencement of construction, the consent holder shall prepare a Construction Noise and Vibration Management Plan (CNVMP) and submit it to Auckland Council Team Leader Central Monitoring for certification.
17. The objectives of the CNVMP are to:
 - (a) identify the Best Practicable Option (within the limits set under the conditions of consent) and define the procedures to manage and minimise construction noise and vibration effects, including blasting;
 - (b) inform the duration, frequency and timing of works to manage disruption; and
 - (c) require engagement with affected receivers, taking into account any information obtained under condition 14, and timely management of complaints.
18. The CNVMP shall include specific details relating to avoiding, remedying or mitigating adverse noise and vibration effects on the environment and neighbouring properties from demolition and construction, and management of all works associated with this development as follows:
 - (a) Contact details of the appointed contractor or project manager (phone number, e-mail, postal address)
 - (b) A general outline of the construction programme for each stage of development;
 - (c) Applicable site noise and vibration criteria set out in these conditions;
 - (d) Programme of works and hours of operation, with rock breaking and blasting works scheduled such that for at least 1 hour between 12pm – 2pm Monday to Friday no rock breaking or blasting occurs;
 - (e) Identification of surrounding noise and/or vibration sensitive receivers, taking into account any information gathered under condition 14;
 - (f) A vibration monitoring program to establish site specific setback distances for the avoidance of building damage per conditions 70 to 73;
 - (g) Details about the works, including:
 - (i) when the higher noise and vibration levels can be expected;
 - (ii) the likely sources or causes of noise and vibration;
 - (iii) methods for monitoring and reporting on noise and vibration;
 - (iv) working hours;
 - (v) a contact phone number for any concerns regarding noise and vibration, (and
 - (vi) when works could be scheduled to avoid the worst of the effects on the receivers.



- (h) These details in 19(g) above shall be provided to the owners and occupiers of the following neighbouring properties:
- (i) All units at 9-15 Carrick Place
 - (ii) 111 Valley Road;
 - (iii) 109 Valley Road;
 - (iv) 107 and 107A Valley Road;
 - (v) 105 Valley Road;
 - (vi) 21A, 21B and 21C Carrick Place;
 - (vii) 18 Carrick Place;
 - (viii) 16 Carrick Place;
 - (ix) 14 and 14A Carrick Place;
 - (x) 12 Carrick Place.
 - (xi) All Units at 236, 240 and 242 Dominion Road;
 - (xii) All Units at 114, 116 and 120 Valley Road, and 262-270 Dominion Road;
 - (xiii) All Units at 191-217 Dominion Road;
 - (xiv) All Units at 219-223 Dominion Road;
 - (xv) All Units at 224-234 Dominion Road;
 - (xvi) All Units at 184-196 Dominion Road.
 - (xvii) 119 Valley Road.
- (i) Details of the management and mitigation measures required to comply with conditions 45 to 73 inclusive;
 - (j) A requirement to undertake building condition surveys of buildings in accordance with conditions 64 to 69;
 - (k) The requirement to monitor construction vibration at the most exposed surrounding buildings; and
 - (l) The process for changing, and certifying any changes to, the CNVMP.

The certified CNVMP (as certified by Auckland Council Team Leader Central Monitoring) shall be implemented and maintained throughout the entire demolition and construction period.

The CNVMP shall be prepared with reference to Annex E2 of NZS 6803:1999 Acoustics – Construction noise.



Construction Management Plan

19. The consent holder shall, at least 10 working days prior to the commencement of earthworks activity on the site, prepare and submit a Construction Management Plan (CMP) to the Auckland Council Team Leader Central Monitoring for approval, in a certifying capacity.
20. The objectives of the CMP are to:
 - (a) identify the Best Practicable Option (within the limits set under the conditions of consent) and define the procedures to ensure adverse effects associated with construction activities are minimised;
 - (b) inform the duration, frequency and timing of works to manage disruption; and
 - (c) require engagement with affected receivers, taking into account any information obtained under condition 14, and timely management of complaints.

No earthworks activity shall commence until confirmation of the CMP is provided from the Council that the CMP is satisfactory. The certified CMP shall be implemented and maintained throughout the entire demolition and construction period.

21. The CMP shall include specific details relating to avoiding, remedying or mitigating adverse effects on the environment and neighbouring properties from demolition and construction, and management of all works associated with this development (where they are not already managed by the CNVMP, BMP or CTMP) as follows:
 - (a) Contact details of the appointed contractor or project manager (phone number, e-mail, postal address);
 - (b) A general outline of the construction programme for each stage of development;
 - (c) Applicable conditions relating to the management of construction matters (including but not limited to those on dust, sediment and contamination);
 - (d) Programme of works and hours of operation;
 - (e) Relevant details for the management of dust on site (as per the guidance in Appendix 4 of the Good Practice Guide for Assessing and Managing Dust (Ministry for the Environment 2016)) including:
 - (i) an objective to ensure the consent holder shall ensure earthworks do not result in any airborne and deposited dust beyond the property boundary of the site that is determined to be noxious, objectionable or offensive (as per conditions 74 and 86);
 - (ii) a general description of the activities and main potential sources of dust emission;
 - (iii) contact details for the person who will manage dust complaints on site to be made available to staff, the CLG and the properties listed above at 19(h);
 - (iv) a full description of the dust mitigation system, including identifying relevant operating procedures and parameters, inventory of mitigating equipment and materials, details and reporting on maintenance programmes for this



equipment and contingency procedures;

- (v) a description of the staff training required, including areas staff are to be trained in, mitigation methods to be used, frequency of training and where training records are to be kept;
- (vi) monitoring procedures, including frequency and kind of monitoring to be undertaken, records to be kept and any system review or reporting required;
- (f) Management processes for earthworks on site to minimise contaminant, erosion and sediment effects as per conditions 126 – 134 and as guided by the Auckland Council guideline document GD05;
- (g) Details of construction hoardings and other measures to be adopted to maintain areas of the site that are visible from public spaces and private property in a tidy condition;
- (h) Details of the approach to be undertaken for the unloading and stockpiling of materials on site (including any necessary reference to the CNVMP or CTMP as required under conditions 17 – 19 and 24);
- (i) Management of rubbish disposal on site, in order to ensure any rubbish is removed in a timely manner and areas of the site visible from neighbouring properties or public spaces are kept in a tidy condition

Restriction on truck movements for construction

22. Truck movements associated with the construction of the development (including the removal of existing buildings and fill) shall not queue to enter, enter or leave the site during the busy commuter peak hours of 8am to 9am and 3pm to 6pm weekdays; and shall not enter or leave the site between the hours of 6pm to 8am.

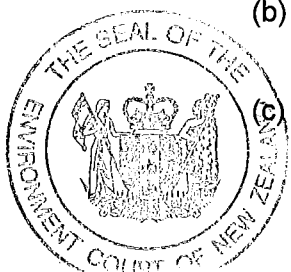
Construction Traffic Management Plan (CTMP)

23. Prior to the commencement of construction, the consent holder shall submit a Construction Traffic Management Plan to Auckland Council Team Leader Central Monitoring for certification.

The objective of the CTMP is to ensure that during construction the surrounding road network (including the footpaths) operates safely and efficiently for all road users including existing residents and pedestrians.

The CTMP shall include specific details relating to avoiding, remedying or mitigating adverse effects on the environment from demolition, construction and management of all works associated with this development, and setting out procedures to be followed which ensure compliance with the conditions of consent (such as condition 23), as follows:

- (a) Plans showing areas where stockpiles, equipment (including contractor parking) will occur so that there is no obstruction of public spaces (e.g. roads).
- (b) Plans showing the location of any site offices, staff facilities and staff car parking required during the construction period.
- (c) An overview of measures that will be adopted to prevent unauthorised public



access during the construction period.

- (d) Location of traffic signs on surrounding streets and proposed signage for traffic management purposes during construction.
- (e) Measures to ensure satisfactory vehicle and pedestrian access is maintained to adjacent properties at all times.
- (f) Temporary protection measures that will be installed to ensure that there shall be no damage to public roads, footpaths, berms, kerbs, drains, reserves or other public assets as a result of the earthworks and construction activities.
- (g) Details on procedures to be followed during major sporting events at Eden Park, noting that pedestrian connectivity and safety requirements shall not significantly impact on the requirements of the respective Eden Park management plans.
- (h) Identification of haulage routes.
- (i) Details on the location of temporary bus stops and the protection of public transport users by measures such as shelters.

The above details shall be shown on a site plan and supporting documentation as appropriate. The certified Management Plan shall be implemented and maintained throughout the entire demolition and construction period.

Notification of Works Commencing to Neighbours

24. The consent holder shall:

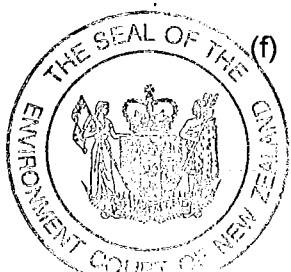
- (a) At least 10 working days prior to the commencement of earthworks on site, provide written advice of the proposed commencement date to owners and occupants of the following properties:
 - (i) All units at 9-15 Carrick Place;
 - (ii) 111 Valley Road;
 - (iii) 109 Valley Road;
 - (iv) 107 and 107A Valley Road;
 - (v) 105 Valley Road;
 - (vi) 21A, 21B and 21C Carrick Place;
 - (vii) 18 Carrick Place;
 - (viii) 16 Carrick Place;
 - (ix) 14 and 14A Carrick Place;
 - (x) 12 Carrick Place.
 - (xi) All Units at 236, 240 and 242 Dominion Road;
 - (xii) All Units at 114, 116 and 120 Valley Road, and 262-270 Dominion Road;
 - (xiii) All Units at 191-217 Dominion Road;
 - (xiv) All Units at 219-223 Dominion Road;



- (xv) All Units at 224-234 Dominion Road;
 - (xvi) All Units at 184-196 Dominion Road.
 - (xvii) 119 Valley Road; and
 - (xviii) All other properties within 100m of the site.
- (b) The written advice shall, as a minimum, include:
- (i) A brief overview of the construction works;
 - (ii) Acknowledgement that some activities are predicted to generate high noise and/or vibration levels that may result in disturbance for short periods
 - (iii) The mitigation and management measures to be implemented;
 - (iv) Details of monitoring (as per conditions 70 to 73) that will be undertaken where concerns about noise or vibration are raised;
 - (v) The working hours, a contact phone number for any concerns regarding noise and vibration, construction traffic, or any other matter associated with the works; and
 - (vi) Copies of the CNVMP, BMP, CMP and CTMP.
- (c) Public site signage shall include contact details for any concerns regarding the works.
- (d) At least monthly the consent holder shall communicate with the occupiers of all units detailed in condition 25(a) regarding upcoming construction works. This shall include written advice which sets out:
- (i) a brief overview of the upcoming construction works;
 - (ii) the duration of each phase of the project;
 - (iii) the anticipated significant events that will happen on site in the next month (for example, rock-breaking, blasting, the removal or importation of fill, concrete pouring, crane establishment or disestablishment, significant deliveries, etc.); and
 - (iv) a contact phone number for any concerns regarding noise and vibration, construction traffic, or any other matter associated with the works.

Where significant on-site events referenced in (d)(iii) above are predicted to result in increased noise or vibration levels on site, the consent holder shall confirm through engagement with the occupiers of those properties listed in condition 25(a) whether their properties will be occupied during the proposed period of each significant event.

- (e) The consent holder shall provide 5 days' advance written notice to the parties listed in condition 25(a) of the commencement of rock breaking activities onsite.
- (f) The consent holder shall provide 5 days advance written notice to the parties listed in condition 25 (a) of the time and number of any blasting activities undertaken



onsite. A second written notice will be provided 1 day in advance of blasting.

25. All construction noise and/or vibration complaints shall be recorded in a complaints file that is available to Council on request. For each complaint, an investigation should be undertaken involving the following steps as soon as practicable:
- (a) Acknowledge receipt of the concern or complaint within 24 hours and record:
 - (i) Time and date the complaint was received and who received it
 - (ii) Time and date of the activity subject to the complaint (estimated where not known)
 - (iii) The name, address and contact details of the complainant (unless they elect not to provide)
 - (iv) The complainants' description of the activity and its resulting effects.
 - (v) Any relief sought by the complainant (e.g. scheduling of the activity)
 - (b) Identify the relevant activity and the nature of the works at the time of the complaint.
 - (c) If a complaint relates to building damage, inform the on-duty site manager as soon as practicable in relation to the building survey process detailed at conditions 64 to 69 below.
 - (d) Review the activity noise and/or vibration levels and the mitigation and management measures in place. Report the findings and recommendations to the Project Manager.
 - (h) Report the outcomes of the investigation to the complainant, identifying where the relief sought by the complainant has been adopted or the reason(s) otherwise.

Consultation with Auckland Transport

26. Prior to giving effect to this consent, the consent holder shall provide details of any agreement with Auckland Transport to the Auckland Council Team Leader Central Monitoring on the following:
- (a) The proposed vehicle crossing on Valley Road with the dimensions marked including clearance from any light poles on Valley Road, and the time restricted parking space affected by the proposed crossing at Valley Road.
 - (b) Existing vehicle crossing on Carrick Place (to make sure the tracking curves from the proposed parking spaces will work) and which existing crossings are to be abandoned.
 - (c) Extent of proposed verandas including their setback from kerblines be clearly marked and shown.
 - (d) Bus stop alterations, covering bus stop seating, shelter, and other bus stop infrastructure.

All costs associated with resolutions required by the development shall be covered in full by the consent holder.



Advice Note: *The proposed verandah will require an airspace licence from Auckland Transport and encumbrances will need to be registered on the Unit Titles. The proposed verandah should comply with section 6 of Auckland Transport's encroachment guidelines.*

Advice note: *The bus stop should provide for shelter. If the verandah/canopy does not provide waiting bus passengers shelter, a bus stop shelter should be provided for.*

27. Prior to giving effect to this consent the consent holder shall provide details of any agreement with Auckland Transport to Auckland Council Team Leader Central Monitoring regarding changes to existing road markings and new road markings including No Stopping At All Times (NSAAT) markings, bus stops and on street parking spaces.

Geotechnical

28. The consent holder shall engage a suitably qualified engineer to supervise all excavations, retaining and foundation construction. The supervising engineer's contact details shall be provided in writing to Auckland Council Team Leader Central Monitoring at least two weeks prior to earthworks commencing on site.

Floor Plans

29. Prior to the lodgement of any architectural building consent, the consent holder shall provide architectural detail drawings of the floor plans and layout of each building. This shall include details of the internal and external floor areas of each residential unit, and their outdoor living areas as well as an accommodation schedule that includes the floor area and number of bedrooms for each residential unit within each building. This shall be submitted to the Auckland Council Team Leader Central Monitoring for certification.

"architectural building consent" means building consent for structure above the podium and excludes any building consents for demolition, the basement, detention tanks, earthworks, retaining walls and drainage.

Materials and Finishes

30. Prior to the lodgement of any architectural building consent, the consent holder shall provide architectural detail drawings of the façade components and a Materials Schedule and Specifications for the proposed external cladding and glazing. A sample palette of materials, surface finishes, and colour schemes shall accompany this. This shall be submitted to the council (Team Leader Central Monitoring, in consultation with Team Leader Urban Design and Team Leader Built Heritage) for certification. The purpose of this condition is to ensure that the proposed architectural treatment, colour, and visual depth indicated in the approved consent drawings is consistent with the documentation listed in condition 1 and will be provided without any compromise of their design intent.
31. Concrete used on Blocks A and B shall have a white or off-white finish, and shall not appear grey. This may be achieved through use of a coloured aggregate, lime wash, opaque paint, or other agreed method. Prior to the lodgement of any architectural building consent, a description and sample of the concrete finish shall be submitted to the council (Team Leader Central Monitoring, in consultation with Team Leader Urban Design and Team Leader Built Heritage) for certification. The purpose of this condition is because exposed grey concrete is not an appropriate material on the application site



in the Eden Valley Special Character area.

32. Prior to the lodgement of any architectural building consent that includes the following matters, the consent holder shall provide details of any external / rooftop services / plant, and visual / aural screening elements to the council (Team Leader Central Monitoring, in consultation with Team Leader Urban Design and Team Leader Built Heritage) for certification. The purpose of this condition is to ensure the appropriate screening/treatment of any external plant equipment in manner that does not undermine the design and architectural integrity of the proposed building(s).

Universal Building

33. The consent holder shall document the demolition of the Universal Buildings. Measured "as-built" drawings shall be prepared before demolition commences, and a photographic record before, during, and after demolition shall be prepared. This demolition record shall be prepared by a suitably qualified Heritage Specialist, and shall be submitted to the council (Team Leader Central Monitoring, in consultation with Team Leader Built Heritage) for certification prior to the commencement of any other building work on the site.
34. Prior to lodgement of any architectural building consent, the consent holder shall provide an interpretive signage plan that includes the location, design, and content of interpretive material to be displayed on the site. This shall be submitted to council (Team Leader Central Monitoring, in consultation with Team Leader Built Heritage) for certification. The interpretive signage certified in the plan shall be installed prior to occupation of the site, and shall be maintained in perpetuity. The purpose of this condition is to ensure that the history of Dominion Road and the Eden Valley Special Character area are understood and appreciated by the public, despite the loss of the Universal Buildings.
35. Demolition of the Universal Building shall not take place until building consent applications for all of Buildings A and B have been approved. The purpose of this condition is to ensure these character buildings are not demolished without sufficient certainty that the consented replacement buildings will be constructed shortly after demolition of the Universal Buildings and in accordance with the design approved under this resource consent.

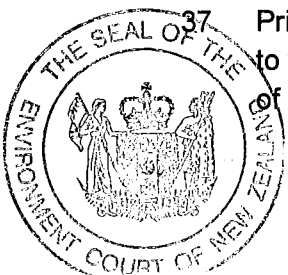
Signage

36. Prior to commencement of signage on site the consent holder shall provide detailed information to illustrate the finalised design details of the proposed signage, including the proposed locations, dimensions, colours, materials, and surface finishes. The finalised design details certified by Council shall be established prior to the occupation of each commercial tenancy, and thereafter retained and maintained.

Advice note: *As part of the certification process, Council's monitoring officers will liaise with members of the Council's Auckland Design Office to ensure that the submitted details are consistent with the approved plans and information.*

Finalised landscape design drawings, specifications and maintenance requirements

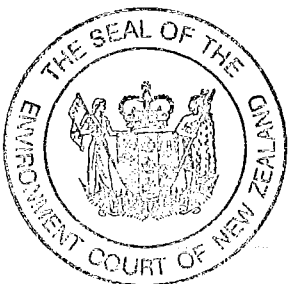
37. Prior to lodgement of any architectural building consent, the consent holder shall provide to the Auckland Council Team Leader Central Monitoring for certification, a finalised set of developed and detailed landscape design drawings and supporting written



documentation which have been prepared by a landscape architect or suitably qualified professional. The submitted information shall be consistent with the consented landscape concept plan(s) as prepared by Isthmus Group Limited shown on the Mediation Summary Report and confirm that the planting within the internal courtyard areas (above the basement car park) will be able to achieve the anticipated outcome, in particular that there is enough depth of soil to accommodate the proposed tree (including Nikau) planting. At a minimum, this information shall include landscape design drawings, specifications and maintenance requirements including:

- (a) Annotated planting plans which communicate the proposed location and extent of all areas of planting
- (b) Annotated cross-sections and/or design details with key dimensions to illustrate that adequate widths and depths are provided for planter boxes / garden beds
- (c) A plant schedule based on the submitted planting plan(s) which detail specific plant species, plant sourcing, the number of plants, height and/or grade (litre) / Pb size at time of planting, and estimated height / canopy spread at maturity
- (d) Details of draft specification documentation for any specific drainage, soil preparation, tree pits, staking, irrigation and mulching requirements
- (e) An annotated pavement plan and related specifications, detailing proposed site levels and the materiality and colour of all proposed hard surfacing
- (f) An annotated furniture plan and related specifications which confirm the location and type of all seats, bins, lights, fences, walls and other structural landscape design elements
- (g) A landscape maintenance plan (report) and related drawings and specifications for all aspects of the finalised landscape design, including in relation to the following requirements:
 - (i) Irrigation
 - (ii) Weed control
 - (iii) Plant replacement
 - (iv) Inspection timeframes
 - (v) Contractor responsibilities

Advice notes: *It is recommended that the consent holder consider a minimum three-year (and preferably five-year) management / maintenance programme for plant establishment and provide, in particular, details of maintenance methodology and frequency, allowance for fertilising, weed removal / spraying, replacement of plants, including specimen trees in case plants are severely damaged / die over the first three or five years of the planting being established and watering to maintain soil moisture.*



Implementation and maintenance of approved landscape design

38. Prior to the development being first occupied and within an appropriate planting season, the consent holder shall implement the landscape design which has been approved by the council under condition 38 and thereafter retain and maintain this landscape (planting, pavement and furniture) in perpetuity to the satisfaction of the Auckland Council Team Leader Central Monitoring in accordance with the maintenance plan which has been approved under condition 35.

Waste Management Plan

39. Prior to lodgement of any architectural building consent, a finalised Waste Management Plan shall be submitted to Council for certification by Auckland Council Team Leader Central Monitoring. The purpose of the plan is to outline the methodology for refuse and recycling storage and disposal from the site, including proposed days/frequency of collection, ensure that the servicing requirements of the overall site are adequately provided for without causing odour / visual nuisance internally or to the public.
40. Any waste collection including all movement of bins shall not be undertaken between 6.00pm and 7.00am, unless undertaken within the basement of the development.
41. The Waste Management Plan shall then be implemented at all times.

Advice note: *The waste management plan required by condition 40 above is also required for any multi-unit development, comprising ten or more units, under the Auckland Council Solid Waste Bylaw 2012. Assistance in determining the contents of the Waste Management Plan can be found within the Auckland Design Manual, www.aucklanddesignmanual.co.nz by searching for the Waste MUD Calculator. As part of the certification process, Council's monitoring officers will liaise with members of the Council's Auckland Design Office and Waste Solutions Team to ensure that the submitted details are consistent with the approved plans and information.*

Lighting Plan

42. Prior to lodgement of any architectural building consent, the consent holder shall provide a Lighting Plan for certification by Auckland Council Team Leader Central Monitoring. This plan shall include proposed locations, lux levels and types of lighting (i.e. manufacturer's specifications once a lighting style has been determined). The lighting plan shall demonstrate that all lighting complies with the relevant AUP(OP) lighting standards and to avoid any light spill onto neighbouring properties.

Advice note: *The purpose of this plan is to demonstrate that adequate lighting will be provided, particularly at the entrances to the building; and any publicly accessible areas within and around the site for the visibility and safety of residents, occupants and visitors to the premises and passers-by outside the daylight hours. The lighting should be designed to prevent any glare or overspill to the neighbouring properties in compliance with the relevant bylaw provisions.*



43. The Lighting Plan certified by Auckland Council Team Leader Central Monitoring shall be implemented as part of the construction of the development and maintained thereafter.

Advice note: *As part of the condition monitoring process, Council's monitoring inspectors will liaise with members of the Council's Auckland Design Office to ensure that the submitted details are consistent with the approved plans and information.*

During Construction Conditions

Construction Noise

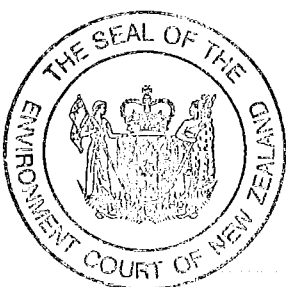
44. All noise generating activities associated with the implementation of this resource consent on, or in the vicinity of, the subject site (which can include (but are not limited to) any demolition, earthworks and construction activities, and ancillary activities (such as deliveries, loading and unloading goods, transferring tools, etc)):

- (a) may only be carried out between the hours of 8:00 am and 6:00 pm, Monday to Friday and 8:00 am and 1:00 pm Saturday; and
- (b) must not be carried out on any Sunday or public holiday (and any following Monday on which that public holiday is observed)

Oversize plant equipment (such as cranes and large machinery) and building elements (such as pre-cast steel) that would cause significant disruption to the surrounding road network may be brought onto, or taken off, site outside the above times and may exceed the relevant construction noise levels set out in condition 46, subject to at least 5 working days' notice being given to the parties listed in condition 25(a) and the approval of the Auckland Council Team Leader Central Monitoring.

45. Except as provided for in Conditions 47, 48 and 49, construction noise levels at occupied buildings shall comply with the following limits, when measured and assessed in accordance with NZS 6803:1999: *Acoustics – Construction Noise*.

Time of week	Time Period	Noise Limit, dB	
		L _{Aeq(30min)}	L _{Amax}
Weekdays	8:00 am – 6:00 pm	70	85
	6:00 pm – 10:00 pm	55	80
Saturdays	8:00 am – 1:00 pm	70	85
	1:00 pm – 10:00 pm	55	80
Sundays and public holidays	7:30 am – 6:00 pm	55	80
At all other times		45	70



46. Construction noise shall not exceed 75 dB $L_{Aeq(30min)}$ when measured at 1m from the façade of any occupied building within 15m of the site boundary. This limit shall apply for a single continuous period of 20 weeks. This condition does not apply to the noise from hydraulic rock breaking or the air overpressure levels from blasting, which must comply with the limits prescribed in Conditions 48 and 49 respectively. The consent holder shall provide to the Council, the occupiers where construction noise is expected to exceed 70 $L_{Aeq(30min)}$, and the CLG the start and finish dates for the single continuous 20-week period at least two weeks before the start of that period.

Advice Note: *For the avoidance of doubt, when conditions 47 applies, the compliance limit at any occupied building within 15m of the site boundary shall be 75 dB $L_{Aeq(30min)}$. The compliance limit at all other receiver will be in accordance with Condition 46, except during rock breaking activities.*

47. The following noise limits apply to rock breaking activities:
- (a) Noise generated by rock breaking activities shall not exceed the following external limits when measured 1m from the façade of any occupied buildings not on the same site, except as provided for in (b) and (c) below:
 - (i) 80 dB $L_{Aeq(30min)}$ at 9-15 Carrick Place
 - (ii) 75 dB $L_{Aeq(30min)}$ at 107A Valley Road, 21 Carrick Place, 111 Valley Road, 191-217 Dominion Road and 236 Dominion Road; and
 - (iii) 70 dB $L_{Aeq(30min)}$ at all other buildings.
 - (b) Noise generated by rock breaking activities shall not exceed an internal limit of 60 dB $L_{Aeq(30min)}$ when measured inside the following occupied buildings: 109 Valley Road and 184-196 Dominion Road.
 - (c) Noise generated by rock breaking activities shall not exceed an internal limit of 65 dB $L_{Aeq(30min)}$ when measured inside the following occupied buildings: 224 – 234 Dominion Road.

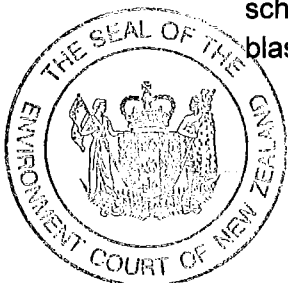
Construction Blasting

48. At occupied buildings, air over pressure from all blast events shall comply with a limit of 120 dB L_{Zpeak} .

At unoccupied buildings, the air over pressure from all blast events shall comply with a limit of 133 dB L_{Zpeak} when measured at any glazed element of any building and 140 dB L_{Zpeak} when measured at any façade not containing glazed elements.

Air over pressure levels shall be measured and assessed in accordance with Australian Standard AS2187.2-2006 *Explosives – Storage and Use – Use of Explosives*.

49. Blasting shall be undertaken only between 9am and 5pm, Monday to Friday, and within specifically set 30-minute time windows within this period. The specifically set windows for blasting shall be set out in the BMP required under condition 53. Blasting shall be scheduled such that for at least 1 hour between 12pm – 2pm Monday to Friday no blasting occurs.



50. Each blast window shall be communicated to occupiers of buildings within 100m of the application site at least 3 days in advance of the blast and again 1 day in advance of the blast.
51. An audible countdown sequence shall be given for each blast.
52. Prior to the commencement of any blasting, a finalised BMP prepared by a suitably qualified person in accordance with AS 2187 shall be submitted to Council for written certification by Auckland Council team Leader Central Monitoring.

The objective of the BMP is to minimise effects of blasting on neighbouring properties and occupants.

The BMP shall include specific details relating to avoiding, remedying or mitigating adverse effects on the environment and neighbouring properties from blasting works associated with this development as follows:

- (a) The proposed programme of dates and times of proposed blasting events;
 - (b) Frequency and timing of blasting events to minimise effects on neighbouring properties (as listed in Condition 64);
 - (c) Training of blasting operators;
 - (d) Procedures for designing each blast event in a way that minimises vibration and air over pressure off the site;
 - (e) The requirement to undertake signature hole analysis (small test blasts) to determine the minimum effective charge weight and effects radius;
 - (f) The requirement to undertake noise and vibration monitoring of signature hole analysis and production blasts; and
 - (g) Procedures and methods to communicate the blasting programme and noise/vibration levels on neighbouring properties (as listed in Condition 64).
53. Blasting shall comply with the vibration limits specified in condition 46.
 54. Rock breaking on site shall be minimised through removal of large basalt rocks from site, as far as practicable.

Noise barriers

55. An acoustic barrier with a minimum surface mass of 15kg/m² shall be erected along the full boundary of the site (except where site access is required or where there are existing concrete or concrete block walls already in place), prior to commencement of demolition activities and shall be in place until the completion of all construction activities.
- (a) An acoustic barrier with a minimum height of 3.6m above the existing ground level of:
 - (i) 9-15 Carrick Place;
 - (ii) The Carrick Place street frontage of 216B Dominion Road; and



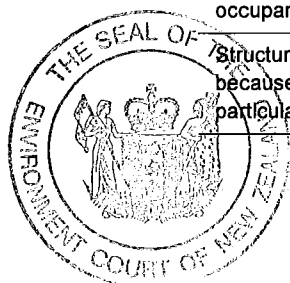
- (iii) 111 Valley Road.
- (b) An acoustic barrier with a minimum height of 2.4m above the existing ground level of:
- (i) The Dominion Road street frontage of the construction site;
 - (ii) The Valley Road street frontage not required for access; and
 - (iii) The north and west boundaries of 224-234 Dominion Road.
56. Prior to the commencement of excavation works, standard shipping containers (2.6m high) shall be placed two containers high along the full length of the site's boundary with 9-15 Carrick Place and extending 3m along the site's boundary with 184-196 Dominion Road. The containers shall be located within the application site at existing ground level and as close as practicable to the site boundary. The containers may only be removed to enable excavation works along the boundary of 9-15 Carrick Place. The excavation works immediately adjacent to 9-15 Carrick Place must be the last excavation works to take place.
57. In addition to the above, temporary noise barriers shall be investigated within the site, and in addition to the noise barriers required by Condition 56, where a construction noise limit would otherwise be predicted to be exceeded and the barriers would noticeably reduce the construction noise level. They should be installed prior to the relevant works commencing and maintained throughout those works.
58. A noise reduction shroud shall be fitted on all rock breaking equipment used at the site.

Construction Vibration

Cosmetic Building Damage

59. Construction generated vibration received on any structure not on the same site shall not exceed the guideline values set out in German Industrial Standard DIN 4150-3 (1999): Structural Vibration – Part 3 Effects of Vibration on Structures during construction in any circumstance, as set out below:

Type of Structure	Short-term Vibration			Long-term Vibration	
	Peak particle velocity (PPV), mm/s			PPV at horizontal plane of highest floor at all frequencies	PPV at horizontal plane of highest floor at all frequencies
	1 Hz-10 Hz	10 Hz-50Hz	50Hz-100 Hz		
Building used for commercial purposes, industrial buildings	20 mm/s	20-40 mm/s	40-50 mm/s	40 mm/s	10 mm/s
Dwellings and buildings of similar design and/or occupancy	5 mm/s	5-15 mm/s	15-20 mm/s	15 mm/s	5 mm/s
Structures that, because of their particular sensitivity to	3 mm/s	3-8 mm/s	8-10 mm/s	8 mm/s	2.5 mm/s



vibration, cannot be classified under the above two rows and are of great intrinsic value

60. Activities resulting in construction vibration beyond the site shall be limited to the hours of 8am to 6pm on weekdays and from 8am to 1pm on Saturdays.

Amenity limits

61. Except as provided for below, vibration levels arising from construction activity on the site shall not exceed, 2 mm/s peak particle velocity in occupied buildings in any axis when measured in the corner of the floor of the storey of interest for multi-storey buildings, or within 500 mm of ground level at the foundation of a single storey building as specified in AUP (OP) E25.6.30 (1) (b).

If measured or predicted vibration from construction activities exceeds 2 mm/s PPV at occupied buildings, the Consent Holder shall consult with the affected receiver to:

- (a) Discuss the nature of the works and the anticipated days and hours when the exceedances are likely to occur; and
- (b) Determine whether the exceedances could be timed or managed to reduce the effects on the receiver.

The Consent Holder shall maintain a record of these discussions and make them available to Council on its request.

62. A level of 2 mm/s PPV shall not be exceeded for more than three days in any 14 day period at any one occupied building, and must not exceed 5 mm/s PPV, unless agreed in writing with the owner and/or occupier. Those exceedance days are to be made known to the owner and/or occupier of the building, unless agreed in writing with the owner and/or occupier. Any such agreement shall be available to Council on request.

Building condition survey

63. The Consent holder shall request in writing the approval of the owners of the following properties to undertake a building condition survey at the times listed in condition 65:

- (a) 109 Valley Road, Mount Eden (Commercial)
- (b) 111 Valley Road, Mount Eden (Residential)
- (c) 184 - 196 Valley Road, Mount Eden (Commercial)
- (d) 198 Valley Road, Mount Eden (Commercial)
- (e) 13 Leamington Road, Mount Eden (Residential)
- (f) 21A, 21B and 21C Carrick Place, Mount Eden (Residential)
- (g) 16 Carrick Place, Mount Eden (Residential)
- (h) 3 Carrick Place, Mount Eden (Residential)
- (i) 105 Valley Road, Mount Eden (Residential)



(j) The units at 9-15 Carrick Place, Mount Eden (Residential)

64. Subject to property owner approval being provided, the consent holder shall undertake a building condition survey for each of the properties listed in condition 64 at the following times:

- (a) At least 10 working days prior to construction commencing;
- (b) Within 10 working days of the completion of excavation; and
- (c) At the completion of construction.

Should any reasonable claim of property damage from construction vibration be received from a property owner listed in condition 64 during the course of the construction activity, a building condition survey of the property in question shall be undertaken within 5 working days of a claim or claims being received by the consent holder.

65. Each building condition survey shall:

- (a) Be undertaken by the Building Surveyor engaged in accordance with conditions 9 - 12;
- (b) Provide a description of the building;
- (c) Determine the appropriate structure type classification⁶ with respect to DIN 4150-3:1999 "Structural Vibration - Effects of Vibration on Structures" (i.e. historic/sensitive, residential or commercial/industrial);
- (d) Document and photograph the condition of the building, including any cosmetic and/or structural damage;
- (e) The Building Surveyor shall invite the owner and any occupier, if different to the owner, to identify any concerns they wish to be considered in any condition survey, and these shall be taken into account in the preparation of the building condition survey; and
- (f) The results shall be provided to the property owner and be available to Council on request.

66. If during any construction the building condition survey demonstrates that cosmetic or structural damage has occurred that has, in the opinion of the Building Surveyor, been caused by the activities authorised by this consent, the infringing vibration generating works shall cease until such time as alternative construction methods have been agreed in writing with the Auckland Council Team Leader Compliance Monitoring (in consultation with the Building Surveyor).

67. Within 5 working days following the identification of cosmetic or structural damage under condition 67, the Building Surveyor shall advise in writing any necessary remedial measures to reinstate the affected building to its previously surveyed appearance and structural integrity. The results shall be provided to the Consent Holder, property owner, the CLG and the Auckland Council Team Leader Central Monitoring as soon as



⁶ Classifications with respect to Tables 1 and 3 of DIN 4150-3:1999 "Structural Vibration - Effects of Vibration on Structures" (i.e. historic/sensitive, residential or commercial/industrial)

practicable. The consent holder shall then offer to, and, if accepted by the property owner shall, at the consent holder's cost, rectify the damage as soon as practicable in accordance with the remedial measures set out in the building survey, in consultation with the property owner.

68. If the post-construction building condition survey demonstrates that damage has occurred that has been caused by the activities authorised by this consent, the consent holder shall offer to, and, if accepted by the property owner, shall rectify the damage at the consent holder's cost, as soon as practicable, in consultation with the property owner.

Monitoring

69. Attended noise and vibration monitoring shall be undertaken during the first occurrence of rock breaking, any on-site blasting (including signature hole analysis (test blasts) and production blasting) and during any other activities that are predicted to reach the noise or vibration limits.
70. Unattended continuous noise monitoring shall be undertaken during the times of construction when the noise limits of Conditions 47 and 48 apply to the works. Such monitoring shall be undertaken by placing one semi-permanent noise logging device at a building agreed by the CLG. This logging device shall be able to be moved to other buildings as agreed by the CLG, during the phase of works when Conditions 47 and 48 apply. Where monitoring shows that noise levels may exceed the limits of Conditions 47 and 48 at another building, an additional noise logging device shall be placed at that building when the exceedance is predicted to occur.
71. Unattended continuous vibration monitoring shall be undertaken during the excavation phase of the works. Such monitoring shall be undertaken by placing one semi-permanent vibration logging device at a building agreed by the CLG. This logging device shall be able to be moved to other buildings as agreed by the CLG, during the excavation phase. Where monitoring shows that vibration levels may exceed the limits of Conditions 60 or 62 at another building, an additional vibration logging device shall be placed at that building when the exceedance is predicted to occur.
72. The results of the monitoring shall be provided to Council and the CLG within 5 working days of completion of the monitoring. The results of the monitoring shall be used to verify the appropriateness of the methodology to undertake the works within the limits of conditions 46, 47, 48, 49, 60 and 62 of this consent

Dust

73. During earthworks all necessary action shall be taken to minimise dust generation and sufficient water shall be available and shall be used where needed to dampen exposed soil, and/or other dust suppressing measures shall be available to minimise dust formation.

Parking and loading

74. The consent holder shall provide 11 parking spaces accessible in the basement carpark that shall be reserved for staff of retail activities. These spaces shall be maintained thereafter.



75. The consent holder shall design and construct the Valley Road vehicle crossing so that the wall along the eastern site boundary (or within 2m of that boundary) is no higher than 0.5m for a length of at least 5m from the street boundary.
76. The consent holder shall provide a plan identifying a minimum of 95 long-term bicycle parking spaces internal to the development in a secure location to Auckland Council Team Leader Central Monitoring for certification. The certified plan shall be implemented to provide the bicycle parking and associated facilities and maintained thereafter.

The bicycle parking and associated facilities shall be provided prior to the commencement of occupation of the development.

Advice note: *The location of such bicycle parking spaces may include racks/hooks at the end of parking spaces where a wall exists, within bicycle racks and/or bicycle storage rooms. Bicycle storage areas should not be located in areas used by pedestrians.*

77. Prior to lodgement of any architectural building consent, the consent holder shall provide a plan identifying the location of at least seven visitor bicycle parking spaces in a location convenient to visitors to the development to Auckland Council Team Leader Central Monitoring for certification. The certified plan shall be implemented to provide the bicycle parking and associated facilities and maintained thereafter.
78. The consent holder shall provide one loading space on-site, accessible from Carrick Place.
79. The consent holder shall provide for refuse disposal loading within the basement only via private contractor.
80. No gates shall be placed at or within the pedestrian thoroughfare entranceways to the site for the entranceways fronting Dominion Road, Valley Road, and Carrick Place.

Stormwater

81. The consent holder shall ensure that the required freeboard to finished floor levels from overland flowpaths within and adjacent to the site is maintained for the 100yr ARI MPD flood.
82. The consent holder shall paint all metal surfaces and shall not use zinc or copper leaching surface treatments.

NES CS (Earthworks)

83. The consent holder shall implement all measures identified in the Site Management Plan for Contaminated Land (including the Remediation Action Plan (RAP)) prepared by Tonkin & Taylor Ltd, April 2017 during remediation and earthworks on the site. Any substantial revisions to the RAP must be provided to Auckland Council Team Leader Central Monitoring for certification.
84. The consent holder shall engage a suitably qualified and experienced contaminated land specialist to monitor the earthworks.
85. The consent holder shall ensure that the earthworks do not result in any airborne and deposited dust beyond the property boundary of the site that is determined to be noxious, objectionable or offensive.

86. The consent holder shall ensure excavated materials, when removed from the site, are disposed of in an appropriate landfill and provide landfill receipts to Auckland Council Team Leader Central Monitoring on completion of the earthworks.



87. If evidence of soil contamination or presence of asbestos which has not been identified, in the initial site investigations, is discovered during excavation, the consent holder shall immediately cease the works and notify Auckland Council Team Leader Central Monitoring and provide a site contamination report and a remedial action plan if necessary to Auckland Council Team Leader Central Monitoring. This condition is subject to the further directions on the management of contaminated soils contained within conditions 122 – 132 in the contamination discharge permit DIS60303722.
88. The consent holder must ensure that the contamination level of any imported soil complies with Auckland Council's clean fill criteria as outlined by MfE Guide for Managing Clean-fills 2002.

Street Trees

89. The consent holder shall engage a Council approved contractor to carry out the removal of the titoki located outside 113 Valley Road, Mt Eden. This must be carried out in accordance with current best arboricultural and safety practices.
90. Within the next planting season immediately following the tree removal, the consent holder shall plant two Titoki (*Alectryon excelsus*) specimen trees in the Valley Road reserve (berm) in a location between Dominion Road and Kenyon Avenue which has been certified as being appropriate by the Auckland Council Team Leader Central Monitoring, at the consent holder's expense. The trees shall be a minimum root grade of Pb95 and be staked, mulched and watered at the time of planting.

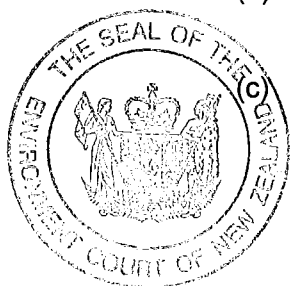
Geotechnical

91. The consent holder shall ensure that supplementary geotechnical investigations are undertaken by a suitably qualified engineer along the western site boundary, and any other boundary where excavation depths are greater than 2 m below current ground level, to determine temporary retention requirements and to assess the nature of the ground conditions for basement and retention tank design and construction purposes. This work shall be undertaken following demolition of the existing buildings but prior to commencement of any bulk excavation.
92. The consent holder shall provide verification in writing from an engineer to Auckland Council Team Leader Central Monitoring, that the temporary retention requirements identified under condition 92 have been implemented on site. This shall be provided no later than two weeks after foundation/retaining construction have been completed.
93. All earthworks shall be managed to ensure that they do not lead to any uncontrolled instability or collapse affecting either the site or adversely affecting any neighbouring properties. In the event that uncontrolled collapse or instability does occur, it shall immediately be rectified.

Archaeology

94. In addition to any requirements under the Heritage New Zealand Pouhere Taonga Act 2014, preliminary earthworks shall be monitored by the Project archaeologist to:
 - (a) Establish whether early 20th century archaeological remains associated with the shops at 224 and 228 Dominion Road and the villas previously fronting Valley Road are present.
 - (b) If present, any significant early 20th century archaeological remains shall be recorded and analysed using accepted archaeological techniques.

The results will be reported to the Auckland Council Cultural Heritage Inventory



within 12 months after the completion of onsite works

Post-Construction Conditions

Operational Noise

95. Noise levels arising from operational activities must be measured and assessed in accordance with New Zealand Standard NZS 6801:2008 *Measurement of environmental sound* and New Zealand Standard NZS 6802:2008 *Acoustics - Environmental noise*.

96. The following noise limits are not to be exceeded by any activities occurring on the site when measured or assessed as the incident level on the façade of any building on any other site in the *Business – Local Centre* zone.

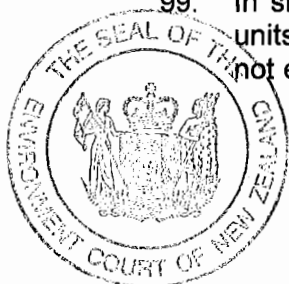
Period	Noise Limit
7:00 am - 10:00 pm	60 dB L_{Aeq}
10:00 pm – 7:00 am	50 dB L_{Aeq}
	60 dB L_{eq} at 63 Hz
	55 dB L_{eq} at 125 Hz
	75 dB L_{AFmax}

97. The following noise limits are not to be exceeded by any activities occurring on the site when measured or assessed within the boundary of a site in a *Residential* zone.

Period	Noise Limit
Monday to Saturday 7:00 am-10:00 pm	55 dB L_{Aeq}
Sunday 9:00 am – 6:00 pm	
At all other times	45 dB L_{Aeq}
	60 dB L_{eq} at 63 Hz
	55 dB L_{eq} at 125 Hz
	75 dB L_{AFmax}

98. Prior to occupation of the buildings, the consent holder shall submit a report prepared by a suitably qualified and experienced acoustic specialist to Auckland Council Team Leader Central Monitoring for certification. The report shall demonstrate that noise from external plant and the commercial activities with the development complies with Conditions 97 and 98 operational noise limits.

99. In situations where common building elements such as floors and walls connect two units, the noise (rating) level arising from any activity measured in any adjacent unit must not exceed the limits below.



Unit affected	Time	Noise Limit
In all units except those containing activities sensitive to noise	At all times	50 dB LAeq
In bedrooms and sleeping areas within units containing activities sensitive to noise	Between 10:00 pm – 7:00 am	35 dB LAeq
		45 dB Leq at 63 Hz
		40 dB Leq at 125 Hz
	Between 7:00 am – 10:00 pm	40 dB LAeq
Other noise sensitive spaces	At all other times	40 dB LAeq

100. At Building Consent stage, the consent holder shall submit a report confirming the building design complies with condition 100 to Auckland Council Team Leader Central Monitoring. The report must be prepared by a suitably qualified and experienced acoustic specialist.

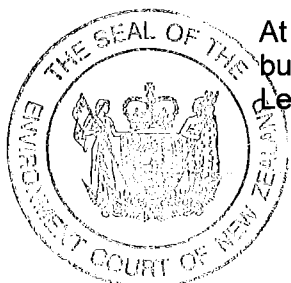
101. (a) Noise sensitive spaces must be designed and/or insulated so that the internal noise levels do not exceed the levels below based on the maximum level of noise permitted by the zone or precinct standards or any adjacent zone or precinct standards.

Unit affected	Time	Noise Limit
Bedrooms and sleeping areas	Between 10:00 pm – 7:00 am	35 dB LAeq
		45 dB Leq at 63 Hz
		40 dB Leq at 125 Hz
	Between 7:00 am – 10:00 pm	40 dB LAeq
Other noise sensitive spaces	At all other times	40 dB LAeq

(b) Where the above internal noise levels can only be complied with when doors or windows to those rooms are closed, those rooms must provide sufficient ventilation either via:

- (i) a mechanical ventilation and/or cooling system that generates a noise level no greater than 35 dB LAeq when measured 1 m from the diffuser at the minimum design airflows; or
- (ii) providing sufficient ventilation via alternate means, such as acoustically treated trickle ventilation, designed to meet the above internal noise level requirements.

At building consent stage, the consent holder shall submit a report confirming the building design complies with condition 102(a) and 102(b) to Auckland Council Team Leader Central Monitoring. The report must be prepared by a suitably qualified and



experienced acoustic specialist.

Flooding

102. The consent holder shall ensure that the development does not result in an increase in peak flows from the site resulting from a 1% AEP event.
103. The consent holder shall ensure that the development does not increase peak flows and water levels of overland flowpaths on other properties in the vicinity of the site, including Dominion and Valley Roads.

Site validation report

104. Following completion of any remediation works, the consent holder shall provide to the Auckland Council Team Leader Central Monitoring for certification a site validation report which shall include but not limited to the following:
 - (a) confirmation of the remediation works being conducted in accordance with an approved remedial action plan
 - (b) the location and dimensions of the remediation carried out, including a site plan
 - (c) soil test results for remaining soil, imported fill if any and any other soil testing
 - (d) total volume of excavated soil disposed off-site
 - (e) landfill receipts.

Street Trees

105. An aftercare period of two years is to be carried out following the planting of the new street trees (as required by condition 91). Should the trees decline during this period to a point where they are no longer healthy (in the opinion of the Auckland Council Team Leader Central Monitoring) then the trees shall be replaced with similar trees of similar dimensions (as required by condition 91). The aftercare shall include any staking, mulching and watering during the summer periods to ensure the establishment and ongoing survival of the new street trees.

Infrastructure

106. A copy of an updated private drainage "as-built" plan signed by a registered certifying drainlayer shall be provided to Auckland Council Team Leader Central Monitoring at the completion of the building works.

Advice Note: *The stormwater and wastewater network connections will require engineering approval to be obtained from Auckland Council prior to applying for Building Consent. All stormwater and wastewater systems shall be designed and constructed in accordance with Council standards. See the council's website (www.aucklandcouncil.govt.nz) for more information on the engineering approval process, or call (09) 301 0101 and ask to speak to a Development Engineer from your local service centre.*

Specific conditions – stormwater discharge permit – DIS60303722

Expiry date

107. Stormwater diversion and discharge permit shall expire 35 years from the decision date of this consent unless it has lapsed, been surrendered or been cancelled at an earlier date pursuant to the RMA.



Pre-construction Conditions

Maintenance responsibility

108. Prior to the commencement of any works, the consent holder shall secure the long term operation and maintenance of the stormwater management devices for owner of the units through an appropriate level mechanism. Evidence shall be provided to Auckland Council Team Leader Central Monitoring within one month of the legal document being created and the devices shall be maintained thereafter.

Advice Note: *If a Body Corporate or similar legal entity is formed with responsibility for the ongoing operation and maintenance of the stormwater management system, consent DIS60303722 for the diversion and discharge of stormwater should be transferred to this entity.*

Stormwater management works

109. The following stormwater management works shall be constructed for the following catchment areas and design requirements, and shall be completed prior to discharges commencing from the site:

Works to be undertaken	Catchment area - impervious	Design requirement(s)
Soakholes (5)	Approximately 4,656m ²	<ul style="list-style-type: none"> In accordance with TR2013/040 - Stormwater Disposal via Soakage in the Auckland Region Soakage rate of at least 27L/s Drilled at a 10° incline to vertical
Storage tank 1		<ul style="list-style-type: none"> Storage volume of at least total 1,211m³
Storage tank 2		
Stormwater quality treatment device	Vehicle parking manoeuvring areas	<ul style="list-style-type: none"> 75% TSS removal in accordance with GD01

110. Detailed designs for the stormwater quality treatment devices including any relevant drawings, plans and calculations shall be submitted for certification to the Auckland Council Team Leader Central Monitoring, at the time of application for Engineering Plan Approval for the following:

Stormwater quality treatment device to achieve 75% TSS removal on a long term average basis in accordance with GD01.



111. In the event that any modifications to the stormwater management system are required, the following information shall be provided to Auckland Council Team Leader Central Monitoring for certification prior to implementation of the modifications:

- (a) Plans and drawings outlining the details of the modifications; and
- (b) Supporting information that details how the proposal does not affect the capacity or performance of the stormwater management system.

Advice Note: *Any changes to the proposal which will affect the capacity or performance of the stormwater management system may require an application to Council pursuant to Section 127 of the RMA. An example of a minor modification can be a change to the location of a pipe or slight changes to the site layout. If there is a change of device type (even proprietary), the consent may have to be varied (s127 under the RMA).*

112. A pre-construction meeting shall be held by the consent holder, prior to commencement of the construction of any stormwater devices onsite, that:

- (a) is arranged five working days prior to initiation of the construction of any stormwater devices on the site;
- (b) is located on the subject area;
- (c) includes representation from Auckland Council Team Leader Central Monitoring; and
- (d) includes representation from the site stormwater engineer, contractors who will undertake the works and any other relevant parties.

113. The following information shall be made available prior to, or at the pre-construction meeting:

- (a) timeframes for key stages of the works authorised under this consent;
- (b) erosion and sediment control measures during construction;
- (c) contact details of the site contractor and site stormwater engineer; and
- (d) construction plans, including design details of the soakholes

Post-construction conditions

114. A post-construction meeting shall be held by the consent holder, within 20 working days of completion of the stormwater management works, that:

- (a) is located on the subject area;
- (b) includes representation from Auckland Council Team Leader Central Monitoring; and
- (c) includes representation from the site stormwater engineer, contractors who have undertaken the works and any other relevant parties.

Advice Note: *To arrange the construction meetings required by this consent, please contact the Team Leader – Compliance Monitoring Central on 09 301 0101 or monitoring@aucklandcouncil.govt.nz*

115. As-Built certification and plans of the stormwater management works, which are certified (signed) by a suitably qualified registered surveyor as a true record of the stormwater management system, shall be provided to Auckland Council Team Leader Central Monitoring for certification 5 days prior to the post-construction meeting required by this consent.



116. The As-Built plans shall display the entirety of the stormwater management system, and shall include:
- (a) the surveyed location (to the nearest 0.1m) and level (to the nearest 0.01m) of the stormwater management devices, with co-ordinates expressed in terms of NZTM and LINZ datum;
 - (b) plans and cross sections of all stormwater management devices, including confirmation of the Water Quality Volume, storage volumes and levels of any outflow control structure;
 - (c) the surveyed locations of all soak holes installed for the management of stormwater discharges to ground shall be measured to the nearest 0.1 metre with co-ordinates expressed in terms of NZTM;
 - (d) the soakage capacities of the soak holes; and
 - (e) documentation of any discrepancies between the design plans and the As-Built plans made under condition 113 above.

Operation and Maintenance Plan

117. A finalised Operation and Maintenance Plan shall be submitted to Auckland Council Team Leader Central Monitoring for certification 5 days prior to the post-construction meeting required by this consent.
118. The Operation and Maintenance Plan shall set out how the stormwater management system is to be operated and maintained to ensure that adverse environmental effects are minimised. The plan shall include:
- (a) details of who will hold responsibility for long-term maintenance of the stormwater management system and the organisational structure which will support this process;
 - (b) a programme for regular maintenance and inspection of the stormwater management system;
 - (c) a programme for the collection and disposal of debris and sediment collected by the stormwater management devices or practices;
 - (d) a programme for post storm inspection and maintenance;
 - (e) general inspection checklists for all aspects of the stormwater management system, including visual checks; and
 - (f) a copy of any current maintenance contract.
119. The stormwater management system shall be managed in accordance with the approved Operation and Maintenance Plan.
120. Any amendments or alterations to the Operation and Maintenance Plan shall be submitted to, and approved by Auckland Council Team Leader Central Monitoring, in writing prior to implementation.
121. The Operation and Maintenance Plan shall be updated and submitted to Auckland Council Team Leader Central Monitoring for certification, on request.



Maintenance Report

122. Details of all inspections and maintenance for the stormwater management system, for the preceding three years, shall be retained.
123. A maintenance report shall be provided to Auckland Council Team Leader Central Monitoring on request.
124. The maintenance report shall include the following information:
 - (a) details of who is responsible for maintenance of the stormwater management system and the organisational structure supporting this process;
 - (b) details of any maintenance undertaken; and
 - (c) details of any inspections completed.

Specific conditions – contamination discharge permit – DIS60303722

Expiry date

125. Pursuant to Section 123 of the Resource Management Act 1991 (RMA), discharge consent DIS60303722 shall expire five years from the date of granting, unless it has been surrendered or been cancelled at an earlier date pursuant to the RMA.

Pre-construction conditions

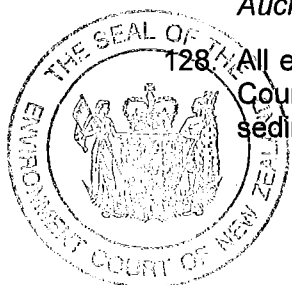
126. Auckland Council Team Leader Central Monitoring shall be notified at least five (5) days prior to the commencement of the proposed remedial works commencing on the subject site at monitoring@aucklandcouncil.govt.nz, or 09 301 0101. The following details shall also be provided:
 - (a) name and telephone number of the project manager and the site owner
 - (b) site address to which the consents relate;
 - (c) activity to which the consents relate; and
 - (d) expected duration of the works.

During construction conditions

127. The discharge of contaminants to land and water from the proposed remedial works shall be carried out in accordance with the revised Site Management Plan titled "Site Management Plan for Ground Contamination Valley Road Apartments, Mt Eden", prepared by Tonkin & Taylor Ltd, and dated August 2017, and to the satisfaction of Auckland Council Team Leader Central Monitoring.

Advice Note: *The Council acknowledges that the revised Site Management Plan is intended to provide flexibility of the management of the works and contaminant discharge. Accordingly, the plan may need to be further updated. Any updates should be limited to the scope of this consent and consistent with the conditions of this consent. If you would like to confirm that any proposed updates are within scope, please contact Team Leader Compliance Monitoring, Central, Licensing and Regulatory Compliance, Auckland Council on (09) 301 0101.*

128. All excavation in the work areas shall be managed to the satisfaction of the Auckland Council Team Leader Central Monitoring to minimise any discharge of debris, soil, silt, sediment or sediment-laden water from beyond the subject site to either land,



stormwater drainage systems, watercourses or receiving waters.

129. Erosion and sediment control shall be installed in accordance with the guideline document titled *Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region* (GD05) (Auckland Council, 2016). The excavation areas shall be dampened during the day to suppress the generation of dust during the works. Filter cloths or cover mats shall be installed over the stormwater cesspits in the vicinity of the excavation areas. Stabilised exits shall be established to avoid the potential for sediment to leave the site on vehicle tyres and enter the existing stormwater system.

Advice Note: *Discharge from the site includes the disposal of water (e.g. perched groundwater or collected surface water) from excavations.*

130. Any soils and/or fill material identified for off-site disposal shall primarily be loaded directly into trucks and shall be covered during transportation off site. Stockpiling of material excavated for off-site disposal shall be avoided. If required, temporary stockpiles of material free from separate phase hydrocarbons or odorous petroleum hydrocarbons shall be located on an impermeable surface within an area protected by erosion and sediment controls, and be covered with tarpaulins anchored at the edges outside working hours and during periods of heavy rain. Any stockpile shall be protected from transfer of dust by wind at all times. Stockpiling of material containing separate phase hydrocarbons or odorous petroleum hydrocarbons shall not take place. All soil removed from the remedial area shall be deposited at a disposal site that holds a consent to accept the relevant level of contamination.

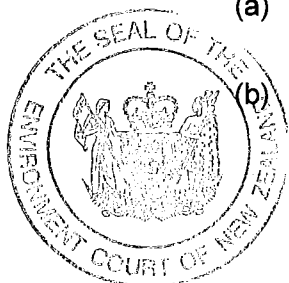
Advice Note: *Where it can be demonstrated that the soil has been fully characterised and found to meet definition of 'Cleanfill material', set out in the Auckland Unitary Plan (Operative in Part), the removal to a consented disposal site is not required.*

131. Any perched groundwater, or surface water encountered within the excavation area requiring removal shall be considered potentially contaminated, and shall either:
- (a) be disposed of by a licenced liquid waste contractor; or
 - (b) pumped to sewer, providing the relevant permits are obtained; or
 - (c) discharged to the stormwater system or surface waters provided testing demonstrates compliance with the Australian and New Zealand Environment Conservation Council (ANZECC) *Guidelines for Fresh and Marine Water Quality* (2000) for protection of 80 percent of marine water species, except for benzene where the criterion for protection of 95 percent of species shall apply.
132. All sampling and testing of contamination on the site, shall be overseen by a suitably qualified and experienced contaminated land practitioner. All sampling shall be undertaken in accordance with Contaminated Land Management Guidelines, No.5 - *Site Investigation and Analysis of Soils*, Ministry for the Environment, (revised 2011).

Advice Note: *All testing and analysis should be undertaken in a laboratory with suitable experience and ability to carry out the analysis. This should include all pesticides and herbicides. For more details on how to confirm the suitability of the laboratory please refer to Part 4: Laboratory Analysis, of Contaminated Land Management Guidelines No.5.*

133. All imported fill shall:

- (a) Comply with the definition of 'Cleanfill material', as per definition set out in the Auckland Unitary Plan (Operative in Part); and
- (b) Be solid material of an inert nature; and



- (c) Not contain hazardous substances or contaminants above natural background levels of the receiving site.

Advice Note: *Background levels for the Auckland Region can be found in the technical publication TP153, Background concentrations of inorganic elements in soils from the Auckland Region, Auckland Regional Council (2001). Under the AUP (OP) Definitions, Cleanfill material cannot contain more than 5% by volume of inert manufactured materials (e.g. concrete, brick, tiles).*

134. Where contamination that has not been anticipated by the application is identified, works in the area containing the unexpected contamination shall cease and be notified to Auckland Council Team Leader Central Monitoring and all neighbouring properties listed in condition 19(h). Relevant contingency procedures, outlined in the Site Management Plan referenced in Condition 128 shall be implemented. Any unexpected contamination and contingency measures shall be overseen by a suitably qualified contaminated land practitioner and documented in the Site Validation Report required by Condition 136.

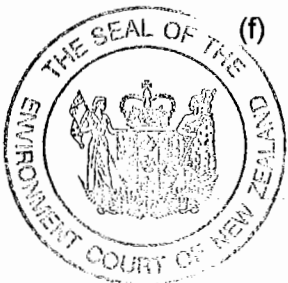
Advice Notes: *In accordance with this consent any unexpected contamination may include contaminated soil, perched water, groundwater, or underground tanks. The consent holder is advised that where unexpected contamination is significantly different in extent and concentration from that anticipated in the original site investigations, handling the contamination may be outside the scope of this consent. Advice should be sought from the Auckland Council Team Leader Central Monitoring prior to carrying out any further work in the area of the unexpected contamination to ensure this is within scope of this consent.*

Details of the likely contamination levels can be found in the Preliminary Site Investigation and Detailed Site Investigation included in condition 2.

Post-construction conditions

135. Within three months of the completion of the proposed remedial works on site, a Site Validation Report (SVR) shall be provided to Auckland Council Team Leader Central Monitoring for certification. The SVR shall be prepared by a suitably qualified and experienced contaminated land practitioner. The SVR shall contain sufficient detail to address the following matters:

- (a) a summary of the remedial works undertaken, including a statement confirming whether the remedial works have been completed in accordance with the revised Site Management Plan referenced in Condition 128;
- (b) the location and dimensions of the excavations carried out, including a relevant site plan;
- (c) records of any unexpected contamination encountered during the works, if applicable;
- (d) copies of the disposal dockets for the material removed from the site and cleanfill imported onto the site;
- (e) a summary of the unexpected contaminated material sampling (if applicable) and validation sampling, tabulated analytical results, and interpretation of the results in the context of the Contaminated Land Rules of the Auckland Unitary Plan (Operative in Part);
- (f) details regarding any complaints and/or breaches of the procedures set out in the revised Site Management Plan and the conditions of this consent.



Advice notes

1. Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.
2. For the purpose of compliance with the conditions of consent, "the council" refers to the council's monitoring inspector unless otherwise specified. Please contact Team Leader Central Monitoring on 09 301 0101 or monitoring@aucklandcouncil.govt.nz to identify your allocated officer.
3. For more information on the resource consent process with Auckland Council see the council's website www.aucklandcouncil.govt.nz. General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment's website: www.mfe.govt.nz.
4. The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.
5. Approval must be sought from Watercare Ltd for the wastewater and water supply connections.
6. The proposed inlet and outlet grates be designed in accordance with the Auckland Council Design Manual, including allowance for blockage and appropriate safety grilles.
7. The diversion of the wastewater line appears to not be in accordance with Watercare Ltd design standards and Watercare Ltd will need to approve the diversion detailed design.
8. Should earthworks on the site result in the identification of any previously unknown archaeological site, the land disturbance – Regional Accidental Discovery rule [E12.6.1] set out in the Auckland Unitary Plan Operative in part (November 2016) shall be applied. Heritage New Zealand Pouhere Taonga Act 2014 - The Heritage New Zealand Pouhere Taonga Act 2014 (hereafter referred to as the Act) provides for the identification, protection, preservation and conservation of the historic and cultural heritage of New Zealand. All archaeological sites are protected by the provisions of the Act (section 42). It is unlawful to modify damage or destroy an archaeological site without prior authority from Heritage New Zealand Pouhere Taonga. An Authority is required whether or not the land on which an archaeological site may be present is designated, a resource or building consent has been granted, or the activity is permitted under Unitary, District or Regional Plans. According to the Act (section 6) archaeological site means, subject to section 42(–
 - a) any place in New Zealand, including any building or structure (or part of a building or structure), that –
 - I. was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and
 - II. provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand; and



- b) includes a site for which a declaration is made under section 43(1)

It is the responsibility of the consent holder to consult with Heritage New Zealand Pouhere Taonga about the requirements of the Act and to obtain the necessary Authorities under the Act should these become necessary, as a result of any activity associated with the consented proposals.

For information please contact the Heritage New Zealand Pouhere Taonga Northern Regional Archaeologist – 09 307 0413 / archaeologistMN@historic.org.nz.

9. Māori artefacts such as carvings, stone adzes, and greenstone objects are considered to be tāonga (treasures). These are taonga tūturu within the meaning of the Protected Objects Act 1975 (hereafter referred to as the Act).

According to the Act (section 2) taonga tūturu means an object that –

- a) relates to Māori culture, history, or society; and
- b) was, or appears to have been –
 - i. manufactured or modified in New Zealand by Māori; or
 - ii. brought into New Zealand by Māori; or
 - iii. used by Māori; and
- c) is more than 50 years old

The Act is administered by the Ministry of Culture and Heritage. Tāonga may be discovered in isolated contexts but are generally found within archaeological sites. The provisions of the Heritage New Zealand Pouhere Taonga Act 2014 in relation to the modification of an archaeological site should to be considered by the consent holder if tāonga are found within an archaeological site, as defined by the Heritage New Zealand Pouhere Taonga Act 2014.

It is the responsibility of the consent holder to notify either the chief executive of the Ministry of Culture and Heritage or the nearest public museum, which shall notify the chief executive, of the finding of the taonga tūturu, within 28 days of finding the taonga tūturu; alternatively provided that in the case of any taonga tūturu found during the course of any archaeological investigation authorised by Heritage New Zealand Pouhere Taonga under section 48 of the Heritage New Zealand Pouhere Taonga Act 2014, the notification shall be made within 28 days of the completion of the field work undertaken in connection with the investigation.

Under section 11 of the Act, newly found tāonga tūturu are in the first instance Crown owned until a determination on ownership is made by the Māori Land Court.

10. Prior to demolishing existing buildings on site, attention of the consent holder is drawn to the provisions of the Health and Safety at Work Act (Asbestos) Regulations 2016 and the current New Zealand Guidelines for the Management and Removal of Asbestos, New Zealand Demolition and Asbestos Association;
11. The consent holder should engage a person hold a Certificates of Competence (CoC) for restricted work to inspect existing buildings (demolishing is proposed), to confirm the presence or absence of asbestos containing materials within the buildings;
12. If asbestos containing materials are identified within any buildings, the consent holder should prepare a site specific asbestos management plan detailing asbestos identification process, removal and disposal procedures, risk assessment and its mitigation measures, air monitoring, health and safety procedures for protection of site workers and the public;



13. *Attention of the consent holder is drawn that should asbestos containing materials are found on site following the demolishing/removal of existing buildings, remediation and validation sampling for asbestos are likely to be required.*

