

14 August 2018

Dear Sir/Madam

RESOURCE CONSENT APPLICATION – ADVICE OF DECISION

Application Number:	BUN60303720, LUC60303721 (Land Use) & DIS60303722 (Discharge)
Applicant:	Panuku Development Auckland (“Panuku”)
Proposed Activity:	To construct a new multi-level mixed use development on the 8 adjoining sites at 198-202, 214-222 Dominion Road and 113-117 Valley Road, Mt Eden (“the site”). The proposal involves the demolition of all existing buildings on site, including two character supporting buildings, associated earthworks, parking, loading and development that will result in 102 residential dwellings and 9 retail units
Site Address:	198-222 Dominion Road and 113-117 Valley Road, Mount Eden

The above application was heard by Auckland Council Hearing Commissioners on 5 April 2018. After consideration of the processing officers’ report and the evidence of the applicant and submitters, the commissioners have resolved that this application be **refused**.

For your reference a copy of the decision of the Hearing Commissioners is attached, and will be forwarded to every person who made a submission. A copy of the decision will be uploaded on the Council website under ‘Meetings and Agendas - Hearings’.

If you are the applicant or a submitter, and you disagree with the decision, or parts of it, you can file an appeal with the Environment Court within 15 working days of receiving this decision.

The applicant and/or any submitter may appeal the council decision under section 120 of the Resource Management Act 1991. If an appeal is lodged, any person who made a submission on the application may become a party to the proceedings by lodging a notice under section 274 of the Resource Management Act 1991. The information on objections and appeals in this letter is provided as a guide only and does not constitute legal advice. Information on the appeal process can be found on the Environment Court website www.justice.govt.nz/courts/environment-court.

A copy of the appeal must be served on the council (Private Bag 92300, Auckland 1142) within 15 working days of the receipt of the decision and on all submitters within 5 working days of lodging the appeal with the Environment Court. Information on the appeal process can be found on the Environment Court website www.justice.govt.nz/courts/environment-court.

If you have any queries, please contact the principal project lead, Quentin Budd on 021 992 052 or quentin.budd@aucklandcouncil.govt.nz and quote the application number above.

Yours sincerely,

Shirin Rahman Whipp
Regulatory Support Officer

RESOURCE CONSENTING AND COMPLIANCE, CENTRAL 2

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



Proposal: To construct a new multi-level mixed use development on the 8 adjoining sites at 198-202, 214-222 Dominion Road and 113-117 Valley Road, Mt Eden (“the site”). The proposal involves the demolition of all existing buildings on site, including two character supporting buildings, associated earthworks, parking, loading and development that will result in 102 residential dwellings and 9 retail units.

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

Application numbers	LUC60303721 (Land Use) & DIS60303722 (Discharge) (BUN60303720)
Site address	198-222 Dominion Road and 113-117 Valley Road, Mount Eden
Applicant	Panuku Development Auckland (“Panuku”)
Hearing commenced	9.30 a.m., Thursday 5 April 2018
Independent Hearing Commissioners	Janine Bell (Chair) Cherie Lane Richard Blakey
Appearances	<p><u>For the Applicant</u></p> <p>Panuku represented by: Daniel Minhinnick and Simon Pilkinton, Legal Counsel Gavin Peebles, Project Development Director Andrew Mirams, Design and Architecture Andre de Graaf, Urban Design Adina Brown, Archaeologist John Brown, Special Character Justin Kirkman, Civil Infrastructure Don McKenzie, Traffic Engineer Nicholas Speight, Geotechnical Siiri Wilkening, Noise and Vibration Simon Miller, Arboricultural Vijay Lala, Planning</p> <p><u>For the Submitters</u></p> <p>John Kristiansen (5 Carrick Place, Mt Eden) The Dove Trust, David Barnett (31 Alba Road, Mt Eden) Pacific Fringe Limited, represented by Craig McGarr (109 Valley Road, Mount Eden) Richard Peters (21B Carrick Place)</p>

	<p>Roger Bannan (4 Kingsview Road, Mt Eden) Robert G M Dexter (105 Valley Road, Mt Eden) Astrid Modrow (105 Valley Road, Mt Eden) Andrew Galbraith, representing himself and Stuart Wong (107 and 107A Valley Road, Mt Eden) Andrea Kellard representing Allan Kellard (1/9 Carrick Place, Mt Eden) Peter Lange (16 Carrick Place, Mt Eden) Lee Evan Whiley & Jan Whiley (3 Carrick Place, Mt Eden) Nicolette Hillyer (7 Carrick Place, Mt Eden)</p> <p><u>For the Council</u></p> <p>Quentin Budd, Senior Resource Consent Project Manager Ashwita Murphy, Reporting Planner Terry Church, Traffic Engineer Chris Butler, Urban Designer Peter Kensington, Landscape Architect Rebecca Fogel, Heritage Specialist Peter Runcie, Acoustic Specialist Emma Petrenas, Hearings Advisor Paulette Kenihan, Senior Hearings Advisor</p>
Hearing adjourned	8 April 2018
Commissioners' site visit	3 April 2018
Hearing closed	3 July 2018

Introduction

This decision is made on behalf of the Auckland Council ("the Council") by Independent Hearing Commissioners, Janine Bell, Cherie Lane and Richard Blakey appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("the RMA").

1. This decision contains the findings from our deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
2. The application was publicly notified on 18 August 2017. A total of 41 submissions have been received, 34 in opposition to the application, 2 neutral and 5 supporting the application.

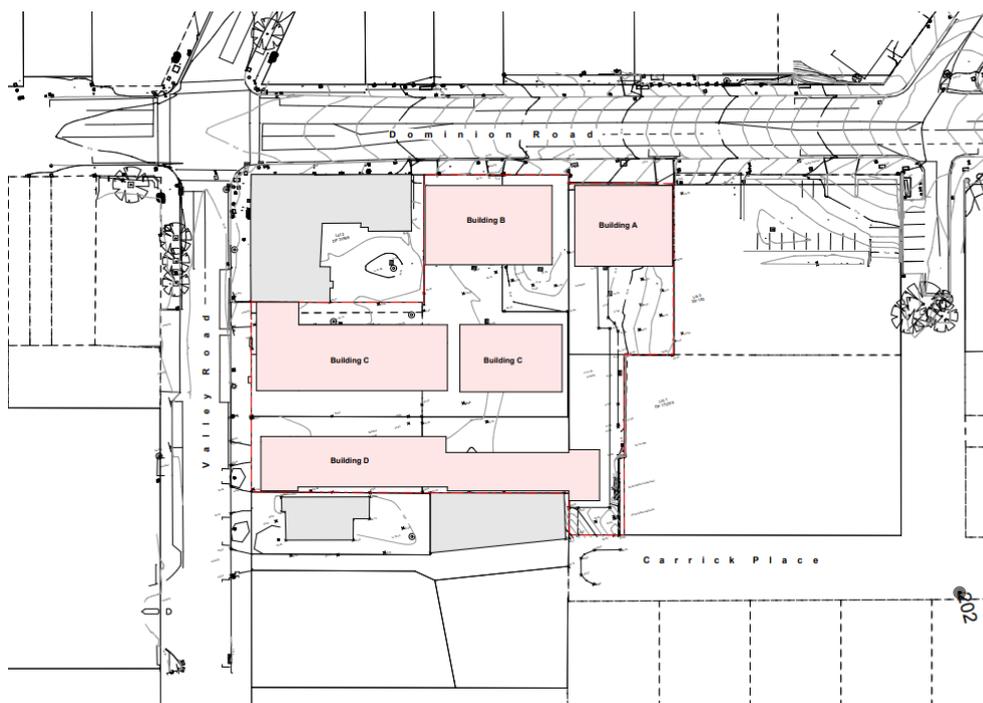
Procedural matters

3. There were two late submissions received to the application from:
 - Krishantha Jayaratne, 101 Valley Road, Mt Eden

- Shabir Ahmad, 269 Dominion Road, Mt Eden.
4. The late submissions of Krishantha Jayaratne and Shabir Ahmad were received within 2 working days of the closing date for lodging submissions. These submissions were therefore considered by the Council specialists as part of their assessment.
 5. Under sections 37 and 37A of the RMA, the time limit is waived to accept these late submissions for the following reasons:
 - the submissions raised no new matters of interest to those already raised by other submitters; and
 - extending the time limit will not result in any delay in considering the application.

Summary of proposal and activity status

6. The proposal includes the construction of multi-level mixed use development at 198-202, 214-222 Dominion Road and 113-117 Valley Road. The site comprises a total of 8 sites with a combined area of 5173m².
7. The site currently contains a mix of commercial businesses within one and two storey buildings which front onto Dominion and Valley Roads. All buildings on the site are proposed to be demolished.
8. The proposed development comprises a carpark basement with concrete podium, on top of which are four commercial/apartment buildings (Blocks A, B, C and D) that vary in height and internal lay-out.



9. Block A is five storeys overall (maximum height of 20.5m) and contains 17 residential units and three retail units. The building is three storeys at the Dominion Road street frontage with the fourth and fifth levels set back from Dominion Road.
10. Block B is four storeys overall (maximum height of 18.5m) and contains 15 residential units and three retail units. The building is three storeys at the Dominion Road street frontage with the fourth level set back from Dominion Road.
11. Block C is five storeys (maximum height of 20.5m) and contains 46 residential units and two retail units, fronting Valley Road.
12. Block D is four storeys (maximum height of 17m) and contains 24 residential units and one retail/community unit, fronting Valley Road.
13. The apartments contain the living and dining rooms and kitchen in an open plan arrangement and are either one, two or three bedrooms with balconies facing the west/east directions.
14. Common areas and facilities are provided for the occupants of the buildings including:
 - Internal courtyard area and
 - bicycle parking for occupants and visitors.
15. Parking for the occupants of the apartment buildings is located in a basement carpark. There are 112 residents parking spaces within the basement and four at-grade parking spaces off Carrick Place. The basement parking will provide private refuse collection services and also accommodate bike racks, storage and plant areas. From within the basement, lift and stair access is available to the internal courtyard and the residential units.
16. Vehicular access (6m wide) to the basement carpark is provided off Valley Road.
17. Primary pedestrian access to the apartment buildings is from Valley Road, Dominion Road and Carrick Place.
18. The proposal includes comprehensive landscaping of the concrete podium that runs across the site including planting of specimen trees, hedge screening, lower level vegetation, lawn areas, climber planting as well as greenery and shrubs. A roofed pergola and BBQ area is also proposed in the vicinity of the northern boundary of the site.
19. Earthworks in the form of excavations are required for the basement parking (15,000m³). The existing ground level conditions within the site comprise of basalt rock and it is proposed that the basement be constructed either using machines or blasting methods. It is also envisaged that pneumatic rock breakers will be required.

20. Two large stormwater detention tanks within the basement of the development are proposed. The detention tanks are 619m³ and 561m³ in capacity.
21. Wastewater, water supply and power/communications for the development is proposed and available.
22. The proposal includes the removal of one street tree located in the berm adjacent to the site along Valley Road.

Reasons for Consent

23. The proposal requires resource consent for the following reasons, as taken from the section 42A report;
 - (i) **Land use consents (s9) – LUC60303721**

District

Business – Local Centre

- To construct new buildings is a restricted discretionary activity under rule H11.4.1 (A44).
- The proposal involves use and development that fails to meet the following standards and is a restricted discretionary activity under rule C.1.9(2):
 - The total height is infringed by a maximum vertical height of 7.5m, which exceeds the maximum total height of 13m under standard H11.6.1 (2).
 - The occupiable building height of 11m is infringed by 9.5m as the building will contain apartments and not be limited to roof form, roof terraces, plant and other mechanical equipment under standard H11.6.1 (2).
 - The side yard setback of 3m where a side yard adjoins a residential zone under standard H11.6.4 (1) is infringed as a roofed pergola is proposed along this boundary.

Residential - Terrace Housing and Apartment Buildings zone

- To construct new dwellings is a restricted discretionary activity under rule H6.4.1(A3).
- To develop new buildings (and/or any additions to existing), as the development of new buildings or any additions has the same activity status as the land use activity, is a restricted discretionary activity under rule H6.4.1(A35).

- New buildings which do not comply with H6.6.6 Height in relation to boundary but comply with H6.6.7 Alternative height in relation to boundary, is a restricted discretionary activity under rule H6.4.1(A34).
- The proposal involves use and development that fails to meet the following core standards and is a restricted discretionary activity under rule C.1.9(2):
 - The height in relation to boundary relative to the northern boundary is infringed by:
 - a length of 10.24m relative to the boundary and to maximum height of 1.40m and
 - a length of 14.17m relative to the boundary, and to maximum height of 3.86m,

This exceeds the required 3m plus 45 degrees height to boundary standard as required under standard H6.6.6 (1).

Special Character Areas Overlay – Business

- The proposal involves demolition of two character supporting buildings located within the Special Character Areas Overlay – Business and is a restricted discretionary activity under rule D18.4.2 (A18).
- The proposal involves construction of new buildings located within the Special Character Areas Overlay – Business and is a restricted discretionary activity under rule D18.4.2 (A20).
- The proposal involves demolition of the buildings at 198-212 Dominion Road that are not identified character defining nor character supporting buildings located within the Special Character Areas Overlay – Business and is a restricted discretionary activity under rule D18.4.2 (A26)
- The proposal involves construction of new buildings that are not identified as character defining nor character supporting buildings located within the Special Character Areas Overlay – Business and is a restricted discretionary activity under rule D18.4.2 (A27).

Transport

- The proposal involves accessory parking and access that does not meet the following parking and access standards and is a restricted discretionary activity under rule E27.4.1(A2):
 - Parking spaces numbered 12 to 15 and spaces 35 to 37 are located alongside a manoeuvring aisle which is 6.1m being short of the required 6.7m width under rule E27.6.3.1.1 (T118) for parking spaces 2.5 m wide.

- The proposal does not provide any retail car parking when a total of 11 spaces are required under rule E27.6.2.3 (T19) for retail activities.
- The proposal does not provide a loading space as required under rule E27.6.2.7 (T113).
- The proposal does not provide the required bicycle parking of 102 spaces creating a shortfall of 64 spaces for residential (secure (long stay)) under rule 27.6.2.5 (T81).
- The proposal does not provide the required bicycle parking of 2 visitor (short stay) and 3 secure (long stay) spaces under rule 27.6.2.5 (T90).
- A new vehicle crossing off an arterial road (being Valley Road) under E27.6.4 (3) (c).

Natural hazards and flooding

- To construct new structures and buildings within the 1 per cent annual exceedance probability (AEP) floodplain is a restricted discretionary activity under rule E36.4.1(A37).
- To use new buildings within the 1 per cent annual exceedance probability (AEP) floodplain for more vulnerable activities (residential) is a restricted discretionary activity under rule E36.4.1(A38).
- To construct a building or structure located within an overland flow path is a restricted discretionary activity under rule E36.4.1(A42).

Earthworks

- To undertake general earthworks of 5,173m² and 15,000m³, being the earthworks greater than 2,500m² and 2,500m³, respectively in a business zone, is a restricted discretionary activity under rules E.12.4.1 (A6) and (A10) respectively.

Noise and Vibration

- To undertake rock breaking activities over the construction phase that will exceed the construction noise standard of 70 dB LAeq by 16 dB LAeq for large excavator rock breaker and by 6 dB LAeq for small excavator rock breaker from a building facade which is a restricted discretionary activity under rule E25.6.27.
- To undertake rock breaking activities over the construction phase that will exceed the construction vibration under rule E25.6.30 which is a restricted discretionary activity.

- The buildings will not comply with the internal sound levels rule E25.6.10 as the units will not be mechanically ventilated which is a restricted discretionary activity.

Trees within a road

- To remove a street tree (4.5m in height) for the vehicle crossing at Valley Road frontage is a restricted discretionary activity under rule E17.4.1 (A10).

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

- Land use consent for the disturbance of a piece of land where a detailed site investigation confirms arsenic, lead, PAH, TPH compounds and heavy metals exceeding the relevant soil contaminant standard / guideline value is a restricted discretionary activity under regulation 10 (1) and (2).

Stormwater permit (ss14 & 15) – DIS60303722

- To create impervious areas discharging to soakage, greater than 1,000m² but less than 5,000m² (being 4,656m²) complying with standards E8.6.1 and E8.6.3.1 is a controlled activity under rule E8.4.1(A9).

Discharge permit (s15) – DIS60303722

- To discharge contaminants into land and water that complies with the controlled activity standard E30.6.2.1 and is therefore a controlled activity under rule E30.4.1(A6).

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

Relevant statutory provisions considered

25. In accordance with section 104 of the RMA, we have had regard to the relevant statutory provisions including the relevant sections of Part 2 and sections 104 and 104C, 105, 107 and 108.

Relevant standards, policy statements and plan provisions considered

26. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant policy statements and plan provisions of the following documents:

- National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES CS);
- Auckland Unitary Plan Operative in Part (AUP OP).

No further matters were considered relevant and reasonably necessary to determine the application in accordance with section 104(1)(c) of the RMA.

Summary of evidence heard

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

Applicant

28. **Mr Daniel Minhinnick**, legal counsel, appeared on behalf of the applicant. In his opening submissions, he briefly outlined the proposal, the site, that the development was needed to accommodate the expected growth in Auckland and that the final design was the result of a rigorous design process that included three reviews by the Auckland Urban Design Panel (AUDP). It was his submission that "this is a prime example of the nature and form of intensification that was contemplated by the Unitary Plan".¹ He considered that the development would be a positive addition to Dominion Road and "achieve the Council's strategic goals for intensification along key public transport routes, whilst complementing the special character of the Dominion Road area."²
29. He outlined that Panuku and the Council were largely in agreement with most of the project's archaeological, transport, civil infrastructure, geotechnical, noise/vibration and arboriculture effects. The key remaining issues related to the design of the project and its associated effects on both Dominion and Valley Road areas and surrounding residential neighbourhoods. He noted that the reporting officer's view that the design of the project would result in "unacceptable" adverse effects on the receiving environments and that consent should be declined, which he considered "flies in the face of the weight of expert evidence"³.
30. Mr Minhinnick advised that the aim of the project was to facilitate a development of high quality design that would be complementary to the character of the Dominion Road area and be consistent with the Council's vision for a quality and compact urban form. He summarised the design process undertaken to arrive at the proposed development and highlighted that consultation had occurred with the Albert-Eden Local Board, the Auckland Council's Design office and the AUDP. He considered the outcome was a design that complements the special character area whilst modern and future focused that provides "density done well" housing infrastructure for Auckland. He advised that the Panuku team had considered the project's height and

¹ Legal submissions, Daniel Minhinnick, paragraph 1.6

² Ibid, paragraph 1.6

³ Ibid, paragraph 1.10

scale and the potential dominance, visual and shading effects, on the Dominion Road/Valley Road receiving environments and the residential areas to the north and east. He went on to list the mitigation elements incorporated into the final design.

31. Mr Minhinnick then set out the planning framework including the zones and overlays that applied to the site. In respect of the Special Character overlay, he reminded Commissioners that these provisions did not “trump” the underlying zone controls and that “contemporary, modern developments are envisaged within the Special Character Overlay where they are complementary to the area’s special character values set out in the Special Character Area Statement.”⁴ He stated that, overall, the planning framework anticipated a multi-level, mixed-use development that takes advantage of the site’s strategic location within a local centre with excellent public transport.
32. Commissioners were advised of the need to consider with care the opinions of lay witnesses with due weight needing to be given to evidence produced by independent experienced experts. He went on to highlight what he considered to be a number of important differences between the approaches to assessing effects between Panuku’s planning witness and the Council’s reporting planner in terms of what constituted the existing environment; the AUP’s height standard; the conclusion of certain effects being “unacceptable”; the differing assessments of shading effects and the identification of the positive effects arising from the proposal.
33. Mr Minhinnick then went onto summarise the key effects of the proposal that would be addressed by witnesses, outlined the relevant statutory framework and responded to the matters raised by submitters, being in particular the issues related to dominance, shading, the area’s special character, the impacts of construction noise and vibration, traffic effects and potential stormwater and flooding effects arising from the proposal. He also outlined some amendments to the proposed conditions of consent included in the officer’s report should Commissioners grant consent to the application.
34. Mr Minhinnick advised Commissioners that Panuku’s evidence painted a “compelling picture” that would result in significant positive benefits for Auckland, while ensuring that any adverse effects are mitigated so they will be minor or less. And that the project is “exactly the kind of development that Auckland needs if [it] is to provide for its expected growth, too the high standard of quality required and anticipated by the Unitary Plan.”⁵ He concluded that the project should be approved subject to the conditions proposed by Panuku.
35. **Mr Gavin Peebles** is the Project Development Director at Panuku who has overall responsibility for the redevelopment proposal on the site. He outlined that “Panuku had identified the Project site as a strategic site for intensification along the Dominion Road corridor, intensification is enabled and envisaged in the Auckland Unitary

⁴ Ibid, paragraph 3.1(c), page 6

⁵ Ibid, paragraph 9.1, page 27

Plan”⁶. And that the corridor is well served by public transport, with significant further investment planned in the near future.

36. He outlined that the development of the proposal had evolved from an iterative process that had commenced in 2012, with the design amended throughout this time to take into account feedback received from various stakeholders. He considered the design of the project, the proposed conditions of consent and the mitigation proposed would address the concerns raised by submitters.
37. **Mr Andre de Graaf**, an experienced architect and urban designer, outlined his role, as design director, for the project which had been one of governance, responsible for the strategic design direction, design overview and quality assurance for the project. He had overseen the design evolution of the project, the preparation of project documentation, and presented aspects to the AUDP. He outlined to the Commissioners the overarching evolution of the scale and bulk of the development, from the earliest scheme which consisted of a conventional five storey apartment building to the current proposal. He discussed the various interactions that the applicant’s design team had had with the AUDP and how the proposal had developed in response to the AUDP’s concerns about the height and character of the proposal.
38. In responding to the Council officer’s report, Mr de Graaf considered that it took an “unduly conservative view” of future re-development potential on surrounding properties. He considered it reasonable to anticipate an acceleration of change for the immediate area along Dominion Road, citing the property immediately to the north of the site as a good example of a site ripe for redevelopment, given its single title, absence of character buildings and current low-density usage.
39. In his opinion, the landscape and visual assessment and urban design effects of the project needed to be mindful of the anticipated level of growth and changing nature of the surrounding area. He disagreed with Mr Butler’s specialist report that recommended that the fifth level of Building A should be removed. Mr de Graaf considered the project ensured the street wall height respected the urban form and surrounding character buildings. It was his opinion, that because the upper level was setback 3m, thereby preserving the human scale of the street wall, so that the potential dominance effects would be no more than minor. He also noted that the redevelopment of the adjacent site to the north of the site, should that occur, would largely screen the project, including the fifth level.
40. In response to the officer’s comments on the proposed bulk, scale and dominance having an unacceptable effect on streetscape, character and amenity, he endorsed the points made by Mr Jones in his evidence, regarding the need to see the project holistically. While it was useful to appreciate the effects of the proposal at specific locations, he considered that there were other aspects that contributed to the experience of the streetscape environment and what may visually dominate.

⁶ Statement of Evidence Gavin Peebles, paragraph 2.1, page 3

41. Mr de Graaf concluded by advising Commissioners that the project will ensure a high quality, mixed use and intensive residential development that gives effect to the intentions of the AUP for this location. He considered that rather than detracting from existing amenity, residents would benefit from increased patronage to support local businesses, drive vibrancy and increased safety, particularly through the intensive residential component of the project.
42. **Mr Andrew Mirams**, an experienced architect and urban designer was responsible for the preparation of responses to the requests on design and architectural design matters, including further sun shading analysis. He outlined the site context and design brief, being to provide a mixed-use transport orientated development to enable the site to maximise the use of Dominion Road, as a strong public transport corridor. This design brief included the provision of a mixture of retail/ commercial spaces and residential dwelling sizes, limited car parking, maximising the use of alternative transport modes and avoiding deep excavations into the basalt rock layer.
43. He described in some detail the proposed development including the building arrangement; their orientation; the associated open space design and boundary conditions of the site that informed the design of the building typology. He also outlined the character assessment undertaken of the Eden Valley Special Character Overlay by Mr Brown to understand the key features along Dominion Road and the existing urban grain and pattern of building block size, shapes, widths and heights.
44. Mr Mirams considered the design of the project responded to the potential of the site to use its location and amenity to provide an engaging and forward-looking building that meets the Council's strategy for urban development. In his opinion the development would produce a high-quality, high density outcome that brings diverse lifestyle options for residents, reinforces the distinct identity of Eden Valley, seamlessly integrating into the existing fabric of Eden Valley and the wider cityscape, efficiently using the site to appropriately maximise the opportunity the site presents.
45. He described how the built form varied in height from three to five storeys above the podium and outlined the careful allocation of those parts of the building, which exceeded the permitted height control of the AUP, to appropriate parts of the site to provide positive outcomes for residents and mitigate potential effects on neighbours.
46. In relation to the Universal Building (one of the 'character supporting' buildings proposed to be demolished), while he agreed with Ms Fogel, the Council's heritage specialist, that the building was a similar scale to the surrounding buildings, in his opinion the building was not authentic, having undergone a significant alteration. He did not consider the building to be complementary to the surrounding buildings, but rather he considered it to be at odds with almost every other character building in the area. In his view, the removal of the Universal Building "is less than minor and does

not materially erode the character of the area”⁷.

47. In responding to the officer’s report, Mr Mirams highlighted the divergences of opinion between the Council officers on the issue of height and character. In his view, the project would result in a built form that is appropriate for the site and that potential adverse effects on neighbours and the special character of the area would be mitigated by a range of carefully considered design features. Like Mr de Graaf he noted the AUDP’s support for the project and did not share the divergent concerns expressed by Council officers.
48. In Mr Mirams’ view, the design of the project makes a future focussed contribution to the Dominion Road environment that aligns with the Council’s strategic objectives and its ambitions for the city and specifically for the Dominion Road transit corridor. He considered that the design reinforces the identity of Eden Valley and provides diversity to living and working options in the area, and stated that “The design acknowledges the special character of the Eden Valley area with a modern interpretation that reinforces the character of the existing streetscape, yet also looks forward to new possibilities”⁸.
49. **Ms Adina Brown** a qualified and experienced archaeologist and heritage consultant outlined the archaeological assessment she had undertaken for the project. She outlined that there were no archaeological sites recorded for the site and that she was satisfied that there would be no adverse effects on any known archaeological sites in proximity to the site. She acknowledged that there may be some potential for adverse effects on unidentified subsurface archaeological remains related to past commercial and residential activity in the area, that may be exposed when work commenced. She recommended that these be managed by conditions of consent that would require obtaining an authority from Heritage New Zealand, prior to subsurface excavation. In her view, the adverse archaeological effects of the project were likely to be none or negligible and could be managed by the imposition of her recommended conditions of consent.
50. **Mr Matthew Jones** an experienced registered landscape architect had prepared the landscape and visual and urban design assessments for the project. In his opinion, the project will result in positive urban design effects. These included a development that would revitalise the business character area; create a quality development appropriate to the environment, integrate with the adjacent Eden Valley centre and the public transport routes; provide a mixture of activities that would activate the ground floor and adjacent streets. He also highlighted the attractive appearance of the buildings and the high-quality amenity that the development would provide for its residents.
51. His statement provided a detailed analysis of the proposed development, its design, layout and building arrangement. He considered the project’s design response had

⁷ Ibid, paragraph 3.75

⁸ Statement of Evidence Andrew Mirams, paragraph 8.2

been strongly influenced by the existing built character in terms of its building massing and layout aligned to the respective street frontages. He highlighted that the building design had evolved, with the input from the AUDP, from simple block forms to a design with considerable variety and interest. He also highlighted the building appearance and layout was supported from a design perspective by the Council's urban designer, Mr Butler.

52. In addressing the proposed intensity and scale of the development, Mr Jones considered the project could be supported from an urban design perspective. The proposed development would form part of the commercial and business corridor, located on a key road close to public transport. That the development had been designed to prioritise density to the Dominion Road and Valley Road frontages with setbacks and reduced scale on the more sensitive edges with the adjacent residential zones. The retail and café spaces on the ground floor would contribute to activating the street frontages. The residential apartments on the upper floors providing activity and surveillance from residents. Again, he highlighted the support of the Council's urban design specialist to the mix of uses and intensity of the proposal.
53. Mr Jones, with the aid of the visual simulations prepared for the proposal, spent some time taking Commissioners through the potential visual effects of the project and the effects on visual amenity in the surrounding environment. Whereas the Council's landscape and visual review had discussed each viewpoint individually, Mr Jones' view was "it is essential [is] to assess the Project holistically."⁹ Assessments at particular points only consider the effects at that specific location. Mr Jones advised that an overall assessment was required, taking into account the wider context of the surrounding environment and streetscape – Dominion Road, Valley road and the residential environments to the north and east.
54. He outlined that the site is located in a heavily modified urban environment. Dominion Road is a main arterial route and a key commercial and transport corridor. It was Mr Jones's opinion that the proposal needed to be viewed in the wider context of the surrounding environment and that when viewed in the immediate urban context, the proposal would for an additional element to the urban landscape. In his opinion the development was an appropriate scale and architectural style in the setting. While acknowledging that visual amenity entails a subjective component, he considered that the proposed design would have an attractive appearance that would create a complementary visual relationship that would be appropriate in the setting.
55. In his opinion, the site was "an ideal location for mixed use development. Its location within the town centre, access to public transport along Dominion Road and proximity to a wide range of social infrastructure (e.g. schools and parks) is in keeping with the Transit Oriented Development ("TOD") approach adopted by the Auckland Plan".¹⁰

⁹ Statement of Evidence Matthew Jones, paragraph 3.34

¹⁰ Ibid, paragraph 2.2

56. He concluded that the project “will produce a high-quality design outcome for this setting, which has been planned for the future intensification within the AUP. It will result in a built form that is appropriate and anticipated by the relevant planning objectives and policies.”¹¹ He considered the design outcome was a 21st century response to development within a character area. He saw no reason from an urban design, landscape or visual perspective to refuse consent.
57. **Mr John Brown**, an independent historic heritage consultant, was engaged to assess the potential effects of the proposal on special character provisions of the AUP. This assessment was included in the application documents. In Mr Brown’s opinion, due to the peripheral nature of the development proposal in relation to the Special Character Areas Overlay – Business: Eden Valley (“Eden Valley Special Character Overlay”), it would have only minor adverse effects. He considered the proposed design generally responded positively to the Eden Valley Special Character Overlay.
58. In his opinion, these minor adverse effects arose from the demolition of the Universal Building – that provided “a moderate contribution to the Eden Valley Special Character Overlay and the construction of that part of the Project within the overlay exceeding the typical two-storey height exhibited elsewhere in the Eden Valley Special Character Overlay.”¹² While he agreed with submitters that there were adverse effects on the Eden Valley Special Character Overlay, he did not consider these effects unacceptable. He considered that Blocks A and B, which are proposed to be constructed within the Eden Valley Special Character Overlay, appropriately recognise and respond positively to the special character values of the overlay.
59. Referring to the Council’s specialist advice, included in the Council’s officer report, he noted that there were several areas of agreement between his assessment and that of the Council’s specialists. In his opinion, the areas of disagreement related to the degree to which adverse effects were mitigated through design.
60. These areas of disagreement related to the scale and height of the buildings. He agreed that the fifth floor of Building A generates adverse effects, however he disagreed about the magnitude of the effect and the degree to which the design of the development mitigated the effect. He disagreed with the Council specialist about the scale and height effects of Buildings B and C.
61. Mr Brown agreed with the Council’s specialist that the loss of the Universal Building would result in an adverse effect on the values of the Special Character Overlay, but disagreed on the magnitude of this effect and the degree to which it had been mitigated. He considered that the loss was appropriately mitigated through the inclusion of the “garage” element for Block B, so the adverse effect was not significant.

¹¹ Ibid, paragraph 7.1

¹² Statement of Evidence John Brown, paragraph 2.2

62. He highlighted that there was disagreement between the Council's urban design and heritage specialists on the design of the Dominion Road street wall in relation to the architectural treatment and materiality. These matters of disagreement he considered could be addressed through conditions controlling the finish of the street façade and treatment of joinery to the Dominion Road frontage
63. He concluded by confirming that in his opinion the proposal would not significantly adversely affect the qualities of the Eden Valley Special Character Overlay. The core historical grouping of character defining buildings were located around the Valley Road intersection, to the south of the proposed development and it was these buildings that would continue to define the historic nature of the street frontage in this area.
64. **Ms Siiri Wilkening** is an experienced acoustics engineer who had supervised and reviewed the acoustic assessment prepared for the project. The Acoustic Assessment considered the noise and vibration arising from the proposed construction activities. She advised that the majority of the construction activities would generally comply with the relevant construction noise and vibration criteria, with the exception of rock breaking and blasting where these occurred in close proximity to neighbouring buildings. The Acoustic Assessment had recommended that prior to the commencement the construction that a construction noise and vibration management plan (CNVMP) be prepared and submitted to Council for approval. The CNVMP would outline the procedures, processes and mitigation measures that will be implemented throughout the construction to address any adverse effects. The draft CNVMP was attached to her evidence.
65. Post construction, operational noise on-site would arise from vehicle movements and mechanical plant. Ms Wilkening advised that the Acoustic Assessment indicated that these noise sources would be able to comply with the relevant noise standards. The Acoustic Assessment also considered the sound insulation requirements of the building envelope and concluded that a suitable indoor acoustic environment could be achieved. This would require the provision of an appropriate acoustic design for the façade being undertaken prior to construction, built in compliance and properly and maintained. She provided comments on the noise issues raised by submitters. While she agreed with the majority of the proposed conditions, she did suggest a number of amendments.
66. **Mr Nicholas Speight**, a senior geotechnical engineer, had lead the team that provided geotechnical advice and prepared the geotechnical assessment for the project. This assessment had indicated that the site was mostly underlain by rubbly basalt and solid basalt rock. Mr Speight was of the opinion that the basement excavations formed in the intact basalt were expected to be stable, while excavation in rubbly basalt may need temporary support until the permanent retaining walls are constructed. His evidence outlined the proposed excavation methodology.
67. Overall, he considered that if the building was constructed in accordance with the geotechnical assessment and the basement excavations were adequately supported

where required, the off-site geotechnical effects of construction would be expected to be minor or less than minor.

68. **Mr Justin Kirkman**, a senior civil engineer who had been responsible for the design of the project's civil infrastructure elements – earthworks, stormwater management, waste water, water and utilities. From a stormwater perspective he advised that the project would decrease the amount of impervious area on site by the introduction of green space, so there would be less stormwater runoff. Stormwater runoff will be disposed of onsite, via rock bore soak holes in a manner similar to the ones currently used and common throughout Mount Eden. The overland flow paths that enter the site will continue to do so from the same entry points, but will be redirected within the site to accommodate the buildings and basement. The overland flow paths will continue to discharge to Valley Road and continue down Dominion Road. The current water that ponds on site in the 1%AEP event will be displaced by the buildings but will be mitigated by two underground flood storage tanks included in the design. In his opinion, the underground flood storage tanks will maintain a neutral flood effect for neighbouring properties.
69. Earthworks required for the construction of the basement will involve 15,000m³ of material to be removed from the site. The earthworks would be managed in accordance with the Auckland Council's Technical Publication 90, with the indicative erosion and sediment control plan prepared for the project being updated by the contractor to suit the ultimate construction methodology.
70. Mr Kirkman concluded that the proposed earthworks, stormwater management and erosion and sediment control methods were consistent with current good practice. He was of the opinion that it had been demonstrated that the site could be serviced in terms of water and wastewater. He was in general agreement with the Council's officer report and proposed conditions of consent. He saw no civil engineering or servicing matters that would preclude the granting of consent.
71. **Mr Simon Miller**, an experienced arboriculturalist, had assessed the effects of the project on the Titoki tree in the road reserve outside 113 Valley Road. This tree will need to be removed to facilitate the provision of vehicle access to the basement carpark. In Mr Miller's opinion the Titoki tree was of fair condition and had not achieved a size or stature or form that warranted alteration of the proposed vehicle access crossing. He felt the loss of the tree was appropriately mitigated from an arboricultural perspective by the planting of two additional trees along the Valley Road frontage.
72. **Mr Donald McKenzie**, an experienced and qualified traffic engineer had been commissioned to assess the potential transportation and traffic effects of the proposed development. In his assessment, the proposed development complied with the AUP parking and access requirements. He advised that the residential portion of the development would generate approximately 54 trips in the peak hour and that, in his opinion, this level of trip generation would have a minimal effect on the existing road network. He considered that suitable provision had been made for the servicing

requirements of the proposal. With the exception of the level of onsite cycle parking, he agreed with the conclusions reached by Mr Church, the Council's transport engineering specialist. This included the provision of a single loading space accessed from Carrick Place.

73. The Council's transport specialist recommended that a total of 105 resident cycle parking spaces/racks and seven visitor cycle parking spaces/racks. In Mr McKenzie's opinion the full provision of cycle parking was not warranted and should be adjusted to take account of the excellent public transport opportunities available to residents, which, he considered, would improve in the future. He recommended that on site cycle parking at 75% of the AUP requirement was appropriate.
74. **Mr Vijay Lala**, the applicant's planning witness, referred Commissioners to his pre-circulated statement of evidence (Evidence in Chief (EIC)) and tabled a summary statement of evidence. His EIC summarised the consent requirements for the proposal, addressed the effects of the proposal on the environment, responded to the submissions received and the Council officer's report. He provided a revised set of conditions, provided comments on the proposed conditions and assessed the proposal against the relevant statutory tests and planning documents. His summary statement also responded to the pre-circulated statement of evidence on behalf of Pacific Fringe Limited, made a number of corrections to his EIC as well as responding to questions raised by Commissioners in the first day of hearing.
75. Mr Lala considered that there was general agreement on a broad range of matters between the Panuku witnesses and the Council's specialists including transportation (with the exception of bike parking), construction effects, noise and vibration, stormwater and flooding, contamination, infrastructure, the removal of a street tree and archaeological matters. He identified, as the key concerns raised in the Council officer's report, to be related to streetscape, character, residential amenity, bulk, scale dominance, visual effects and shading. Like earlier witnesses he highlighted the areas of disagreement between the Council's specialists. In Mr Lala's view, the assessments undertaken by the Council's reporting planner, heritage specialist and landscape and visual specialists overstated the importance of the character provisions and, he considered, elevated them to a level akin to scheduled heritage items or areas. He noted that none of these provisions apply to the application.
76. He outlined the proposal, described the site and locality, and the planning controls that applied to the site and surrounding properties, in particular the height provisions and special character overlay. He outlined the numerous consents the proposal required in terms of the AUP, confirming that overall the proposal was to be assessed as a restricted discretionary activity.
77. Mr Lala summarised that the principal areas of disagreement between the applicant's specialists and the Council's specialists related to:
 - Character, amenity and design;

- Visual, dominance and shading; and
 - Positive effects.
78. He described the various character and amenity found in the area - Dominion Road, Valley Road and the residential environments to the north and east. In terms of Dominion Road, he considered the overall outcome was a combination of character buildings mixed with more recently constructed buildings, which are not well designed and vehicle crossings/carparks. Like Mr Jones, Mr Lala emphasised that a key consideration associated with, what all applicant witnesses referred to the application as, “the Project”, was to “establish a 21st century approach to redevelopment within such character areas.”
79. Mr Lala highlighted that the character area is identified along the Dominion Road frontage. He also considered an important point to recognise in relation to the character area is the 13m (11m occupiable development plus 2m roof form) permitted building height standard provided by the Height Variation Control and that the AUP provides for additional height as a restricted discretionary activity. He highlighted that for that part of the site zoned Terrace Building and Apartment House (THAB) zone that fronted Carrick Place, the applicant had chosen not to utilise the 16m height standard that applied to the site and more generous height in relation to boundary rule which had greater potential to adversely affect neighbouring residential sites than the Local Centre provisions. He also drew Commissioners attention to the other allowable heights in the surrounding area, the 8 to 9 metre height in the Single House residential zone to the north east, the 18m (16m occupiable + 2m roof form) in the Mixed Use zone to the north west and 21m (19m occupiable + 2m roof form) further north towards the top of Dominion Road.
80. In his opinion, these zonings and heights establish the context of the development and were important in relation to the scale and intensity of development within the local centre being in keeping with the planning outcomes identified in the AUP. In terms of intensification, he directed Commissioners to the AUP Local Centre zones objectives and policies, that in his view, outlined a broad approach to development in the zone. He referenced Objective H11.2(1) that seeks “a strong network of centres that attract ongoing investment, promote commercial activity, and provide employment housing and goods and services, all at a variety of scales”.¹³ This objective, he considered, needed to be read in conjunction with Objectives H11.2 (2), (5) and (7) and Policies H11.3(2) and (3)(a). Mr Lala considered that “the proposed development complemented the identified scale and intensity outcomes of the surrounding environment, subject to meeting the applicable amenity, character and design outcomes that are also identified in the relevant policy framework”¹⁴.

¹³ Summary Statement of Evidence of Vijay Lala, paragraph 2.10

¹⁴ Ibid, paragraph 2.15

81. In terms of the Eden Valley Special Character Overlay and the Height Variation Control (HVC), that applies to part of the site, Mr Lala outlined his disagreement with Mr McGarr, the planning witness for Pacific Fringe Limited, particularly in relation to Policy H11.3 (14) as it related to the HVC. This policy deals with reduced building height limits being applied where the standard heights would have significant adverse effects on the identified special character. In Mr Lala's opinion, the policy was critical to developments that seek to infringe the HVC, as, he considered that this policy enabled such proposals to proceed where it could be demonstrated that they will not have a significant adverse effect. He noted that the AUP made provisions for such infringements from the standards as a restricted discretionary activity and that as such, may only be considered against those matters over which the consent authority had restricted its exercise of discretion as set out in the AUP.
82. Likewise, in relation to the Business Special Character Area Overlay provisions, the proposed development requires consent for a number of matters under these Overlay provisions which included the removal of a character supporting building. Mr Lala addressed these in his EIC and concluded that the proposal satisfied the relevant criteria.
83. Mr Lala provided a detailed assessment of the shading effects of the proposal in his EIC to demonstrate that the effects in the winter months compared to the spring and autumn and summer months. The assessment compared the shading effects of the proposed scheme against the existing development in the vicinity and against a scheme with a 13m height. Overall, he concluded that properties in the vicinity will continue to receive sunlight for most of the day throughout the year and that several properties would be affected by some additional shade, however he considered any adverse effects to be minor.
84. In terms of positive effects, Mr Lala considered that the reporting planner had underestimated the positive effects of the proposal. In addition to providing additional housing and the amenity provision for occupants, he highlighted that the proposal will -provide new retail activities to support the local centre; provide economic benefits to the construction industry; support the intent of high density development in the THAB and Local Centre zones; potentially increase support for the public transport network; provide a range of housing options; as well as making efficient use of one of the few large sites in close proximity to the city centre.
85. In relation to the relevant statutory documents, his assessment concluded that the proposal was in accordance with the NESCS and the objectives and policies of the AUP (including Chapter B Regional Policy Statement).
86. He concluded that, in his opinion, the proposal was acceptable and satisfied the relevant statutory tests in terms of sections 104 and 104C to warrant consent, subject to imposition of conditions. He suggested a number of changes to the conditions and advice notes proposed by the Council officers.

Submitters

Mr Kristiansen (5 Carrick Place)

87. **Mr Kristiansen** outlined his principal concern related to the height of the proposed development. He advised that he had been a resident for the past year and that prior to coming to live in the area he had consulted the Council's Unitary Plan, which he had taken in good faith, particular the identification of the area as a special character area. He considered the additional height proposed, particularly by Buildings A and C would have adverse visual effects and was inconsistent with the outcomes anticipated for the area as set out in the AUP and the special character overlay. He disagreed with the representative for Panuku that the support for intensification should override the other provisions in the AUP. In response to Commissioner Blakey's questions on the potential impacts of the adjoining THAB zone, Mr Kristiansen responded that he wasn't aware of any redevelopment plans for the site in the future.

The Dove Trust (111 Valley Road)

88. **Mr Grant Barnett** spoke on behalf of the Dove Trust. He confirmed that the property, which adjoined the eastern boundary of the proposed development site, had been acquired in July 2015 as an investment property and was currently used as legal offices. He advised that the Trust supported the modernisation of the area, including the proposed LRT, which it saw bringing new business to the area. There were however, he advised, concerns regarding the impacts of the new development, in particular the proposed height, increased traffic and parking and construction management. In terms of height, Mr Barnett considered that his building would be dwarfed by the proposed development and expressed a preference for the development to be two storey or 13 metres. In relation to the traffic and parking impacts, he advised Commissioners that the Countdown supermarket's carpark that has vehicle access on to Valley Road was particularly busy on Thursdays, Fridays, and Saturdays and that he was concerned about the impacts the additional 116 carparks would have on 111 Valley Road, particularly at peak times. He also raised concerns about the lack of any visitor parking within the development and the impacts this would have on the available on-street parking, particularly on days when there were events at Eden Park. Mr Barnett was also concerned about the physical impacts the construction would have on his building that was constructed in the 1920's. He sought assurance that there would be pre and post construction surveys of their building.

Pacific Fringe Limited (109 Valley Road)

89. **Mr Craig McGarr** an experienced planning consultant, spoke to his pre-circulated statement of evidence on behalf of the owners at 109 Valley Road. Like the Dove Trust property, 109 Valley Road shared a common boundary with the proposed development site. Mr McGarr outlined that his clients were not necessarily concerned with the proposed intensification of the proposed site, rather it was the

potential for the proposal, specifically the third and fourth storeys of Building D, to generate adverse dominance, amenity and shading effects upon the property at 109 Valley Road.

90. Pacific Fringe Limited had also been concerned about potential construction noise and vibration effects. Since lodging their submission, they had met with representatives of Panuku and received additional information on shading and an updated noise and vibration management plan. Mr McGarr advised that Pacific Fringe were satisfied that the updated draft noise and vibration plan could appropriately mitigate the potential construction effects on 109 Valley Road.
91. Mr McGarr informed Commissioners that in his opinion there had been little attention given in the proposal for the effects on the amenity at 109 Valley Road and his client remained concerned about the effects associated with the over-height portion of Building D to be located on Pacific Fringe's property. He outlined how proposed Building D, which abutted the boundary of 109 Valley Road, had an overall length of 78m, of which 30m was adjacent to the boundary of 109 Valley Road. He noted that the building was approximately 16.5 metres in height, exceeding the maximum permitted height by 3.5m relative to the common boundary.
92. Mr McGarr provided Commissioner's with a very helpful summary of the relevant objectives and policies for the Business - Local Centre zone. He commented that the objectives of the AUP for business zones generally and the Local Centre zone specifically are "broad and include maintaining the role, function and hierarchy of centres, managing large scale commercial activities, and ensuring a diversity of retail, commercial and residential activities."¹⁵ In his opinion the proposed activity was consistent with the intended outcome of the zone, however as it related to the common boundary with 109 Valley Road, it resulted in a "scale of built form which is not in keeping with the planning outcomes identified in the Plan for the surrounding environment and in particular compromises the attractiveness of 109 Valley Road as a place to live, work and visit (per Objective H11.2.7 and 8)"¹⁶.
93. Mr McGarr identified that the Local Centre objectives generally intended that business activity is of a scale and form that manages the adverse effects on the environment, including effects on residential amenity. He highlighted policy H11.3.14, which specifies that in identified locations within centres, the permitted height is reduced below the standard zone height where these heights would have a detrimental significant adverse effect on identified special character. Mr McGarr explained that while the focus of the AUP is on the effects of development within the business zones on residentially zoned land, he asserted that "when read collectively, the objectives and policies that relate to the nature and scale of built form within the centres are concerned with managing the adverse effects on the environment, which is inclusive of the environment within the business zones and the amenity of

¹⁵ Evidence of Craig McGarr, paragraph 8.1

¹⁶ Ibid

neighbouring sites”¹⁷. He noted that the built form outcomes of the proposal were detrimental to that amenity and more specifically to the HVC applied to the Dominion Road frontage and the corners of the Dominion Road/Valley Road intersection.

94. Mr McGarr opined that the purpose of the HVC standard as set out in H11.6.1 of the AUP was to “provide variations to the standard zone height through the HVC, to recognise the character and amenity of particular areas and provide a transition in building scale to lower density zones.” He noted that the HVC applied to this part of Dominion Road, including 109 Valley Road, reduces the permitted height from the standard Local Centre height of 18m (16m to occupiable building height and 2m of roof form) to 13m (comprising 11m occupiable building height and 2m of roof form). In his opinion, the HVC had been applied to this location to reflect a scale of development that was suitable having regard to the appreciable characteristic of the locality and the centres relationship and context with the amenity of the nearby lower density residential zones.
95. Mr McGarr also advised that the submitter had been exploring residential options for the site at 109 Valley Road. He advised that while the site was zoned Business – Local Centre, being a rear site, with no street appearance, it was considered by the submitter to be well situated for residential activity. He provided a more detailed assessment of the potential adverse effects on 109 Valley Road as a result of the height of Building D, concluding that the proposal will result in unacceptable dominance and shading effects upon the amenity at 109 Valley Road and was contrary to the objectives and policies for the Business – Local Centre zone. Mr McGarr agreed with the Council’s officer’s recommendation that the application be declined.

Mr Richard Peters (21B Carrick Place)

96. **Mr Richard Peters** and **Mr Roger Bannan** are co-owners of 21B Carrick Place. They have owned the property for more than 20 years and while it had been purchased as a rental property, it was also seen as a possible retirement property. Mr Peters was concerned at the impact the proposal would have not only on his own property but on that of the many retirees at the adjacent 9 Carrick Place who he considered would be severely impacted by the proposed development.
97. Mr Peters acknowledged that the proposed design would achieve a quality urban outcome for future occupants and that it would provide high density living and increase housing capacity along a transport corridor. He was, however, concerned that the proposed development exceeded the ‘conditions/rules’ of the AUP, particularly height and bulk and did not maintain daylight access or minimise the visual dominance effects to adjoining sites. He felt that the development should comply with the AUP requirements. Mr Peters considered that the proposal, which

¹⁷ Ibid, paragraph 8.4

includes two buildings up to 20.5m high, would be visually dominant and out of character with the surrounding environment.

98. Like Mr Barnett, Mr Peters was concerned about the mass and bulk of Building D and its effects on his adjacent property. While the eastern elevation of the proposal had no windows, and would give privacy to the neighbours, he considered the design to be visually heavy and dominant. He was also concerned that the visual simulations were often taken from a distance and the nearest ones for 9 and 21 Carrick Place were taken from outside 10 Carrick Place, from an elevated position. He also directed Commissioners to the Attachments A and B to Ms Fogel's report which he considered contained examples of similar successful development within a Local Centre zone at 130 Ponsonby Road. In relation to shading he raised concerns about the loss of sunlight in the evening "after work" and the impact on the use of his property's outdoor area. He did not consider this a "minor" effect.
99. In relation to the special character of the area, Mr Peters reminded Commissioners that both the Dominion Road commercial area and the residential catchments to the north and east were identified in the AUP as Special Character areas. He considered these areas needed to be retained and if development is to occur in these areas it needs to be done sympathetically and in an aesthetically pleasant manner. He concluded, by agreeing with the recommendations in the Council officer's report, that the application should be refused for the reasons set out in the report.

Mr Roger Bannan (21B Carrick Place)

100. **Mr Roger Bannan** confirmed that he and his partner Yvonne McGill co-owned 21B Carrick Place with their associate Mr Peters. The property is currently tenanted with four tenants. His concerns related to the building process and the construction effects of the development. He outlined his reservations with the draft CNVMP including the proposed construction hours for Saturdays which he considered needed to be shorter. He was also concerned about the Council's ability to enforce the conditions, based on his previous experience with a neighbouring construction project, where conditions of consent were not adhered to by the developer.
101. He was also concerned about vibration and the impacts of blasting and rock breaking on the base structure of his building. He considered that the pre- and post-construction building condition surveys were essential. He also raised concerns about the ability to maintain tenants over the construction period, the lack of timeframe for the proposed build and the number of truck movements associated with the earthworks.
102. Mr Bannan was concerned about the lack of proposed parking provided as part of the development which he saw as putting further pressure on the available on-street parking within Carrick Place and the surrounding streets. He was also concerned that the failure of the development to maintain and enhance the special character values of the area and the surrounding residential amenity would have a detrimental

impact on property values. He concluded by also endorsing Council officer's recommendation and reasons to decline the application.

Mr Robert Dexter (105 Valley Road)

103. **Mr Robert Dexter** bought his property at 105 Valley Road in 2010. He advised his purchase was in the full knowledge that 198-226 Dominion Road was an existing Business Character zone and this was retained in the AUP. He understood that buildings of a 13m maximum height were allowed and there were requirements to retain character buildings at/near the Valley Road/Dominion Road intersection. He had also taken comfort that these buildings were owned by the Council.
104. He considered it to be appropriate for the Council should keep building activity at 198-22 Dominion Road and 113-117 Valley Road within the agreed standards of the AUP and its intent in terms of its impact on adjacent residential character areas. With the aid of a series of photographs of his property and the surrounding area, he presented his concerns about the visual dominance of Building D on the eastern boundary, how the development would result in the loss of sunlight into his property at key times of the day and how the development was inappropriate in relation to the Character Overlay.
105. Mr Dexter disagreed with the opinion of Mr Lala that the northern part of Valley Road was more contemporary in nature than Dominion Road and therefore a contemporary building solution was proposed. He concluded that the proposal would result in a significant loss of living amenity for his family and neighbours for the lifetime of the building.

Ms Astrid Modrow (105 Valley Road)

106. **Ms Astrid Modrow** also lives and owns 105 Valley Road. While she acknowledged that she was not a planning expert, she considered that she is an expert in relation to her property at 105 Valley Road, where she has been developing the home and gardens, since its purchase seven years ago. She outlined the importance of 'heritage' buildings and their character in deciding on the purchase of her family home.
107. With the assistance of a series of photographs she outlined the importance of character buildings in the Dominion Road area which she considered should be protected and not demolished citing the Universal Building as an example. Dominion Road was characterised by single and double storey buildings and in her view the planned apartment buildings up to five levels would not fit in, being bulky and out of scale. She reminded Commissioners that the permitted height for the area was 13m which also recognised and protected lower density adjoining residential areas. She was particularly concerned at the buildings proposed on the Valley Road frontage which would have the greatest impact on her home both in terms of the proposed height of 20.5m and the design which she did not consider aligned with the surrounding character. She was also concerned about the proposed shading from the

development and the negative impacts it would have on the family's living areas, backyard and deck, which, she believed, would lose afternoon sun. She illustrated this with a series of photographs¹⁸ of her living areas showing the current sunlight they enjoyed in the late afternoon/early evening. She was also concerned about the proposed shade and its impact on her garden and her bees.

108. Like other submitters, Ms Modrow drew the Commissioners' attention back to the AUP provisions for the area and her expectation that the standards, in particular the 13m height limit, would be applied. She considered that the dominance effect of the proposed development would impact negatively on the neighbourhood character and on the neighbouring sites, would block access to daylight and sunlight to their property and would result in shading her home and garden not just in winter but during autumn and spring.
109. Ms Modrow then went on to reinforce the main points of her submission by providing more detailed comments in response to the statements of evidence of Mr Lala, Mr de Graaf and Mr Jones.

Mr Andrew Galbraith (107 Valley Road)

110. **Mr Andrew Galbraith** spoke to his submission and that lodged by his brother in law Stuart Wong. Mr Galbraith and Mr Wong own 107 and 107A Valley Road. With the aid of some photographs, Mr Galbraith outlined the impacts that the proposed development would have on their properties, in particular the outdoor living area at 107 Valley Road. Mr Galbraith was concerned about the proposed height and bulk of the development, and considered that the Valley Road frontage required more modulation commensurate with the style found in the 'heritage' area. He also stated that the proposal would add to the already congested traffic network in the area and outlined his concerns at the lack of consultation with neighbours.
111. Mr Galbraith was concerned that this Council proposal was contrary to the recently ratified AUP and that the Council's approach to this development contrasted with that required of owners in residential areas. He described his own recent experience in gaining resource consent for the development of his property in the Residential Special Character area. In his experience, the Council had adopted a hard-line approach when he explored a 200mm height infringement to compensate for a requirement to raise the floor level a corresponding amount due to the floodplain.

Mr Allan Kellard (1/9 Carrick Place)

112. **Ms Andrea Kellard** appeared on behalf of her father. Mr Kellard, her 93-year-old father, resides in one of the units at 9 Carrick Place. Ms Kellard outlined to Commissioners that her father spent much of his day sleeping and she was concerned about the impact the proposed blasting would have on her father's health and welfare. She requested that the Council look to relocate him during this stage of

¹⁸ Photographs taken 17 March 2018 at 16.50pm

the construction process. Ms Kellard was also concerned the development would result in the loss of sun to the units and that this would have a detrimental impact on her father's enjoyment.

113. She helpfully explained that the land upon which the units at 9 Carrick Place were located, had been donated to the former Mt Eden Borough Council, some 30 years ago, for the development of units for retirees and that these units were owned 48% by the residents and 52% by the Council. She understood that these were on a 100-year lease.

Ms Nancy Smith (2/9 Carrick Place)

114. **Ms Nancy Smith**, also an owner and resident of a unit at 9 Carrick Place, described her concerns with the mass and height of the proposed development. As she outlined, the residents of 9 Carrick Place are the nearest neighbours to the proposed development and the bulk of the building will dominate their view and outlook, in comparison with the existing development, especially from the back-garden areas of units 1-5. Her concerns with the proposal were in relation to its excessive height, scale and bulk and the shading that will occur to units 1- 5 in the summer months from 5pm onwards.
115. Ms Smith was particularly upset by the proposal, which had caused her many sleepless nights and feelings of depression. She considered she had done her homework when entering into her purchase of the retirement unit from Auckland Council in June 2016. She was also upset that the Council had not advised her of the proposed development next door, which she considered would have been 'on the drawing board' at that time.

Mr Peter Lange (16 Carrick Place)

116. **Mr Peter Lange** and his family have lived within 20m of the site for almost 40 years. He spoke of his long association with the area and his love of Dominion Road. He outlined the various planning battles fought by the residents of Carrick Place over the last 40 years.
117. He described the pleasure of sitting in his front bedroom or balcony and enjoying "the sunsets across the silhouetted parapets of the Edwardian shop fronts, to the Waitakeres beyond."¹⁹ He considered the imposition of a five storey building would seriously compromise this amenity. He too expressed the view that the proposal showed "disdain for the recently hard won unitary plan."²⁰
118. Mr Lange was concerned about the impact the development would have on parking in Carrick Place, and opposed any pedestrian access from the proposed development to Carrick Place. He considered that there was insufficient parking

¹⁹ Submission by Peter Lange, page 2

²⁰ Ibid

provided within the development to meet the needs of the owners of the new apartments. He also raised concerns about the proposed earthworks and the associated noise and vibration which would occur over an extended period of time.

119. Mr Lange reminded the Commissioners of the RMA definition of “amenity”. He considered the proposed development would affect the visual catchment, change the character area, create shading, generate noise and create parking issues thereby diminish the values of the adjacent residential properties. He considered that the proposal, which seeks to exceed the regulations of the recently implemented AUP, would leave the residents of the area and the City disappointed and confused. He reminded the Commissioners of the need for the Council to maintain the integrity of the AUP that had been so recently adopted.
120. Mr Lange considered this to be a very valuable property that provided a rare opportunity for imaginative design and the chance to offer something really exciting near the centre of the city. He was concerned that the site was owned by the people of Auckland but earmarked for a gated community for a few privileged citizens, when it could become a mixed residential block of low visual impact with public spaces, planting and retail interest. He concluded by reinforcing he would welcome development on the site, but it must be one that takes into consideration the existing amenities of the area, its social make up and its architectural heritage and be considerate and respectful of its neighbours.

Mr Lee Whiley (3 Carrick Place)

121. **Mr Lee Whiley** spoke on behalf of himself and his wife Jan, who have lived at 3 Carrick Place since 1968. He advised he was a supporter of the RMA and the AUP. Mr Whiley also supported redevelopment in the area but considered the proposed development was out of scale with the surrounding locality. He was less concerned about the westerly aspect (fronting Dominion Road) but felt the southerly aspect was out of context. He advised that he would be happy if the development was rescaled down to 3 storeys and the earthworks minimised. Minimising the earthworks would lessen the associated noise and vibration. The Whileys were also concerned about the impact the development would have the availability of on street parking in the area and they opposed there being access from the proposed development to Carrick Place.

Ms Nicolette Hillyer (7 Carrick Place)

122. **Ms Nicolette Hillyer** and her family had resided at 7 Carrick Place for 18 years. She spoke of her family’s love of their house and the area due to its heritage character, greenery and view of the Waitakere Ranges and Owairaka, friendly neighbours and ease of access to town. While she was not opposed to the development of the site, she strongly opposed this proposal. Her concerns were similar to previous submitters, that the bulk and height of the development was not in keeping with the special character of the neighbourhood and ignored the 13m height limit in the AUP. She rejected the applicant’s suggestion that the residential properties to the east and

north would receive screening and privacy from existing vegetation.

123. Ms Hillyer rejected the applicant's suggestion that as 9-15 Carrick Place was zoned Terraced House and Apartment Building zone, with a permitted building height of 16.5m, this would block views of the proposed development to surrounding properties. She went on to highlight the point that the height of the proposed development was 4.5 m higher than 16.5m, that 9-15 Carrick Place was developed with single storey pensioner flats and that there were no plans to change this and no permitted baseline on the site. She felt the applicant and the urban designer had "over-emphasised the fact that the surrounding sites will be able to absorb the adverse effects through development that occurs."²¹ She noted these matters were outside the applicant's control.
124. Ms Hillyer felt that Mr Matthew Jones, the applicant's landscape architect, had ignored the impacts the proposed development would have on the residents in Carrick Place and she sought that the Panel require the development to stay within the 13m height limit.
125. Ms Hillyer also had concerns about the Council's traffic consultant's recommendation that three retail carparks and a loading space be provided at the Carrick Place access to the development. She did not consider Carrick Place to be a suitable street to receive commercial deliveries and felt that the retail parking and loading should be managed within the development and not use Carrick Place. Like Mr Whiley, she opposed any pedestrian access through to Carrick Place as she considered that this would encourage residents and visitors to the development to park in Carrick Place.
126. Lastly, she outlined her support for the retention of the Universal Building and felt that economic drivers should not be prioritised over supporting and acknowledging the area's special character.

For the Council

127. Following the submitters' presentations, the Council's officers were invited to comment on any matters raised by the applicant and submitters and to indicate whether these had in any way changed their recommendations on the application. Commissioners also had questions and points of clarification for the Council experts arising from their specialist review reports.
128. **Mr Peter Runcie**, the Council acoustics specialist confirmed that there was agreement with the applicant's acoustic specialist and that he was happy with proposed CNVMP that had been included as an attachment to Ms Wilkening's statement of evidence.
129. **Mr Terry Church**, the Council's traffic consultant also responded to a number of the transport matters raised during the hearing by Commissioners in response to the

²¹ Statement from Nicolette Hillyer, page 2, paragraph 3.

material presented by the applicant and submitters. He advised he did not agree with the proposed reduction in bike parking, noting that in addition to Dominion Road being a major public transport route, it was also a busy cycle route. He also commented that the AUP's standards did not require onsite parking to be provided and therefore bike parking should not be sacrificed to provide car parks.

130. In relation to submitters' concerns about the Valley Road access, he confirmed that Valley Road was preferred as the access location for the site and should be located as far east as possible along this road. In relation to the proposed loading space on Carrick Place, he confirmed that while not ideal, he envisaged that this would be used by residents in the apartments rather than by the retail tenants. In responding to Commissioner Blakey's concerns about accessible parking, Mr Church indicated that, as advised by Mr McKenzie, there are some opportunities to create disabled parks if the pedestrian areas were realigned. He confirmed that he had no issue with Mr Lala's proposed amendment to condition 5 to include the construction traffic management related matters.
131. **Mr Peter Kensington**, the Council's landscape architect, stated that he had concerns with the overall massing of the height with respect to Building D, located closest to the neighbouring residential sites in Valley Road and the end of Carrick Place. He highlighted to Commissioners, policy H11.3(5) and "the requirement for large scale development to be of a design quality that is commensurate with the prominence and visual effects of the development". He supported the redevelopment of the site, but not to the scale proposed. He was concerned about the massing of the over height element. In relation to Commissioners' questions about the impacts on the adjacent residential properties, Mr Kensington advised it was not uncommon to prepare visual simulations from submitters' sites following receipt of submissions and the identification of specifically affected properties.
132. He also elaborated on the NZILA seven-point scale²² used by Ms Verstraeten, the Council's Specialist Landscape Architect, in preparing her review of the visual amenity effects of the proposal as set out in the application documents. He explained that an assessment of "3" would be considered minor. Based on the information presented by submitters in Valley Road, he considered the visual effects and dominance of Building D would be more than minor.
133. In respect to Level 5 of Building A, fronting Dominion Road, Mr Kensington maintained the opinion that this level had not been set back enough and therefore should be removed. This view had been informed not by any "rule of thumb" about the appropriate distance between the road and the level, but rather he was guided by the intent of the AUP including the Special Character overlay.

²² Memorandum from Ainsley Verstraeten, Appendix 1

134. **Mr Chris Butler**, the Council's urban designer, commenced by advising Commissioners that while he was, perhaps, more amenable to the proposal than his colleagues, that his specialist memorandum had been one of "non-support". In relation to Building A, Level 5, he referred Commissioners to the street elevation on in the agenda. He highlighted the lack of transition and setback, and that in his opinion a 2.5m setback was insufficient. He also had concerns with the "gated community" nature of the development and the nature of the residential units at ground level and its internalised public realm.
135. In relation to Valley Road, Mr Butler confirmed that this part of the site was not subject to the Special Character Overlay but that design had sought to address the issues arising from it being the south facing elevation and overlooking a carpark. He noted that the proposed mansard roof would provide views through to Maungawhau.
136. Mr Butler also confirmed that the AUDP assessment was focussed on height, mass and street façade i.e. more focused on design than regulatory compliance. He considered there were some special or unique elements presented by the proposal for intensification including the site's proximity to the city centre coupled with the planned public transport improvements i.e. the proposed LRT. It was also a mixed-use development and he endorsed the internal bulk and scale. He did however have concerns about the building dominance on the properties at 21B Carrick Place and 109 Valley Road. He noted in the case of 109 Valley Road, that the Local Centre zone had no height in relation to boundary or yard requirement.
137. In relation to the height and dominance concerns raised by Mr Dexter and Ms Modrow at 105 Valley Road he considered the effects would be more than minor in comparison with a complying development in terms of building height and length.
138. **Ms Rebecca Fogel**, the Council's Heritage Specialist, having considered the applicant's evidence, advised that she was not satisfied that the Universal Building could not have been incorporated into the development. The Universal Building was a character supporting building and she referenced the AUP policy directives in D18.3 (10) (a) and (b) which require the applicant to demonstrate that the loss of the building would not erode the identified special character values of the area and would not disrupt the cohesiveness of the streetscape and wider special character area.
139. She had no issue with the site being redeveloped and agreed it would likely bring more people to the area. In relation to the bulk, dominance and materiality of the development, like Messrs Kensington and Butler, she was concerned about the upper level of Building A. She also considered the 2.5 m setback of level 5 from Dominion Road to be insufficient. She did, however, consider that a good job had been done on breaking up the Dominion Road façade.
140. With respect to Building B, Ms Fogel considered there should be a more appreciable building depth and suggested that 6m would be appropriate. Ms Fogel expressed concern that the materiality and bulk did not respond positively to the identified special character values and context of the area. She did not consider that the

buildings needed to mimic the character of the area but rather, should provide a neutral contribution. She agreed with Mr Brown that the Dominion Road/Valley Road intersection was the heart of this Special Character area. For that reason, she considered that it was important not to erode the edges. In her opinion, buildings that were too tall would indeed have that effect.

141. In response to Commissioners' questions she confirmed that there were no provisions in the AUP to prohibit demolition of any of the Special Character buildings but added just because a building wasn't scheduled didn't mean it was not worthy of protection. Ms Foley considered that the applicant had provided insufficient information on the cost of restoration, a necessary element of the application's assessment criteria.
142. **Ms Murphy** the Council's reporting planner, advised the Commissioners that she maintained her recommendation that the application should be declined. She considered the proposed development was out of character with the area, particularly the height, bulk and scale in relation to the adjacent sites. In response to Commissioner Blakey's question regarding her response to Mr Lala's shading evidence, being that it differed from her own assessment, she indicated she had nothing further to add. She also confirmed that Auckland Transport supported the loading arrangement proposed for Carrick Place.

Applicant's Right of Reply

143. Initially Mr Minhinnick lodged his written reply with two supplementary statements of evidence from Mr Jones and Mr Lala. Commissioners declined to receive these two supplementary statements of evidence, but provided Mr Minhinnick with the opportunity to review and re-submit his right of reply.
144. In his written reply, Mr Minhinnick reminded Commissioners of the form of development that the AUP anticipated for the site and surrounding area. He directed Commissioners to the evidence of Mr Lala (as supported by Mr McGarr) that identified support for the intensification on the site, and Mr Lala's advice that the RPS did not direct the avoidance of intensification on the site, rather the site is in a centre, close to a range of established public transport services, which is where the RPS directs intensification.
145. In relation to the HVC, Mr Minhinnick emphasised that this was not a "hard limit" that could not be infringed, pointing to the fact that the AUP provides for applications to infringe the rule as a restricted discretionary activity. He acknowledged that the HVC rule was drafted in a directive "must not exceed" manner, but that this did not mean that it could not be exceeded and further, that such proposals need to be assessed in accordance with the discretion listed in H11.3.14. He reminded Commissioners of the early advice from Mr Lala that where a proposal to infringe the HVC will not have a significant adverse effect in terms of Policy H11.3.14, it will not be contrary to the policy. He highlighted that there was no expert evidence that identified that the adverse effects would be significant and that as the matter refers to effects,

Commissioners must therefore consider the positive effects arising from the infringement, as well as adverse effects. A key consideration in his opinion was the weighting to be attached to the different expert and lay assessments of the amenity effects of the HVC infringement. Overall, Mr Minhinnick concluded that all the relevant matters of discretion were satisfied and there was no basis for the application to be declined.

146. In terms of the Special Character Overlay, Mr Minhinnick reminded Commissioners that it relates only to special character and not historic heritage and as such is not afforded as great a statutory weight, and nor does the Special Character Overlay “trump” the underlying Local Centre zone provisions. In his opinion, Commissioners also needed to remember that the Overlay was applied to “character defining” and “character supporting” sites as well as to sites occupied by building that were not classed character defining or supporting. In the case of the current application the overlay triggers two restricted discretionary activities, being (i) for the demolition of a “character supporting building” (the Universal Building) and (ii) for the construction of a new building within the Overlay.
147. In terms of the demolition of the Universal Building, Mr Minhinnick responded to the matters raised in the hearing regarding the retention options and the cost to restore/repair the Universal Building. He referred Commissioners back to the Isthmus Design Assessment and Mr Brown’s Character Assessment as well as the application’s AEE. He considered that these assessments had shown that retention of the Universal Buildings would result in the loss of one retail space and four apartments over a number of floors, representing a “very significant” financial cost. This did not take into the account the costs of renovation (including seismic upgrading). He also emphasised that the rationale for the removal of the Universal Building had been accepted by the AUDP and deserved significant weight and should not be set aside lightly.
148. In terms of the surrounding area, he referred Commissioners to the supplementary evidence of Mr Lala that addressed the range of zones and heights and the type of development that could be anticipated. He also provided further comment on the adjoining site at 9 Carrick Place, occupied by a Council “Own-Your-Own” Unit development, a scheme to provide affordable housing for older people. In Mr Minhinnick’s submission, “it is reasonable to anticipate that part or all of this site will be redeveloped for much more intensive residential use up to 16m in height under its THAB zoning. Auckland Council retains control over the site, and its location in very close proximity to the proposed LRT route and Eden Valley Station mean it is ripe for redevelopment”.²³
149. In responding to the effects on residential properties, Mr Minhinnick’s reply reminded Commissioners of the need for care to be given before attaching weight to material prepared by lay submitters on dominance and shading effects. He submitted that in

²³ Daniel Minhinnick, Reply Submission on behalf of Panuku, paragraph 3.26

assessing the dominance and shading effects on the residential environment Commissioners must use the expert material prepared by Panuku.

150. In response to the concerns raised by submitters, he advised that Mr Jones had undertaken further expert assessments of the visual and dominance effects of the proposal on properties to the north and east which were appended to the reply submission. In the case of the eastern frontage this showed the heights would range from 11-15m, not the 20.5m suggested by some submitters. He advised that Mr Jones had also visited 107, 107A Valley Road and 21 Carrick Place and in relation to 107 and 107A Valley Road, Mr Jones has produced drawings to illustrate the effects of the proposal on the proposed deck at 107 Valley Road. From the additional visual simulations in terms of the existing view, only a small portion of the eastern façade of the proposed development would be visible, and that existing vegetation and buildings at 109 and 111 Valley Road will provide a visual buffer between Building D and 107 and 107A Valley Road. Mr Minhinnick confirmed that Mr Jones considered the potential visual amenity (including dominance) effects would be very low.
151. Mr Minhinnick advised that Mr Jones had not been able to access 105 Valley Road where similar concerns were raised by Mr Dexter and Ms Modrow. He advised that Mr Jones had, however, undertaken further analysis that provided a representative view of what would be seen from the western façade at 105 Valley Road and the deck. Mr Jones considered that the development at 107/107A Valley Road in combination with the vegetation at 105 Valley Road would significantly restrict views from 105 Valley Road. He considered the potential visual amenity effects to be low. Mr Jones considered it likely that further screening would also be provided if complying developments were constructed on 109 and 111 Valley Road.
152. We were advised that Mr Jones had also visited 21 Carrick Place, where the eastern façade of the proposal will be seen above the existing buildings at 109 Valley Road. Mr Minhinnick advised that Mr Jones considered that the potential visual effects on the amenity of 21 Carrick Place will be low to moderate. This assessment is based on the existing house, vegetation and fences that restrict views of the proposal, with a framed view of the northern portion of Building D; where the eastern façade of Building D is broken up through a mix of vertical and horizontal elements and varying materials; the upper elements of Building D 'fold away' from the properties, and from the southern end of the property the view is broken up by a range of intervening properties, buildings and vegetation. We were advised that a complying development at 109 Valley Road would further buffer and screen the development from 21 Carrick Place.
153. In relation to the remaining sites to the east, these houses have windows on their western facades and outdoor private spaces. Mr Jones considers the proposal will be largely screened from these properties. He undertook further assessments at 7 Carrick Place (Ms Hillyer) and 16 Carrick Place (Mr Lange). Ms Hillyer was concerned about the view of the northern facades of Buildings A, C and D and the potential loss of views to Owairaka. Mr Jones considered the visual effects of the

proposal to be low, with him commenting that the considerable vegetation along the southern boundary will frame the development and provide visual separation. He noted that the northern facades will be visually interesting, and Buildings A and C are set back from the lower floors giving a terraced appearance. While the views to Owairaka will be compromised by the development and the anticipated development of 9-15 Carrick Place, Mr Jones advised that there is no protection of views to these landscape elements under the AUP.

154. From 16 Carrick Place, views of the northern and eastern facades of Buildings A, C and D will be seen from the southwest. In Mr Jones' assessment was that the proposal has low to moderate visual effects, however the anticipated development of 9-15 Carrick Place would partially screen the northern elements of the proposal and in the longer term, the visual effects will be low.
155. In response to submitters' concerns about shading, Isthmus Group updated the Sun Study to incorporate the development at 107/107A Valley Road. Mr Minhinnick advised that Mr Lala considers that the updated sun study shows the potential shading effects are further reduced by the new developments under construction at this address. Mr Minhinnick also advised that Mr Lala maintained his criticism of the reporting planner's assessment of shading effects and with the reporting planner having not sought to defend her assessment, Mr Minhinnick submitted that the Commissioners had no choice but to accept Mr Lala's assessment and conclusions regarding shading effects.
156. In relation to the construction effects and residents' concerns regarding inconvenience and disturbance during the construction phase of the project, Mr Minhinnick submitted that Panuku's proposed consent conditions for the control of construction related effects would ensure these effects were well managed. He highlighted that the Council's acoustic and traffic specialists agreed with the proposed management measures proposed as conditions of consent.
157. In relation to the submission of Pacific Fringe Limited, and while Mr Minhinnick acknowledged Commissioners could consider the effects of the proposal on the amenity of 109 Valley Road, he counselled that we could not attach any significant weight to Mr McGarr's suggestion that Commissioners consider the effects on a potential outdoor roof terrace. In this respect, he noted that while possible "it is a stretch to say that a roof terrace is anticipated in the site's Local Centre zone".
158. Mr Minhinnick concluded by addressing some matters to be covered in conditions and submitting that the planning framework applying to the site and surrounding area anticipated the kind of development proposed by Panuku. He submitted that the proposal fitted comfortably within the relevant policy and criteria assessments, and that Panuku had put together a comprehensive application which is supported by the AUDP. He also submitted that the evidence of the Panuku experts should be preferred to the opposing views of the Council, which in his opinion had expressed flawed arguments and reasoning. The application should therefore be approved subject to the conditions proposed by Panuku.

Reconvened hearing

Procedural Matters

159. Commissioners, having read Mr Minhinnick's statement of reply, were concerned it included new information pertinent to the effects on the adjacent residential properties in terms of the dominance effects and shading effects that had not been seen by the submitters and the Council's officers. This new information was set out in section 6 of the reply submissions. In response to this new information, the Commissioners issued a direction that set out a process and timetable for the Council officers and submitters to respond to the new information.
160. In response to this Direction, written comments on the new information were received from the following:
- Ms Astrid Modrow;
 - Mr Richard Peters, Roger Bannan and Yvonne McGill;
 - Mr Peter Lange;
 - Mr Rob Dexter;
 - Pacific Fringe Ltd (Mr Craig McGarr); and
 - Auckland Council.
161. Commissioners also received a memorandum from Mr Minhinnick, who advised that during that week, the Council's planning and landscape/urban designer had contacted Panuku's design expert, Mr Jones, requesting further information regarding the 3D computer model used to develop the visual simulations, and in relation to the development potential identified for the adjacent property at 109-111 Valley Road. The memorandum requested that Commissioners reconvene the hearing.
162. Concerned that the Council officers had requested additional information that had not been made available to the submitters, Commissioners issued a further Minute²⁴ setting out a process to reconvene the Hearing to enable the further information regarding the 3D computer model to be presented to all the parties and enable Commissioners to ask questions on the new information and the written comments received in response to this information.
163. In response to this direction, we received a memorandum from Mr Matheson, legal counsel for Pacific Fringe Limited, outlining concerns with our reconvened hearing procedure and requesting amendments. We understood that Mr Matheson considered that submitters were being disadvantaged in the proposed process and, in response, he requested that we amend the process.

²⁴ Minute 3 of the Commissioners to Parties, Dated 24 May 2018

164. In response to the Pacific Fringe memorandum, we received a further memorandum from Mr Minhinnick in which he recorded his concerns with Mr Matheson's amended process and suggested his own amendments to the process for reconvening the hearing. He also advised that the applicant was happy to make the 3D model available to the parties prior to the hearing being reconvened.
165. Commissioners having considered the matters raised by both legal counsel and their own independent legal advice, issued a further Direction on 31 May 2018, setting out the process that would be followed including the requirements for the pre-circulation of written material. The hearing was reconvened on Thursday 28 June 2018.

Applicant

166. At the reconvened hearing, Mr Minhinnick provided a brief overview of the matters covered in section 6 of the reply submission, followed by Mr Jones who spoke to the visual and landscape material in the Reply submission and he took Commissioners through the additional visual simulations for Viewpoint 9, as viewed from 109 Valley Road, Viewpoint 10, from 107 and 107A Valley Road and Viewpoint 11, from 21B Carrick Place.
167. Mr Jones also referred Commissioners to his pre-circulated reply statement of evidence in which he provided a visual simulation from 21 Carrick Place. In his opinion, this visual simulation confirmed the opinion offered in his EIC, that the potential visual effects from this location will be low to moderate in the short term and low in the long term. He noted that with a future redevelopment of 109 Valley Road (to its potential under the AUP), significant screening and a buffer of views from 21 Carrick Place would then be afforded.
168. Mr Jones' statement also responded to the criticism made by Mr Butler regarding the accuracy of the side yard setback for the building envelope at 109/111 Valley Road. He confirmed that these had been modelled at 1m rather than 3m. While acknowledging the error, he remained of the view that the building forms illustrated by the previously issued visual simulations (Viewpoints 9 and 10) remained appropriate for assessing the potential visual effects of the project, should a compliant development on 109 and 111 Valley Road be developed.
169. He also outlined that a minor technical error in interpretation, related to the height and yard setbacks applying to the property at 9-15 Carrick Place had been corrected for the future development of the property.
170. Mr Lala, with the assistance of Mr Broadbent, took the opportunity to clarify that the shading diagrams had been modified to include the proposed development of 107 and 107A Valley Road. The shading diagrams were based solely on building form, with no allowance for vegetation. He emphasised that his opinion remained unchanged.

Pacific Fringe Limited

171. Mr McGarr responded to two matters raised in section 6 of the applicant's reply statement. Firstly, he discussed whether it was reasonable to anticipate a roof terrace occurring on 109 Valley Road and whether the policy or rule framework supported such an outcome; and secondly whether the policy framework provided for the consideration of effects of the proposed development on similarly zoned land.
172. In relation to the roof terrace, Mr McGarr referred Commissioners to his statement of evidence and the need for any future development at 109 Valley to be located toward the western boundary to meet the AUP's height to boundary standard (to the east). Mr McGarr remained of the opinion that the AUP's definition of height provides for and encourages a flexible approach to building form, specifically with the provision of outdoor areas on buildings and that this means that a building could be developed to the maximum height, with the roof top projecting above this because handrails, lift towers and stair bulk heads were all exempt from the assessment of height.
173. In relation to the need to consider the effects of the proposal on the amenity of neighbouring sites, Mr McGarr directed the Commissioners attention to the matters of discretion listed in standard H11.8.1(8) (c) and (d) in the Local Centre zone. He considered that these matters of discretion fully supported the position that it was entirely appropriate for effects on the amenity of neighbouring land where similarly zoned to be taken into consideration. It was Mr McGarr's position (based on these matters of discretion) that consideration of the height infringement was not limited to consideration of only neighbouring residentially-zoned land.

Mr Richard Peters

174. Mr Peters, along with Mr Dexter and Ms Modrow, objected to the applicant's continued reference to them as lay submitters, which they considered detracted from the points that they wished to raise in relation to the proposed development. Mr Peters, on behalf of the other owners of 21B Carrick Place, reinforced that the visual simulations produced confirmed that the proposed building would, in their opinion, be overly dominating. They rejected, as pure speculation, the suggestion that the visual dominance of the proposal would be acceptable as a redevelopment of 109 Valley Road could be potentially bigger. Mr Peters expressed concern about the aesthetics of the eastern elevation. He remained concerned about the increased level of shading, particularly at times of day when people had returned from work. He concluded that the development should be compliant with the AUP.

Mr Robert Dexter

175. Mr Dexter was concerned that the corrections identified by Panuku's experts in the statement of reply cast doubt on the accuracy of the whole application. He was particularly concerned that no additional work had been undertaken regarding the impacts on his property at 105 Valley Road, particularly in relation to the dominance and shading implications. He drew the Commissioners attention to Viewpoint 10 in

the photomontages and the scaffolding surrounding the houses at 107 and 107A Valley Road. In his opinion the presence of the scaffolding reduced the full impact that the proposal would have when viewed from this point. He observed that these structures were temporary and their presence should be discounted when considering the longer term visual impacts of the proposal. Once the scaffolding was removed, much more of the development would be visible from his property.

176. Mr Dexter disagreed with the shading analysis provided by Panuku's experts, identifying that the diagrams did not correctly identify the location of his house and as such the analysis of the impact of the proposal on his property were incorrect. Specifically, he advised that the living room and large roof skylight his house had been built to obtain maximum sunlight in the late afternoon/early evening and effects of its loss would be substantial. While the shading diagrams compared the effects of the proposal against the maximum allowable complying development, he questioned whether the implied building would meet the combined AUP criteria and in reality, would be developed to this extent. He was also concerned at the applicant's reliance on the presence of existing trees, vegetation and landscape features to mitigate the impacts of the proposal. He noted that these features were not protected and could therefore be removed, which would further increase the impact of the proposal.

Ms Astrid Modrow

177. Ms Modrow remained unconvinced by the new material produced by the applicant and disagreed that possible developments at 109 and 111 Valley Road would buffer the impact of the proposed development. In her view the proposed development underway at 107 and 107A Valley Road provided minimal screening. Like Mr Dexter she considered any screening provided by existing vegetation as temporary in nature and indicated that they regularly pruned their plants, especially in the winter to allow sun into their property.
178. She reiterated her support for the comments made by the Council's planner, Ms Murphy, that the developments at 107, 107A, 109 and 111 Valley Road and the existing vegetation in the vicinity would provide insufficient screening. She also expressed her support for Mr Kensington's comments that the proposal would have adverse visual dominance effects.
179. Ms Modrow had taken the opportunity to view the 3D model at the Isthmus Group's offices but felt that this had not provided any new information on the proposal and that it lacked any additional information on shading and dominance that they would experience. She reiterated her opposition to the proposed development and requested consent not be granted.

Mr Peter Lange

180. Mr Lange raised concerns with the new sun studies diagrams showing the extent of shadow at 6pm and 7pm on December 21st and the impacts this would have on his existing amenity and enjoyment at the end of the day, summer sun and the sunset.

Like Ms Modrow, he expressed frustration at the viewing of the 3D model and the lack of additional information provided on shading. He also expressed concerns about the accuracy of the shading diagrams in relation to neighbouring buildings.

181. He too objected to the applicant's suggestion that this impact will be minimal due to the presence of trees at the front of the house and the focus of daily activities would be to the rear of the property, indicating he could choose to remove the trees in his front yard and that the recent subdivision of the rear of his site and subsequent development of the area would mean his use of the site would move to the west. He also rejected the applicant's justification that the additional height was warranted as the site at 9-15 Carrick Place has a permitted height of 16 metres. He felt that the redevelopment of this site was unlikely due to the terms of the Lorraine Bertille de Berry Trust that had led to the development of the site by the former Mt Eden Borough Council. He remained concerned at Panuku's attempts to depart so markedly from newly established planning rules.

Council Officers

182. The Council's planning, landscape and urban design advisers made written comments on the new information. They had also viewed the 3D model and visited a number of the private properties in Valley Road and Carrick Place owned by the submitters.
183. Mr Butler outlined that, having viewed the applicant's model and reviewed the business zoning standards, he was satisfied that a development of a similar form and scale could be undertaken on 109 and 111 Valley Road to help screen views of the proposed development. In his opinion the majority of the proposed development would be screened by the dwelling under construction at 107A Valley Road, with further filtering from the existing vegetation located between the site and 103 Valley Road. He did highlight an inaccuracy in the modelling of the yard standard on the eastern boundary of 111 Valley Road, which was addressed by Mr Jones in his reply statement of evidence. In terms of building dominance, in addition to the screening provided by the new dwelling at 107A Valley Road, Mr Butler considered a development that complied with the 13m allowable building height at 109 and 111 Valley Road would screen much of the proposed development. In terms of shading, his view remained unchanged, being that the development would result in some minor adverse shading in the late afternoon throughout the year on properties at 105 and 107 Valley Road and 18 and 21 Carrick Place. This conclusion took into account the level of shading that would be generated by a development of 109 and 111 Valley Road, undertaken in the future, in accordance with the Local Centre zoning.
184. Mr Kensington having also viewed the 3D model and visited the surrounding sites, confirmed his view as expressed at the hearing that the proposal would likely result in adverse landscape and visual effects on the residential properties immediately to the east of the site. Mr Kensington confirmed that in his opinion these adverse visual dominance effects arose from the combination of height, scale, massing and materiality of the proposed built form. In his opinion, future developments at 109 and

111 Valley Road, that maximised the complying buildable envelope, were “not overly fanciful” and should these developments occur, they would effectively mitigate the adverse visual dominance effects of the proposal. He did however acknowledge that there was no certainty around when such a scenario may occur.

185. Lastly, we heard from Ms Murphy who provided comments on both the applicant’s reply material and the specialist comments of Mr Butler and Mr Kensington. In terms of the receiving environment, she considered the comments about the potential redevelopment of 109 and 111 Valley Road were based on speculation. There was no certainty regarding what could be built and its timing. She remained of the view that the proposal would result in unacceptable adverse bulk and dominance effects on the residential amenity of the immediate and wider area. In relation to shading, her opinion remained the same as expressed in the s42A report, that there would be unacceptable effects on persons at 9, 16, 18 and 21 Carrick Place and 103, 105, 107 and 107A Valley Road. Further, she now considered that based on the additional shading diagrams provided in the reply statement, that persons at 12 and 14 Carrick Place would also experience unacceptable shading effects.

Applicant’s Reply

186. The hearing concluded with Mr Minhinnick making some brief verbal comments in response to matters raised in the reconvened hearing. In relation to Mr McGarr’s evidence he referred Commissioners to the evidence of Mr Mirams and Mr Lala that dealt with the particular design elements of Buildings D and C that would ensure good outcomes for residents and neighbouring sites. He also referred Commissioners to the AUP’s anticipated zone outcomes for the THAB and Local Centre zones and the relevant objectives and policies to be considered in relation to this application.
187. He advised Commissioners that the submitters criticism of the expert evidence was unfounded and that it had been prepared in accordance with the orthodox standard approach for visual and landscape assessment as set out in the NZILA guidelines. Furthermore, that the models used for consideration of the shading effects had been based on the Council’s GIS information and had gone above and beyond what was required.

Principal issues in contention

188. Firstly, we record that there was general agreement between the parties on the issues of infrastructure, soil contamination and the effects on human health, natural hazards, the removal of the street tree and archaeology.
189. The main issues of contention between the parties related to the issues of:
- What constitutes the receiving environment;
 - Special character, amenity and urban design;

- Height of the development, dominance, visual and shading effects;
- Traffic generation, parking and loading and the effects on the wider transport network; and
- Construction noise and vibration.

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

Main findings on the principal issues in contention

What constitutes the receiving environment?

191. Under the provisions of the AUP, the application site is primarily zoned Business Local Centre, with the rear portion of the site at 198 Dominion Road that fronts Carrick Place, zoned Terrace House and Apartment Buildings zone (THAB zone). The site and surrounding business area very much accords with the purpose of the Business Local Centre zone, being in an area well served by public transport, and primarily providing for the local convenience needs of the surrounding residential areas.
192. The Local Centre zone standards typically enable buildings up to four storeys high, with the zone providing for residential use at upper floors. The total building height standard in the zone is 18m, being 16m occupiable height with an additional 2m height for roof form. Unlike the general Local Centre-zoned areas, this part of Dominion Road is subject to several overlay provisions including the Height Variation Control (HVC) and the Special Character Overlay - Business: Eden Valley (Special Character Overlay). The net effect of these overlays is to place additional restrictions on the development of this site.
193. The THAB zone is applied to the rear portion of 198 Dominion Road which has frontage to Carrick Place. The site adjoins 9 Carrick Place which is also zoned THAB zone and is occupied by 10 single-storey units, built by the Council but individually owned. Neither the Special Character Overlay nor the HVC apply to this part of the site. The THAB zone is a high-intensity residential zone enabling a greater intensity of development than previously provided for and provides for urban residential living in the form of terrace housing and apartments. The maximum height of buildings is 16m.
194. The HVC applying to the site reduces the total building height for the Local Centre-zoned part of the site from 18m to 13m, being 11m occupiable height with an additional 2m height for roof form. The stated purpose of the HVC provision is “to recognise the character and amenity of particular areas and provide a transition in building scale to a lower density zones.” The zonal provisions also require new development to be assessed to ensure it is designed to a high standard which enhances the quality of the centre’s streets and public open spaces.

195. The Special Character Overlay also applies to part of Dominion Road. This overlay provision seeks to retain and manage the special character values of business areas identified as having collective and cohesive values, importance, relevance and interest to the communities within the locality and wider Auckland region. The AUP includes a specific special character area statement for Eden Valley that identifies the key special character values of the area. Proposals for development and modifications to buildings within special character areas are required to be considered against the relevant policies and the special character area statements and the special character values that are identified in the statement. These values set out and identify the overall notable or distinctive aesthetic, physical and visual qualities of the area and community associations. Standards have been placed on the use, development and demolition of buildings to manage change in these areas.
196. The AUP records the Business – Local Centre Zone objectives as:
- (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.*
197. These objectives are reinforced by policies that require development to be of a quality and design that positively contributes to planning and design outcomes identified for the zone (H11.3 (3)(a)) and to require development adjacent to residential zones to maintain the amenity values of those areas, having specific regard to dominance, overlooking and shadowing (H11.3 (8)). The policies also specifically deal with identified locations with greater and reduced heights. Policy H11.3 (14) outlines that in “identified locations within the centre zones” there is reduced building height below the standard zone height, “where the standard zone height would have a significant adverse effect on identified special character, identified landscape features, or amenity”.
198. There was considerable discussion during the hearing on what constituted the receiving environment and more particularly the environment as likely to be modified by activities permitted by the AUP in the foreseeable future. Counsel for the applicant was critical of the approach taken by the reporting officer which he considered “unduly narrow” and gave insufficient regard to the future development of the surrounding area that could be reasonably anticipated by the AUP. The applicant’s experts emphasised that both the Local Centre and THAB zones anticipated high density residential development and that while part of the site was subject to the Special Character Overlay, these controls did not “trump” the underlying zone controls. Rather, contemporary and higher intensity developments that complemented the special character values were envisaged.

199. As outlined in the Council's s42A report, the only relevant consent in the area was the recent subdivision at 107 Valley Road to create two lots and undertake additions and alterations to the existing dwelling and construct a new dwelling at 107A Valley Road. There was also a consent approved to convert the existing building at 111 Valley Road into two storey offices and create a new parking area, which had not been implemented. During the hearing we also heard from Mr Dexter and Ms Modrow that they were seeking to subdivide their property at 105 Valley Road and from Mr Lange that he had plans to subdivide the rear of his site in Carrick Place.
200. We also note that while the applicant was content to rely on the potential future theoretical developments to mitigate aspects of the proposed development, notably height and dominance, they were critical of Mr McGarr's suggestion of a potential rooftop outdoor space being developed at 109 Valley Road. Mr Minhinnick in his opening submissions reminded Commissioners of the need to take a real-world view of the existing environment when considering the effects of the project and that "there is no resource consent, or even an application, that will provide for this proposal".²⁵ As Mr Minhinnick implies, the future development of 109-111 Valley Road is at best uncertain, and such development would be subject to consent as a restricted discretionary activity (at a minimum), in relation to building design considerations. We consider that expectations as to development of these sites would be subject to further uncertainty as a result of the construction of the proposed building, given the potential impacts on the amenity outcomes for such development, as we describe below.
200. While Ms Murphy agreed that, given the location, new development would likely increase the intensity of the area, she was cognisant that all new buildings in the immediate area both in the business and residential zones would require resource consent approval. She also noted that much of the immediate locality was restricted by height (11m-13m) and by the special character overlays in both the residential (Isthmus A) and business overlays (Eden Valley). She considered that the applicant and Council's urban designer had over-emphasised the ability of the surrounding sites to absorb adverse effects through development that may occur on these sites. In her view there was no certainty that these future developments will occur.
201. To resolve this particular matter, we turn to the RMA itself. Section 104 states that:
- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*
202. In this regard, we make two observations, firstly that development within any adjacent Local Centre-zoned property (i.e. 109-111 Valley Road and 184-196 Dominion Road), or THAB-zoned property (i.e. 9-15 Carrick Place) or within the Special Character Overlay (i.e. 184-196 Dominion Road) requires consent as a

²⁵ Minhinnick opening submissions para 7.15

restricted discretionary activity. In other words, the AUP does not “permit” the construction of new buildings on these sites, and so no buildings can be constructed as of right. While the “permissible” development standards for the zones or overlay do not appear likely to be fettered to a significant degree by the matters of discretion applicable to new buildings, there is some degree of conjecture as to the eventual building envelopes that would be able to be achieved in each case when the matters of discretion are taken into account. Secondly, there is a discretion as to whether a consent authority will disregard the effects of a permitted activity.

203. We have therefore adopted a precautionary approach in our consideration of the evidence in this regard, and apply our discretion not to adopt possible future building forms as a primary mitigation feature for the mitigation of adverse effects,

Is the special character, amenity and urban design intent of the area met / achieved?

Introduction

204. The site’s planning context may be described as ‘multi- layered’, and thus requiring specific consideration of the proposal against built character, amenity and urban design aspects. In addition to the site’s split zoning (Business - Local Town Centre and THAB); a Special Character Overlay applies to part of the site (principally the Dominion Road frontage). As described above, a HVC applies to the Business Local Centre zoning of the site. This control extends across the wider commercial location spanning the Dominion Road commercial frontage from Paice Avenue / Grange Road in the south to Onslow Road / Carrick Place to the north; within which sites are zoned both Business Local Centre and Mixed Use. The HVC is described in detail above, having, as its purpose; the recognition of the “character and amenity of particular areas”.
205. The Special Character Overlay provision seeks to retain and manage the special character values of business areas identified as having collective and cohesive values, importance, relevance and interest to the communities within the locality and wider Auckland region (D18.1). The AUP includes a specific special character area statement for Eden Valley (15.1.6.4, Schedule 15: Special Character Statement). This character statement identifies the key special character values of this area. Assessment of proposals for development and modifications to buildings within special character areas are required to be considered against the relevant policies and the special character area statements, including the respective character values of the area. These values set out and identify the overall notable or distinctive aesthetic, physical and visual qualities of the area and community associations. Standards have been placed on the use, development and demolition of buildings to manage change in these areas.
206. The proposal includes the demolition of six buildings within the special character area overlay, of which two are identified as ‘character supporting’ buildings (214-216 Dominion Road and the ‘Universal Buildings’ at 218-220 Dominion Road). This

proposed demolition, along with the replacement new building construction, require consent which relies (as restricted discretionary activities), on the identified matters of discretion (D18.8.1.1 (1)) and assessment criteria (D18.8.2.2 (1) and (4)). For new buildings in the Business Local Centre, matters of discretion (H11.8.1 (4)) and assessment criteria (H11.8.2 (4)) apply.

207. This planning analysis was undertaken collectively by Mr Brown, Mr Lala and Mr Jones for the applicant and by Ms Fogel, Mr Butler, Mr Kensington and Ms Verstraeten for the Council. No expert evidence was presented by submitters in respect of special character considerations. Most of the concerns expressed at the hearing by submitters related to the impact of buildings to the Valley Road and Carrick Place neighbourhood. It is noted that the Valley Road portion of the site is not subject to the Special Character Overlay, although the HVC does apply. Written submissions received did seek that new development remained within the “traditional line of the Edwardian commercial buildings”.

Demolition

208. There was agreement between the Council’s heritage specialist, Ms Fogel and the applicant’s heritage expert, Mr Brown, that those buildings that were not identified as ‘character supporting’ did warrant consent for demolition. Only one of these four buildings fronts Dominion Road (198-202 Dominion Road) and was built in the “latter half of the 20th century”. There was agreement that this building did not hold any character value; as was also the case for the other three buildings, which are located to the rear within the site, being commercial buildings of utilitarian appearance and all constructed post-1944.
209. In respect of the two ‘character supporting’ buildings sought to be demolished, Ms Fogel and Mr Brown were in agreement that the building at 214-216 Dominion Road no longer contributed strongly to the character values of the Eden Valley area. This building, although constructed in 1928, had been heavily altered and its demolition would not, it was considered, result in adverse effects on the special character area within which it is located. This conclusion was supported by the assessment undertaken by both heritage specialists against the relevant plan criteria (D18.8.2.2 (1)).
210. We accept the evidence of Ms Fogel and Mr Brown and, for the reasons outlined above, find that the demolition of the following buildings meets the relevant criteria:
- 198 - 212 Dominion Road
 - 214 - 216 Dominion Road
211. However, there was disagreement on the value and therefore merit of demolition of the building at 218-220 Dominion Road, known as the ‘Universal Buildings’. Originally built in 1932, evidence was provided that it was ‘remodelled’ in 1949 to its current ‘Moderne’ style as a shop at ground floor and residential flats above. Mr

Brown was of the opinion that although the building “retains some degree of integrity from the 1949 remodelling”, its removal from this part of the Dominion Road street frontage would not have a more than minor adverse effect on the special values of the character overlay. In his special character assessment report, Mr Brown described this building as lacking “the degree of integrity apparent in its neighbours of similar architectural styles” and that there were “better examples of this type of architectural style within the overlay, further south of the intersection with Valley Road and Walters Road”.

212. In contrast, Ms Fogel was of the opinion that the Universal Buildings makes a “moderate contribution to the street”; that it was an authentic period building, with its mass and design being complementary to the surrounding buildings. For these reasons Ms Fogel considered that the removal of this building would not meet the relevant demolition assessment criteria (D18.8.2.2(1) (i) and (ii)) and that, furthermore, she considered that the building was part of a cohesive group of buildings and that demolition would erode this contribution.
213. We note that the remaining assessment criteria include consideration to the state of the building and whether or not it is beyond rehabilitation, as well as to the costs of rehabilitation and repair compared to the costs of a new building. We understand from the applicant that incorporating the Universal Buildings in to the new development was not considered to be feasible. Mr Brown stated in his special character assessment report that retention of the Universal Buildings was “considered to be unworkable in terms of achieving the project outcomes”. We understood him to be of the opinion that the design of the proposed new building in this location would mitigate the loss of this building.
214. While all of the assessment criteria do not require slavish analysis, it is expected that, where relevant, this analysis and consideration will be provided. In this case some commentary on the condition of the existing building and costs of rehabilitation was expected. Ms Fogel has described the building as being in reasonable condition, being in active use. However, no detailed analysis of rehabilitation costs was provided by the applicant against which a consideration of this demolition criterion could be made. In his reply submissions, Mr Minhinnick did refer to this matter by way of reference to the cost of seismic upgrading (which he estimated to be in the order of \$1.5 million). No other cost assessments were provided. Rather, in addressing the matter of rehabilitation costs for the Universal Buildings, Mr Minhinnick reiterated that retention of this building would “have implications for the efficient use of the remainder of the Site”.²⁶ This would, he stated, have an effect on the yield for the development with lost opportunity to construct additional apartments. While this may be a ‘cost’ to the overall proposed development, we are not convinced that this is the form of cost analysis that the AUP envisages as part of the assessment criteria (D18.8.2.2 (1)(a)(v)) and is therefore of limited assistance to us in our consideration of this criterion.

²⁶ Reply Submissions, dated 26 April 2018, para 5.5(b), pg 11

215. In summary, we find that the demolition of the Universal Buildings 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's individual built form makes to this character area. We concur with Ms Fogel that the Universal Buildings complements the adjacent character-defining buildings, as is the intention of the special character statement. We find that the demolition of this building would not be consistent with relevant policies and objectives of the special character business area. The continuity and coherence of this part of Dominion Road would be adversely affected which would contribute to the erosion of the identified special character values of this area. We do not place the same negative emphasis on the building's location on the 'periphery' (to the north) of these character-defining buildings as Mr Brown does.
216. In addition, without supporting information in respect of the building's condition and rehabilitation requirements, we must assume that this course of action is achievable and that there is no valid reason (other than a matter of convenience) why this building cannot remain in this location.

New Building

217. The proposed building structure comprises a basement under a concrete platform which forms the podium upon which four separate buildings are to be constructed. Buildings A and B front Dominion Road; Buildings C and D front Valley Road. All buildings require assessment in terms of design and appearance under the Business: Local Centre zoning assessment criteria (H11.8.2 (4)). Further assessment is required for those components of the building that fall within the Special Character Overlay (being Buildings A and B and the northern portion of Building C). All of the buildings are subject to the HVC which sets a maximum building height of 13 metres (comprising 11m 'occupiable' and 2m for 'roof form'). The proposed buildings infringe the HVC to varying degrees, at up to 9.5m above the 11m occupiable height control.
218. An urban design assessment of the proposal was undertaken by Mr Butler, Mr Kensington and Ms Verstraeten for the Council, and by Mr Jones, Mr Mirams and Mr de Graaf for the applicant. Special character assessment was provided by Ms Fogel for the Council and Mr Brown for the applicant. We rely on and refer to these expert assessments as part of our deliberations. We also note that the proposal was considered by the AUDP. Mr Jones advised us that by way of collaboration and consultation, the design of the proposal "evolved from simple block forms to a design with considerable variety and interest".²⁷ Mr Mirams recorded the transition in design being partly in response to input from the AUDP. Both Mr Mirams and Mr Jones described the proposal as an "urban intensification project" which responded to its location on Dominion Road as a "transport node". This was supported in reply

²⁷ M. Jones EIC, para 3.11, pg 13

submissions by Mr Minhinnick, in which he referenced the RPS as directing intensification in locations and business zones such as this site.²⁸

219. In our consideration of this proposal we have had regard to the overall planning 'context' of the site which, as expressed in the AUP, relates to the "planned urban built character" of this location. We consider that this is not only the site's business zoning and opportunity for mixed use development but must also include the built form envisaged by way of the special character overlay and the HVC. We do not regard this level of consideration as equating to the 'trumping' of zone provisions (a matter that was detailed in Mr Minhinnick's reply submissions).

220. While there was agreement by Ms Fogel that the built form of the proposed new buildings on Dominion Road (Buildings A and B) resulted in an appropriate rhythm and grain at street frontage, there was a difference in opinion as to the effect of the scale of these buildings as a result of their height and location. Ms Fogel²⁹ was of the opinion that:

The bulk of the design (especially the top levels of Buildings A and B) does not complement the character of the traditional town centre. Combined with the extensive use of non-traditional materials, this has resulted in a design that dominates and competes with the character of the area".

221. We agree that, while the upper levels of these buildings are setback to a degree, the overall bulk of Buildings A and B and their materiality does not result in a built form and scale that reflects and supports the identified two to three storey special character of this area. The Business: Eden Valley character area statement (Schedule 15.1.6.4) describes the special character values as being related, for example, to the two storey Edwardian style buildings located on the corners of the Dominion Road / Valley Road intersection; a location described by Ms Fogel as being at the 'gateway' to the Eden Valley area.

222. In contrast, Mr Brown described the site location as being on the 'periphery' of the Eden Valley area and which supported his assessment of the effects of the proposal, as he stated in evidence:

*These effects are considered to be minor because of the peripheral nature of the development in relation to the Eden Valley Special Character Overlay.*³⁰

223. Having had regard to the special character statement and with reference to the images provided in the applicant's visual assessment (Isthmus Group), we consider that this site location is more appropriately described as a 'gateway' location than 'peripheral' to the Eden Valley special character area. The bulk of Buildings A and B within the Dominion Road area is evident in these visual images (Figure 3: Viewpoint

²⁸ Reply Submissions (26 April 2018), para 3.5, pg 3

²⁹ R.Fogel memo, dated 26 January 2018, pg 328 Agenda

³⁰ J. Brown, EIC, para 2.1, pg 3

1 and Figure 5: Viewpoint 2).³¹ We find that the upper levels of Buildings A and B result in a built form that is of a scale and bulk that is dominant within the context of the anticipated planned urban built character of this special character area. As such, this part of the proposal does not therefore respond positively to the context of, nor achieve consistency with, the area's special character values. We have been mindful that this location is not solely a Business: Local Centre zone where high density urban intensification may very well be appropriate. We have been cognisant of the intent and purpose of the Special Character Overlay which also applies. As part of that 'context' we consider that the scale of buildings envisaged is also reflected in the purpose of the HVC; and that this control provides guidance to, and works in tandem with, the Special Character Overlay provisions. To this end we find that the upper levels of Buildings A and B in particular are not consistent in their scale and form of development with that which is expected within this particular special character area.

Findings / concluding comments

224. Redevelopment of the site, with mixed use development is both anticipated and supported. This position was confirmed by all experts and submitters. We agree. However, we consider that site redevelopment in this location (being a Local Centre zone where both a special character area overlay and a HVC apply), is required to take account and provide for a wider project scope than simply 'high intensity / urban intensification'. While we find that the proposal addresses these project parameters to a large degree, there remain elements of the design that result in a built form that is not compatible with the intent and purpose of the special character area values. As described above, we refer to the building height of Buildings A and B where, we find, that the urban design response has not taken sufficient consideration of the site-specific controls and streetscape character of Dominion Road.

Height of the development, dominance, visual and shading effects.

Introduction

225. As described in the preceding sections, the site is located within the Local Centre Zone, and the Special Character Overlay. The height standard for the Local Centre Zone in this location is subject to the HVC, which varies the standard height of 16m occupiable height with 2m provided for roof forms (total height of 18m) for the zone (per H11.6.1.1), to 11/13m (per H11.6.1.2). This is the height standard for the site, and we have not identified any aspect of the control as requiring a balancing approach to be taken between the "standard" height and that which is specified under the HVC.
226. The purpose of the height standard is stated at H11.6.1 as being to:

- *manage the effects of building height;*

³¹ Isthmus Visual Assessment (November 2017), pg 235 Agenda

- *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.*

227. H11.6.1 further provides that:

- (2) *If the site is subject to the Height Variation Control, buildings must not exceed the height in metres, as shown in Table H11.6.1.2 and for the site on the planning maps.*
- (3) *Any part of a building greater than the occupiable building height is to be used only for roof form, roof terraces, plant and other mechanical and electrical equipment*

228. We have set out these particular provisions as a basis for our consideration of this issue below. As a preliminary comment, we acknowledge Mr Minhinnick's submissions that the phrasing used in the rule, that buildings "must not" exceed the height standards, should not be read literally, given the provision for infringements of the standard to be treated as a restricted discretionary activity by reference to C1.9.

229. We further observe a purposeful approach to the application of the various height standards within the AUP, but more particularly in the way that it has differentiated these standards within the Local Centre Zone. The purpose of the height standard at H11.6.1 includes the statement that the HVC provides:

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.

230. The application of the HVC standard can then be seen, in a local context, through specific notations to the local centres at Balmoral Road, Kingsland and Mt Eden Village that are also subject to the Special Character Overlay. In our view, that is a deliberate approach, applied to such sites, and which runs somewhat counter to the statement in Mr Minhinnick's reply that "No specific consideration was given at the

plan-making stage to whether a particular site may be appropriate for additional height beyond the HVC”.³²

231. As a further preliminary comment or observation, we discerned a general approach in the evidence for the applicant, and by reference to the drawings, that a simple maximum height of 13m had been adopted, without any particular appreciation for the nuance in the height standard that seeks to reserve the additional 2m above the 11m occupiable height for roof forms and those other matters noted in H11.6.1(3) above. The AUDP similarly observed that this additional 2m height allowance has been used for primary building form. We further note that it appears to have been adopted in fairly simple terms as the basis of “baseline” height comparisons and the analysis of shadowing effects.
232. The applicant had initially sought to illustrate the apparent effects of building form through the use of photo-simulation images from eight public vantage viewpoints. These were of a high standard and enabled us to gain a good understanding of the way in which the proposed development would, in respect of most of the viewpoints, appear within the existing environment. For the most part, these photo-simulations placed the development in its existing context, without using the screening effect of superimposed future building outlines, except in the case of Carrick Place, which we discuss in our findings with respect to the respective viewpoints below. As outlined in the summary of evidence earlier in this decision, additional photo-simulations were subsequently prepared by the applicant as part of its reply to illustrate views from adjacent properties (from 107 Valley Road and 21B Carrick Place). These further simulations included superimposed outlines of a “compliant” building within the subject site, and a compliant building(s) at 109 and 111 Valley Road.
233. We have noted earlier our reluctance to accept the mitigating effects of “compliant” but theoretical future buildings in our consideration on the evidence relating to the effects of building heights. Our assessment is therefore primarily informed by a consideration of the effects of the proposal against the environment as we find it, but with reference to any relevant resource consent approvals, including those presently being implemented.
234. As would be expected, the key potential effects on dominance, visual and shading effects would be most experienced by those properties adjacent to or in close proximity to the subject site. We address these aspects below.

Dominion Road

235. We have previously set out our conclusions with respect to the height of Building A in relation to Dominion Road, primarily in terms of the Special Character Overlay provisions that apply along that frontage, and the way in which the over-height components of the development will serve to erode the special character evident in this location. We adopt the conclusions of Ms Fogel and Ms Murphy in regard to

³² Reply, para 3.16

those effects. From a broader visual/landscape and urban design perspective, we agree with Mr Butler's conclusions where he noted that the fifth floor of Building A is overly dominant when considered in the wider Dominion Road streetscape and against the backdrop of the existing character buildings.³³ Similar concerns were expressed by Ms Verstraeten.

Effects on 109-111 Valley Road

236. Proposed Building D would be located in close proximity to the western boundary of 109-111 Valley Road. This site is comprised a residential building in the front lot (111 Valley Road) and a commercial warehouse style building in the rear lot (109 Valley Road). Evidence was presented by Mr McGarr in respect of the effects of the proposal on 109 Valley Road, and the effects identified appeared to be generally applicable to the Dove Trust property at 111 Valley Road.
237. The relevant drawings in respect of 109-111 Valley Road are those depicted by the "D-East" elevation and the "D-South" elevation, and Sections A1, A2 and A3. Mr McGarr also prepared a drawing (Figure 3 in his EIC) which inserted a compliant building for 109 Valley Road against Section A1, showing a building form to 11m height, and a further 2m for "roof deck volume". He noted that Building D has "an overall length of 78m, of which 30m of the building would be located adjacent to the boundary with 109 Valley Road, being the full length of its western boundary". Mr McGarr's Figure 3 illustrated the height of the building, at approximately 16.5m, relative to a development of 109 Valley Road. Mr McGarr noted that any development of 109 Valley Road would be required to comply with a 2m + 45 degree recession plane to the adjacent residential-zoned site, and this was reflected in the outline building shown in his Figure 3. Mr McGarr commented that:

"To provide for outdoor living, the likely development would involve a series of roof terraces to provide outdoor living with reasonable access to sunlight. A roof terrace located on top of a building that complied with the 11m maximum occupiable height within the western half of the site would be situated 1.5 storeys (5.4m) below the height of the roof of Building D ... or 1 storey (3.4m) if the roof terrace was situated on the roof form.

The scale of Building D is visually dominant and overbearing in such a circumstance to the amenity of 109 Valley Road. The incorporation of a partial mansard roof (when viewed from the east) does little to address this effect, which is generated by the over-height portion of the building."

238. Mr Lala's evidence³⁴ noted that the building mitigates privacy or dominance effects to both 109 and 111 Valley Road by providing accessways to the apartments along the site boundary, which "avoids overlooking onto the adjacent properties". He also advised that any bedrooms will either feature louvered screens or a coloursteel stand

³³ C Butler memo, dated 26 February 2018

³⁴ Lala, EIC para 5.82

seam roof to avoid privacy effects, and do not have their primary outlook facing these properties. In his view, “the proposal appropriately mitigates any actual or potential dominance effects on the local centre zoned sites to the east”.

239. In terms of shadowing effects, Mr Lala advises³⁵ that:

There would be shading on a future roof top outdoor space starting with a small sliver at 2pm and extending to a noticeable area between 3pm and 4pm.... In my view, the likelihood of a roof top outdoor space ever being constructed is difficult to predict. However, given the additional shading occurs towards the end of the day in winter and sunlight is available for the rest of the day, I consider the adverse effects to be minor.

240. The above statement reflects a similar theme expressed through Mr Minhinnick’s opening submissions, and again through his reply,³⁶ where he made the surprising statement that “it is artificial to consider a ‘rooftop outdoor space’ at 109 Valley Road as part of the existing environment”. We say surprising, because H11.6.1(3) of the AUP specifically provides for “roof terraces” as part of the allowable components of those parts of a building above the 11m occupiable height limit, as noted in Mr McGarr’s “Response to Reply Submissions”. However, the particular aspect of such a development is therefore directly contemplated by the AUP, as forming part of a particular standard, and is less artificial in our view than any expectation of exceedances to the same standard.

241. Mr Minhinnick’s submissions in respect of this property sought to further diminish the need for any specific consideration of effects on 109 and 111 Valley Road in two respects – one by noting the lack of any “interface controls between two Local Centre-zoned sites”³⁷, and secondly by noting that “there is no resource consent, or even an application, that will provide for this proposal”.³⁸

242. In respect of the first point, Mr McGarr’s evidence in response drew our attention to the AUP policy framework that directs consideration to effects on land with a similar zone, and in particular H11.8.1(8), matters of discretion, which includes consideration of:

(c) *The effects of the infringement of the standard; and*

(d) *The effects on the amenity of adjacent sites.*

243. In our view, therefore, the AUP contemplates the consideration of effects between sites within the same zone. While such considerations may seem unnecessary in view of their ostensibly commercial character, the above matters of discretion are

³⁵ Lala, EIC, para 5.114

³⁶ Submissions, para 7.15 and Reply para 7.4

³⁷ Reply, para 7.2

³⁸ Submissions, para 7.15

appropriate given the provision within the Local Centre zone for the use of such sites for residential activities (as are proposed in the present application).

244. In terms of the second point, and as discussed previously, we note that the applicant has sought to rely extensively on theoretical development envelopes for adjacent sites, including within 109 and 111 Valley Road, to demonstrate the way in which such developments would screen or minimise views of the proposed buildings from other nearby sites. As discussed above, any such screening development, including that at 109-111 Valley Road, would be subject, as a minimum, to a resource consent as a restricted discretionary activity (to address building design considerations), and so does not form part of the “permitted baseline”. We further observe that the applicant has depicted a form of development similar to that prepared by Mr McGarr for the purpose of its shadowing diagrams, and to establish a further level of “compliant” shadows when considering shadowing effects for sites to the east.
245. We consider that what Mr McGarr has done is to define a comparative building envelope as between both sites, which illustrates the height of the proposed development against that which is permitted, and which the owners of 109 and 111 Valley Road will be obliged to comply, having regard to both the height and the height to boundary standard that applies to their boundary to the residential zoned-properties to the east. In our view, the proposed development, which exceeds the occupiable height limit by some 5.5 metres on the boundary interface with 109 Valley Road (but to a lesser height at 111 Valley Road), borrows from the amenity of both adjoining sites by some considerable degree. In our view, the suggestion by Mr Lala of the effects of the loss of sunlight in this regard being limited from 2pm on winter afternoons as minor is a significant understatement of this matter. It is trite to note that sunlight access is highly valued in any setting during winter months, and Mr Lala’s evidence in this regard places an unduly low value on this measure of amenity, in our view.
246. Mr McGarr advised that he agrees with Ms Murphy’s assessment of effects on residential amenity, which was as follows:³⁹

Although the proposal offers various setbacks, design techniques and landscaping, I consider that these techniques do not mitigate the effects of the excessive height and corresponding bulk proposed which results in a development that towers over these adjacent residential dwellings. The additional height of the buildings when considered together results in an unacceptable level of residential amenity for the dwellings adjacent to the proposal.

247. Mr McGarr acknowledged that this assessment refers to the effects on adjacent residential dwellings, but notes that 109 Valley Road is located closer to the site, and so Ms Murphy’s conclusions can also be made in respect of this property, “despite it

³⁹ S42A Report, p26

not being currently occupied by a residential dwelling”.⁴⁰ He advised that, in the absence of these effects being rectified (through lowering of the building or repositioning of the footprint), he agreed with Ms Murphy that the application should be declined.

248. In terms of visual effects, no photo-simulations were prepared from 109 or 111 Valley Road, and so such effects are best determined by reference to Viewpoint 9 (from 107 Valley Road) and, to a lesser extent, from Viewpoint 4. In this regard, the scale of the building will be significant in relation to the existing premises at 111 Valley Road, but less so from 109 Valley Road given the form of development currently existing on that site. In our view, the proposal will have a large and overbearing presence in relation to these properties which is mitigated to some extent by their commercial zoning and present commercial use, but which impacts on the likely amenity able to be achieved as part of any future development of either site.

Views from 107 and 107A Valley Road

249. Proposed Building D will be separated from the property at 107 and 107A Valley Road by the aforementioned 109 - 111 Valley Road (i.e. approximately 16.5m). The additional photo-simulation material included Viewpoint 9 (as noted above), with the view position located between the buildings at 107-107A Valley Road and taken from a standing position on the ground. Both sites are presently under construction, involving a house renovation and new building respectively, in accordance with a resource consent approval granted in December 2016 (as appended to Mr Lala’s evidence at Attachment D). The front dwelling (107 Valley Road) is being extended, with a new two-level garage towards the western boundary and front of the site, with living spaces and a north facing deck to the rear. The new dwelling at 107A Valley Road is two levels, incorporating ground-level outdoor living spaces oriented to the west.
250. Mr Lala’s evidence expressed the view that these properties (along with 21B Carrick Place) are separated from the proposed development (by between 16.5 to 18.8m), and that the existing buildings at 109-111 Valley Road will also partially screen 107-107A Valley Road, and 21B Carrick Place, from the proposed development. He added that “façade modulation will further mitigate adverse effects”.
251. As previously noted, Mr Galbraith, as owner of 107 and 107A Valley Road, provided photographs at the hearing to describe the impacts that the proposed development would have on this property, and in particular the outdoor living area at 107 Valley Road.
252. The applicant’s Viewpoint 9 has provided a clearer understanding of the view that would be expected from 107 Valley Road, from a position between the two buildings on this site. The viewpoint is described as being from the “proposed deck on the property at 107 Valley Road”, but the reply submissions clarify that “the viewpoint

⁴⁰ McGarr, EIC, para 8.21

photography was shot from the existing ground level at the location of the deck – a lower height than the proposed deck is anticipated to be”.⁴¹

253. The Reply submissions outline Mr Jones’ view that, in terms of the existing view, “only a small proportion the eastern façade will be visible from this viewpoint”, with existing buildings (109-111 Valley Road) and vegetation acting as a buffer. He adds that “the portion that is visible contains a mix of elements with the roof containing folded elements and variation to provide interest and reduce dominance effects”. Mr Jones’s rating of potential visual amenity (including dominance) effects from this location is “low to moderate”.
254. Mr Kensington advises in his response statement that his view remains the same as expressed at the hearing on 6 April 2018, noting the adverse visual dominance effects that result from the combined height, scale, massing and materiality of the proposed built form. Ms Murphy also stated that her opinion is unchanged, in that she considers that the proposal results in adverse bulk and dominance effects on the residential amenity of the immediate (and wider) area “that in my opinion is unacceptable”. Mr Butler’s views in this regard were focussed on outcomes following a possible development of 109-111 Valley Road, and offered that “should commissioners be convinced that the proposed building envelope represents a realistic development scenario for 109 and 111 Valley Road, then I am of the view that any such future development would largely screen views of the development from these properties”.
255. In our view and having regard to our previous conclusions with respect to the future environment, it is appropriate for us to make a finding in respect of the environment as it presently exists. In this regard, we prefer the evidence of Ms Murphy and Mr Kensington, who have, properly, considered the proposal in this light, and we conclude that the applicant has understated the scale of this effect. In particular, it seems clear to us that the proposed eastern elevation fills the entirety of the ground-level viewpoint, and this effect is exacerbated by the dark and generally unrelenting form of the building, with the use of narrow windows and fixed louvres doing little in the way of providing relief from the overall building mass. While the viewpoint includes an outline indication of a compliant 13m high building, we also consider that this does not make proper allowances for the fact that the top 2m of this height control is reserved for those more nuanced projections (including “roof forms”) as expected through the HVC provisions. In this regard, the applicant has persisted, despite numerous questions on this point throughout the hearing, with adopting the 13m standard as a proxy for total elevation height. We consider this approach is to mis-interpret the clear approach and purpose of this standard.
256. This approach is repeated by the applicant in the depiction of a compliant development on 109-111 Valley Road for Viewpoint 9 (Attachment MJ22).⁴² Such a

⁴¹ Reply Submissions, para 6.10/Footnote 29

compliant development assumes a contiguous development across both 109-111 Valley Road, which we were advised is consistent with the relevant zone standards which would not require any yard or height to boundary setbacks between these properties. On the basis of such a development, and the screening effect that would arise when viewed from 107 Valley Road, the reply submissions record Mr Jones' view that the resulting visual effects for 107/107A Valley Road "will be very low".

257. We understand the basis for that approach and resulting opinion but have some misgivings as to the veracity of that conclusion when the view has (a) not been taken from the more elevated position of the deck at 107 Valley Road, and (b) has not properly, in our opinion, represented the manner in which the HVC is to be utilised. In general terms, we share to some extent Ms Murphy's concerns that there is a great deal of uncertainty as to what could or would be constructed on the site at 109-111 Valley Road, and when it would be developed. Mr Kensington comments, however, that in his view the future development of these sites that maximises the complying buildable envelopes "is not overly fanciful". In this regard, he advises that such a development:

*"would effectively mitigate the adverse visual dominance effects of the proposal discussed above. I however acknowledge that there is no certainty around when such a scenario might occur"*⁴³.

258. Notwithstanding our concerns as to the somewhat bald depiction of a "compliant development", and the view location shown, we agree that such a development would largely screen the eastern elevation from views from 107-107A Valley Road. However, for the reasons set out above, we consider that such a development is (a) not presently proposed or consented, and (b) not a development that is "permitted" by the AUP. We further observe that any development of this property is further affected by the uncertainties arising from the present proposal and any future development response by the owners of these sites is, as Ms Murphy put it, speculative. We have, however, recorded the concerns of the owners of 109-111 as to the effects that the proposal, in its present form, would have on the potential amenity outcomes for such a development.
259. We conclude that adverse effects on 107-107 Valley Road will be of more than minor consequence.

105 Valley Road

260. The property at 105 Valley Road will be separated from the subject site by the intervening sites of 109-111 and 107-107A Valley Road, a distance of approximately 43m. Effects on this property were not specifically addressed in Mr Lala's evidence. As noted previously, evidence was presented by the owners of this property, Mr

⁴² Mr Jones' reply statement corrected the assumption of a 1m side yard as defined in MJ22, which should instead reflect the 3m standard - although we agree that this factor would not affect the scale of the upper part of the compliant envelope as depicted.

⁴³ Mr Kensington, memo in response to 8 May 2018 Direction, point 5.

Dexter and Ms Modrow. They expressed concerns at the dominance effects associated with the height of the proposed development, and the potential loss of sunlight into their property at key times. They provided photographs of the subject site, although as noted by Mr Minhinnick in his reply submissions, these were taken prior to the construction works at 107/107A Valley Road.⁴⁴

261. We understand from the reply submissions that Mr Jones was not able to visit the property at 105 Valley Road, although we are unclear as to the reasons for that. The additional visual simulations therefore rely on the photographs taken from the eastern boundary of 107 Valley Road, and between the houses at 107-107A Valley Road as Viewpoint 10 (although no photo-simulation of the building was provided in this viewpoint). The submissions outline Mr Jones' opinion that the aforementioned houses and existing vegetation within 105 Valley Road will significantly restrict views towards the proposal, and that potential visual amenity effects will be low. These would be further reduced (to "very low") on the basis of a "complying development" at 109-111 Valley Road.
262. Mr Butler was afforded access to 105 Valley Road and included internal and external photographs of views from this property towards the subject site. These photographs further illustrated the screening effect of the buildings at 107-107A Valley Road, and Mr Butler noted that in his view "this will reduce the extent of building length and height that are observable from this viewpoint, helping to mitigate the effects of building bulk and dominance".⁴⁵
263. We agree with the criticism expressed by Mr Dexter as to the use by Mr Jones of the screening effect of temporary scaffolding structures to limit the impact of views of the development on the westward views from 105 Valley Road. A better appreciation of the views towards the site has been provided by Mr Butler, in particular that from the living room of 105 Valley Road where the true building form of 107A Valley Road is visible, and the scaffolding has greater transparency from this position. Having regard to the modelled outline of the building within Viewpoint 10, it seems reasonably apparent that the proposed building will become a significant component of the view from this location. While the position of this viewpoint, and the presence of the 107-107A Valley Road buildings helps to mitigate the effects of building bulk and dominance, as noted by Mr Butler, we consider that this will result in an adverse effect of at least minor scale as indicated by Ms Murphy and Mr Kensington.

Views from Carrick Place

264. The applicant's photo-simulations identified that the proposed building would be of significant scale when viewed from various locations within Carrick Place (Viewpoints 6-8). These photo simulations were presented in the applicant's evidence in chief with a shaded outline that sought to incorporate the screening effect of a potential

⁴⁴ This was countered by Ms Modrow in her further evidence, para 6.12, but we think Mr Minhinnick is correct in this regard, at least in respect of the building at 107 Valley Road.

⁴⁵ Butler, 22 May 2018 Memorandum, p3

development at 9-15 Carrick Place (hereafter referred to as “9 Carrick Place”), and one which we were advised depicted an “L”-shaped building, which oriented its allowable mass (based on building coverage standards) along both frontages of Carrick Place.

265. As was the approach in terms of describing views within Valley Road, it appeared that a significant level of reliance was placed by the applicant’s witnesses on what was assumed to be a likely future development of 9 Carrick Place, and accordingly little analysis was provided with respect to the effects of visual dominance on residential units presently located within this site, or on the loss of views or outlook and associated amenity values for properties on the opposite side of Carrick Place. Certainly, the block outline adopted to illustrate the “development potential” for 9 Carrick Place represented a maximum form of development, based on the standards for the THAB zone.
266. In response to questions, Mr Jones acknowledged that the assumed height was taken from the northern road boundary, and not from existing ground level which is approximately 2m lower from that position. Mr Jones’ supplementary evidence advised that the height and yard setbacks applying to this property had since been corrected. No amended visual simulation was provided in this regard, but Mr Jones advised that these “technical amendments” had been made to the applicant’s 3D model and had been made available to the submitters on request.
267. In this regard, no allowance was provided in the photo-simulation outline for an optimal form of design for the site at 9 Carrick Place, or one that might better address its relationship and interface to the adjacent Single House Zone properties on the opposite side of Carrick Place (that are subject to the Special Character Overlay). However, in addition to our general misgivings previously expressed about reliance on theoretical and non-permitted developments, we had some concerns as to the lack of information with respect to the likely potential for any development of 9 Carrick Place that would displace the ten retirement housing units that presently exist there. In this regard, Mr Minhinnick advised in his reply submissions that:
- “These units are part of Auckland Council’s Own-your-Own-Unit scheme to provide affordable housing for older people. Through this scheme, persons over 65 have access to affordable housing but with Auckland Council retaining long-term control of the underlying land and its future re-development.”⁴⁶*
268. Mr Minhinnick further submitted that, because of the THAB zoning of the site, and its ownership by the Council, that is reasonable to anticipate its redevelopment for more intensive use, and indeed, it is “ripe for redevelopment”.⁴⁷
269. These submissions ran somewhat counter to the evidence provided by Ms Kellard, on behalf of her father, a resident at 9 Carrick Place, who advised that the subject

⁴⁶ Reply submissions, para 3.24

⁴⁷ Ibid, para 3.26

land had been donated to the former Mt Eden Borough Council for the present development, and that the units were owned 48% by the residents, and 52% by the Council, and that these were on a 100-year lease. Mr Lange also advised in his further evidence that “the threatened development of the site is not permitted for another 70 years (99 years from 1990) under the terms of the Lorraine Bertille de Berry Trust”.

270. Neither Ms Kellard, Mr Lange or Mr Minhinnick were able to provide us with any further particulars in regard to these apparent ownership rights, although Mr Minhinnick did suggest that the Council could override such restrictions through use of the Public Works Act 1981, if required. We make no comment on the *vires* or otherwise of the use of the Public Works Act in this regard. However, we note that, in addition to the section 104(2) limitations to the consideration of a theoretical development as previously identified, the current interests and restrictions for this site would appear at the very least to direct that a conservative approach is adopted in regard to the applicant’s assumptions as to its theoretical development envelope suggested for this site.
271. While potential redevelopment of the Carrick Place site at some stage in the future cannot be ruled out, we conclude that it would be highly speculative, and indeed fanciful at this time, to consider the effects of the proposed development against anything other than the existing environment in its present context. Unfortunately, and because the landscape and urban design witnesses for both the applicant and the Council have tended to adopt an unquestioning reliance on the theoretical building envelope for this site, we have not placed a significant degree of weight upon their assessments when considering potential effects on occupiers of 9 Carrick Place, or those residents elsewhere in Carrick Place.
272. Perhaps as a result of the aforementioned assumptions, no visual impressions were provided from the units within 9 Carrick Place, including from those units near the northern boundary of the subject site. Viewpoint 8 provides the closest indication of the likely inter-relationship between these properties, but due to the position of this viewpoint, an understanding of the development in this regard requires consideration against the plans and elevations of the proposal. The key buildings to consider in this respect are Building A, which fronts Dominion Road and faces the western boundary of the 9 Carrick Place properties, and Buildings C and D which face the southern boundary.
273. In terms of physical parameters and based on the Revision J plans provided as part of the hearing agenda, Building A exceeds the 13m maximum total height standard on its eastern elevation by approximately 5m, and is approximately 17.5m from its eastern boundary. Building C exceeds the 13m height standard by 7.5m, and is approximately 10.5m from its northern boundary. The height infringement associated with Building D is less easily defined, but of a lower order than Buildings A and C, and in part complies with the THAB standard of 16m for a short distance. This end of

the building also infringes the height to boundary standard to its northern boundary by between 3.8m and 1.4m. It is between 3m and 4.5m from the boundary.

274. Mr Lala described in his evidence the manner in which the proposal incorporates mitigation measures to address effects on 9 Carrick Place. The key points of his analysis are as follows:

- (a) Building C is set back from the adjoining residential properties by approximately 12m⁴⁸, with landscaping incorporated in this separation area. He notes that while Building C is in the vicinity of the private open spaces of units within 9 Carrick Place, the separation distance and orientation of the proposed units (east-west) will ensure adverse effects are “appropriately mitigated”.
- (b) Privacy screens will be employed on the northern face of Building C, and upper levels will be set back further from the northern boundary by approximately 5m. We were, however, unable to discern from Drawing 3.4 Rev J any such setback in this regard (other than the set back of the upper roof structure by approximately 14m), nor did the aluminium screens appear to be deployed within the northern elevation.
- (c) Building D is located closer to the northern boundary than Building C, but still separated from 9 Carrick Place by approximately 6.2m.⁴⁹ This area will incorporate a walkway and landscaping which will improve the appearance of the site when viewed from 9 Carrick Place, with Building D overlooking the garage and rear spaces of the residential units of 9 Carrick Place. An additional set back at Level 4, in combination with screening features and balconies oriented to the north-west, will “ensure that any adverse dominance, privacy and visual amenity effects are mitigated or avoided”. As with Building C, however, we do not discern the use of privacy screens on the northern elevation of this building. Nevertheless, the position of this building to the south-east of the 9 Carrick Place residents, and away from their areas of private open space, does assist to mitigate potential adverse dominance and privacy effects to this property.

275. Mr Lala did not describe for us in similar terms the potential effects of Building A in respect of 9 Carrick Place. Building A is five storeys in height, with east/north-east facing decks on Levels 2 to 5 (plan 3.3 Rev J), and towards 9 Carrick Place, and the private open space areas associated with those units to the southern end of the site. The primary mitigation in this respect would appear to be the separation of the building from the eastern boundary (17.5m), and the provision of two specimen Jacaranda trees adjacent to that boundary as part of the landscape plan (Isthmus, 8.6.17).

⁴⁸ As noted above, this separation yard is closer to 10.5m when measured from plan 2.2 Rev J.

⁴⁹ As noted above, this separation yard is closer to 3-4.5m when measured from plan 2.2 Rev J

276. It is apparent from Viewpoint 8 in particular and by the aforementioned reference to the plans and elevations, that the scale of the proposed building, and that part of the Building A to the west and Building C to the south, will result in significant levels of dominance over the southern units within the 9 Carrick Place property. This was addressed in Ms Verstraeten's memorandum which, having regard to permitted height levels, concludes that:

"...where the development goes above four storeys I agree it will create dominance effects. As mentioned above, I do not consider the setbacks and architectural articulation to mitigate these effects"⁵⁰.

277. While Mr Butler placed a high degree of reliance on the THAB standards for the consideration of effects on 9 Carrick Place, he did note that a reduction in the scale of Building A, as related to his concerns with respect to Dominion Road, "would likely have positive implications for further reducing building bulk and scale when viewed from Carrick Place". While we accept that conclusion, we consider that Ms Murphy's assessment presents the situation in broader, and more realistic, terms in respect to the effects of the development on 9 Carrick Place. We set out her conclusions in this respect in full below:⁵¹

Notwithstanding the orientation, the bulk and scale of the proposal will still be visible and highly noticeable from these sites, especially from the outdoor living areas of the dwellings at 9 Carrick Place. The adverse visual amenity effects on these sites are high due to the additional scale from the height of these buildings, this visually dominates the area and imposes on these residential dwellings. While the buildings are separated into four blocks, the spaces between the blocks are relatively narrow (approximately 11-12m), this is insufficient to mitigate the bulk and scale effects as from many perspectives the buildings will be read as one large bulky building. Although the proposal offers various setbacks, design techniques and landscaping, I consider that these techniques do not mitigate the effects of the excessive height and corresponding bulk proposed which results in a development that towers over these adjacent residential dwellings. The additional height of the buildings when considered together results in an unacceptable level of residential amenity for the dwellings adjacent to the proposal.

278. We consider that, through the simple fact of additional distance and relative height, that effects on properties in more elevated positions to the north of the site, as depicted through Viewpoints 6 and 7, will be less than those experienced by occupants of 9 Carrick Place. However, we conclude that a development that complied with, or was more aligned with the HVC that applies to the subject site, would be less dominance over those properties to the southwest. For the reasons set out previously, we do not consider that these effects can be discounted on the basis of a theoretical development of 9 Carrick Place as depicted in those viewpoints.

⁵⁰ Memorandum from Ainsley Verstraeten, para 4.4.

⁵¹ S42A Report, p22 (Agenda p26)

21B Carrick Place

279. The property at 21B Carrick Place is located to the immediate north of 107-107A Valley Road (and to the east of 109 Valley Road) but with frontage (and access) to Carrick Place. The western boundary of this property will be approximately 16m from the eastern elevation and northern end of Building D.
280. Mr Lala noted that this site is elevated above Valley Road and overlooks the parking and service area of the commercial activity at 109 Valley Road. He stated that:
- “The east elevation of Building D does not include any windows from living spaces that would overlook 21 Carrick Place and therefore privacy effects will be avoided. In terms of dominance and visual effects, the materiality of the façade (which will include a variety of textured pre-cast concrete and colour steel louvres) will ensure any potential adverse effects will be less than minor”⁵².*
281. As noted earlier, we heard from Mr Bannan and Mr Peters, who are the co-owners of 21B Carrick Place. They set out their concerns as to the effects of the proposal on their own property, as well as on the many retirees at 9 Carrick Place. Mr Peters expressed a concern as to the visually heavy and dominant appearance of the proposed development, and that the initial visual simulations had been taken from a distance, and from a more elevated position.
282. In response to questions from the Panel regarding the location of the photo-simulations that had been provided to date, and the lack of such from private property viewpoints, the applicant’s reply included a new photo from the front yard of 21B Carrick Place (Viewpoint 11) looking west towards the site.
283. The applicant’s reply submissions included the findings of Mr Jones with respect to this new viewpoint, noting that Mr Jones considered the potential visual amenity effects (including dominance) to be “low to moderate”. This was for the reasons that (in summary):
- (a) The house (on 21 Carrick Place), existing vegetation and fences will restrict (and frame) views to the project;
 - (b) The eastern facade of Building D is “broken up through a mix of vertical and horizontal elements and varying materials, which break up the mass and provide interest and articulation, emphasise the shadow lines and add richness to building form and appearance, thereby avoiding a monolithic appearance”.
 - (c) The upper portion has folded elements that fold away from the properties to the east, and variation in the roof form provides interest to the skyline.

⁵² Lala, EIC, para 5.94,pg 35

- (d) From the southern (backyard) part of the property, views are broken up by a range of intervening properties, neighbouring buildings and existing vegetation, such that the proposal will be seen as a secondary element.
284. This viewpoint was developed into a photo-simulation and referred to in Mr Jones' Reply Statement provided for the hearing and which depicted the eastern elevation of Building D. Mr Jones reiterated his view set out within his evidence-in-chief, that potential visual effects from 21B Carrick Place will be low-to-moderate in the short-term, and low in the long-term where 109 Valley Road is developed to its potential under the AUP. We asked Mr Jones to further elaborate on the features that he was referring to at (b) and (c) above. These were described as the horizontal window band (between the Coloursteel stand seam roof and the precast concrete panels below), the Coloursteel louvres over the vertical windows in the roof level (and associated shadow lines) and the vertical edging and horizontal banding of the concrete panels.
285. The reviews provided by Council officers pre-dated the receipt of Mr Jones' additional photo-simulations. As noted, Ms Murphy and Mr Kensington reaffirmed their conclusions with respect to visual amenity, privacy, dominance and shadowing effects in relation to adjacent properties, including 21B Carrick Place. In this regard, we further observe that the dark colour of the horizontal window detail and the large roof form, and relatively simple form of the pre-cast concrete panels has a somewhat monolithic and unrelieved appearance when viewed from 21B Carrick Place, which is exacerbated by those parts of the building that exceed the HVC height standard.

Shading Effects

286. Our analysis of shadowing effects has been complicated by the applicant's shading diagrams which have sought to illustrate the shadowing from four scenarios, including the effects of "compliant" development on 109-111 Valley Road as well as from "maximum potential future development scheme". The assessments of those shading diagrams as between Mr Lala for the applicant, and Ms Murphy and Mr Butler for the Council, were the subject of further disagreement. For our consideration between the respective positions, we have relied on the updated diagrams provided in the applicant's reply statement⁵³ which were prepared in order to incorporate the development that is now underway at 107-107A Valley Road.
287. Because of our concern as to the relevance and legal applicability of "maximum potential future development scheme", we have considered shading effects primarily in respect of the shadowing effects between a compliant scheme (red line) and from the proposed scheme (orange line). While we were advised by Mr Butler, and was reiterated by Mr Minhinnick in his reply, that the shading diagrams were prepared in accordance with best practice, we consider that further detail as to the assumptions

⁵³ Appendix F - Updated Sun Study

behind the “compliant” envelopes would have been a beneficial component of such diagrams.

288. In addition, we note that the shadowing from a compliant scheme may not have provided appropriately for the HVC, and the outline development shown at 109-111 Valley Road may not have properly accommodated HVC considerations. Mr Lala advised us in terms that the shadow modelling was basis on “a scheme at 13m in height”. Plainly then, the applicant’s diagrams did not accommodate what we have earlier termed the more nuanced requirements of the HVC standard, with building components above the 11m occupiable height standard being for “roof form, roof terraces, plant and other mechanical and electrical equipment”.⁵⁴
289. This problem is illustrated by an analysis of shading effects against the adjacent property at 109-111 Valley Road. As previously noted, Mr Lala has assessed the shading effects to a possible outdoor roof space at 109 Valley Road as being comprised of a small sliver at 2pm, but extending to a noticeable area between 3-4pm. This finding is not observable, however, from reference to the updated shading diagrams. Having regard to the cross-section diagram prepared by Mr McGarr,⁵⁵ it is apparent that if the proposed development was designed in accordance with the HVC, then the buildings would sit alongside each other at a roughly equivalent height (depending on the manner in which a 2m-high “roof form” was deployed for either site). Nevertheless, Mr Lala has discounted the effects on 109 Valley Road because the additional shadowing “occurs towards the end of the day in winter and sunlight is available for the rest of the day”.
290. Mr McGarr responded in his evidence-in-chief as follows:

“The additional shading analysis prepared on behalf of the applicant by Isthmus illustrates that the proposal will result in shading across the potential location of the roof terraces up to three hours earlier than a building which otherwise complies with the permitted height control, in the worst case (afternoon in mid-winter). While this is not substantial, when combined with the form and scale of the building which exceeds the permitted height, the combined effect results in a situation which is a poor quality outcome to the reasonably anticipated amenity that a development at 109 Valley Road can expect.”⁵⁶

291. We agree with Mr McGarr’s comments in this regard, and in our view, Mr Lala’s discounting of effects in this regard is inappropriate in that it seeks to define when an affected neighbour may seek to utilise its outdoor spaces, and understates the point we have made earlier in respect of the amenity benefit of sunlight at those times of the year when it is most highly valued. In combination with the effects in relation to dominance and visual amenity effects, we consider that the proposal will have more

⁵⁴ AUP - H11.6.1(3)

⁵⁵ McGarr EIC, Figure 3

⁵⁶ Ibid, para. 8.17

than minor effects on the amenity that can reasonably be expected for the sites at 109-111 Valley Road.

292. Ms Murphy comments in the s42A report that she considers that the proposal will generate unacceptable shading effects at 9, 16, 18 and 21 Carrick Place, and 103, 105, 107-107A Valley Road. In this regard, she advises that “the additional height of the buildings results in shading effects greater than what is envisaged for the area”, and that the applicant has under-estimated the shading effects on the aforementioned properties.
293. Mr Lala disagreed with Murphy’s assessment of shadowing effects. As a preliminary comment to the shadowing analysis in his evidence-in-chief, he observed that, in his view “if more shading protection was meant to be provided to properties that adjoin a centre ... then additional standards or further interface controls⁵⁷ would apply”. However, we consider that a building height control is in itself the primary method for managing shadowing effects, and determines the expectations that neighbouring property owners would have in respect of sunlight access. We further note in this regard that the purpose of the height standard under H11.6.1 is to *inter alia* “manage the effects of building height”.
294. Mr Lala outlines the key basis for his assessment of winter shading effects for properties in Valley Road. In terms of 21A-C Carrick Place and 107-107A Valley Road, he notes that by 4pm, these properties are in shadow from either complying, existing or plan-enabled development”. He further states that:

The s42A report identifies that 21 Carrick Place and 103, 105, 107 and 107A (Valley Road) will be affected from shade from 3pm onwards and this is unacceptable and at 4pm 103 Valley Road will be completely shaded from the proposed development. For clarification, at 3pm 103 and 105 Valley Road will not be shaded by the proposed development at all. At 4pm, 103 Valley Road will not be completely shaded by the proposed development. The effects on the other properties are outlined above and are considered to be minor.

295. Mr Lala’s opinions in respect of 107-107A Valley Road generally align with the updated Sun Studies for the 3pm period, although we would suggest that the “compliant scheme” line may not be completely accurate due to the assumptions made with respect to the 13m ‘compliant height’ standard that has been adopted. For 105 Valley Road, we note that the orange shadow line is subservient to the existing shadows cast by the dwellings at 107-107A Valley Road. The applicant’s reply statement notes that by 4pm, the only area of additional shadowing occurs “on the roof of 21 Carrick Place, the roof of 105 Valley Road and part of the front yard of 103 Valley Road and adjoining footpath/road”.
296. We agree with that conclusion, although we accept Ms Modrow’s and Mr Dexter’s commentary in this regard that (a) there will be some degree of transitional effect

⁵⁷ i.e. beyond the 2m + 45-degree recession plane referred to in Mr Lala’s EIC, para 5.107.

(between 3pm and 4pm); that shading effects on the roof will affect light to their solar light and (c) that the diagrams have not correctly identified all the parts of their house (notwithstanding that these are clearly identified in the aerial photography record). We consider that while their criticisms of the applicants shading diagram in this respect are valid, but overall, having regard to the extent of shading that arises from the two storey dwellings at 107-107A Valley Road, we conclude that effects on this property will be minor. We also agree with the applicant's analysis that effects on 103 Valley Road will be minor.

297. In terms of Carrick Place properties, the s42A report concludes that from 5pm in summer the shading effects of the project on 9, 16, 18 and 21 Carrick Place will be unacceptable. The reply statement, by reference to Mr Lala's advice, advises that overall "the majority of additional shading from the Project during summer will occur over small areas of nearby residential sites or on roof areas after 5pm. Prior to this, the Project will not create any additional shading on nearby residential properties".
298. The updated Sun Studies were reviewed by Ms Murphy and Mr Butler, and their comments are summarised below:
- (a) Ms Murphy comments that shading on roof forms will still be experienced within internal living areas of dwellings, and that shading will be experienced by persons at 12 and 14 Carrick Place from 7pm, and given the location of affected glazing for these properties, that these effects will be unacceptable (in addition to those other properties noted of concern in Carrick Place and Valley Road).
 - (b) Mr Butler confirms that his opinion as to shadowing effects has not changed, i.e.

*"the development will result in some minor adverse shading effects in late afternoon throughout the year on properties at 105 and 107 Valley Road and 18 and 21 Carrick Place. I have arrived at this conclusion having taken into account the Local Centre zoning of the adjoining site at 109-111 Valley Road, the level of shading cast by a compliant scheme and the anticipated shading generated by a potential future development scenario on 109-111 Valley Road."*⁵⁸

299. For the reasons set out earlier, we consider that the adoption of future "compliant" building forms within intervening sites (i.e. 9-15 Carrick Place and 109 and 111 Valley Road) exceeds what we consider to form the appropriate baseline for the comparison and assessment of effects, including shadowing effects. We recognise that shadowing effects for these properties in Carrick Place would be limited to late afternoon/evening periods in summer. From the evidence of submitters in this regard we understand that this would represent an adverse effect on the amenity values that they presently enjoy during summer periods.

⁵⁸ Butler, Memo in response to 8 May 2018 Direction, para 3, pg 4.

300. Overall, we accept the general premise of the applicant's evidence that shadowing effects will be limited to certain times of the day and year – for Valley Road properties this will be in the afternoon periods during winter, for Carrick Place this will be during summer and late afternoon. However, we are not prepared to discount entirely those effects on that basis, when it is apparent from the evidence received from submitters that access to sunlight during those periods represents a not-insignificant aspect of the amenity enjoyed at their respective properties. It is our conclusion that such effects are inconsistent with the outcomes that submitters could reasonably expect by reference to the standards of the AUP.

Traffic generation, parking and loading and the effects on the wider transport network.

301. The submissions raised concerns about the potential traffic effects of the proposal particularly the ability of the wider transport network to safely accommodate the additional traffic generation and the lack of parking and servicing provided for residents and the implications it would have for available on-street in the surrounding residential area. The Council's transport specialist was also concerned that the development failed to provide the required number of bike spaces.
302. In relation to the ability of the local transport network to accommodate the traffic generated by the new development, the evidence from the two transport specialists advised that the network would be able to accommodate the level of trip generation. The level of trips would be similar to that generated by the existing development.
303. In relation to the level of car parking provided on site, both transport experts highlighted that the AUP required no minimum or maximum rate of parking to be provided for the residential or commercial activities within the development. Both experts agreed that, as Dominion Road is a major public transport route, the provision of 112 basement parking spaces would be sufficient to accommodate the likely demands associated with the development. In addition, there are four existing parking spaces with access to Carrick Place. Mr Church recommended three of the four spaces be made available to the retail activities on site, with the fourth space identified as a loading space to serve the entire development, particularly the needs of the residential apartments. Both experts advised that the traffic, parking and vehicle access would be adequately managed and was overall acceptable.
304. Mr Church, the Council's transport consultant recommended that each residential unit should be provided with sufficient space to securely store a bicycle (i.e. 105 resident cycle racks) as well as the provision of seven visitor cycle spaces. Mr McKenzie disagreed. He considered that in the same manner that the supply of car parking had been adjusted to take account of the site's access to excellent public transport, that the provision for cycle parking could be considered in a similar light. In his view, the provision of the full AUP cycle parking provision was an inappropriate use of the physical space and development resource. He recommended a provision at 75% of the AUP standard. Mr Church disagreed and reminded Commissioners that Dominion Road was both an important public transport and cycle route.

305. Commissioners note that while the AUP does not require the provision of onsite parking as part of this development it does require the provision of bike parking. As this is a new development, we see no reason why the full bike parking requirement cannot be provided. We therefore favour the advice of Mr Church in this matter.
306. Accordingly, Commissioners, having received no expert advice to the contrary, agree with the expert evidence of Mr McKenzie and Mr Church, we find that subject to the imposition of conditions, the transport effects of the proposal will be no more than minor.

Construction noise and vibration

307. A number of submitters raised concerns about the likely construction noise (particularly rock breaking and the effect of vibration on building structures) and operation (particularly the cumulative ventilation/plant noise from the development).
308. Both Ms Wilkening and Mr Runcie agreed that the noise and vibration from the construction activities could generally comply with the relevant noise and vibration criteria of the AUP. However, rock breaking and blasting was predicted to exceed the performance criteria where these activities occurred in close proximity to neighbouring buildings. The proposed rock breaking activities were predicted to exceed the cosmetic building damage criteria and the noise criteria at 15 Carrick Place, 109 and 111 Valley Road and 198 Dominion Road. These issues were of significant concern to many of the submitters who live in the surrounding residential area, particularly the effects on the older residents at 9 Carrick Place. The concern related to both the exceedance with the AUP standards and criteria and the duration of work.
309. Both acoustic specialists identified the preparation of the CNVMP and its implementation through the construction phase as the primary mitigation and management measure. The CNVMP is seen as a living document that will be expanded and updated as the project progresses and work conditions become clearer.
310. Regarding operational noise on site such as noise emission arising from onsite vehicle movements and mechanical plant, there was agreement between the acoustic specialists for the applicant and the Council that the predicted vehicle movements and the mechanical plant could comply with the relevant noise limits. The acoustic assessments also concluded that a suitable indoor acoustic environment could be achieved with the appropriate acoustic design, construction and maintenance of the façade.
311. In relation to construction noise and vibration effects, we agree with the evidence of Ms Wilkening and find that, subject to the imposition of conditions, these will be minor.

Statutory Assessment

Section 104 and 104C considerations

312. In light of the above analysis, which included consideration of environmental effects and planning policy matters, we have considered the matters in s.104 of the RMA subject to Part 2 of the RMA.
313. The application is for restricted discretionary activity resource consent, as such under s104C only those matters over which the Council has reserved its control or restricted its discretion have been considered. A summary of our findings is included below in the reasons for our decision.

Overall Conclusions

314. Having considered the specialist reports and evidence of the applicant, the evidence of the submitters and the specialist peer reviews undertaken on behalf of the Council we have concluded that consent to the application should be refused. While we agree that the applicant's experts have demonstrated that many of the adverse effects arising from the development proposal such as traffic, parking, noise, vibration, stormwater and flooding can be appropriately mitigated, we agree with the Council's reporting planner that the proposed intensity of the activity overall will not be compatible with the maintenance and enhancement of amenity values for the properties in the immediate vicinity, particularly in relation to the adjoining residential amenity and character to the east.
315. In our view, the proposal was not without merit, as we can see the positive benefits that residential intensification would offer to this part of the inner city. As set out in our preceding discussion, it was the scale, bulk and intensity of the proposed development within this part of the Business Local Centre zone that we find is not in keeping with the planning outcomes identified in the AUP for the surrounding environment, in particular the Special Character Values of the Eden Valley Area and the reduced height limit imposed by the HVC.
316. It was clear to us from the material presented that the design of the development had benefited from its multiple reviews by the AUDP and this was evident particularly in the detailing and materiality of the Dominion Road façade. However, these architectural and design elements do not sufficiently mitigate the effects to an acceptable level. As set out above, we consider the demolition of the Universal Buildings would have a significant adverse effect on the special character of this business area due to the group coherence with the adjoining two storey character defining buildings that would be lost, as would the contribution that the building makes in its own right. There was a lack of evidence provided to support the removal of the building.
317. While the standard provisions of the Business Local Centre zone provide for buildings up to 18m in height, the application of the HVC, lowering the height in this

particular area to 13m, is recognition of the area's character and amenity as well as providing a transition in building scale to lower density zone to the east. We have concluded that the exceedance of the height coupled with the bulk and scale of the buildings will result in unacceptable visual, bulk, shading and dominance effects on the neighbourhood character and immediate area. In our view, the applicant has 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. We agree with the Council's planner that there is no certainty that these developments will occur or the form that they may take.

318. With regard to the effects of the proposal and the relevant statutory documents, the proposal is contrary to certain key objectives and policies of the AUP and will not achieve the sustainable management purpose of the RMA. We consider that the applicant's experts have placed too high a reliance on the higher level RPS urban growth and form objectives and policies of the AUP and the non-statutory documents and forums such as the Auckland Plan and the AUDP in the development of the proposal rather than the AUP planning provisions applied to the site.
319. While many aspects of the proposed development are consistent with many of the AUP general business objectives and policies that seek a strong network of centres and the creation of attractive environments, that will attract ongoing investment and provide employment, housing and goods and services, the AUP also seeks developments of a form, scale and design quality that reinforce the centres and create a sense of place (H11.2(3)). There is also a clear direction in the AUP that "the scale and intensity of development within local centres is in keeping with the planning outcomes identified in this Plan for the surrounding environment" (H11.2(6)). In the case of this site, we have concluded that this scale and intensity is dictated by the Special Character Area Overlays both Business: Eden Valley and the Residential (Isthmus A) and the application of the HVC which reduces the standard Local Centre height in this part of the zone from 18m to 13m.

Decisions

Late Submissions

1. Pursuant to sections 37 and 37A of the RMA, the Commissioners waived the time limit for the receipt of submissions to accept the late submission(s) of Krishantha Jayaratne (101 Valley Road, Mt Eden) and Shabir Ahmad (269 Dominion Road, Mt Eden) for the following reasons:
 - the submissions raised no new matters of interest to those already raised by other submitters; and
 - extending the time limit will not result in any delay in considering the application.

Application

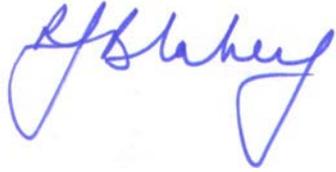
2. In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104 and 104C and Part 2 of the RMA, we determine that resource consent to construct a new multi-level, mixed use development, that will result in 102 residential dwellings and 9 retail units, at 198-202, 214-222 Dominion Road and 113-117 Valley Road, Mt Eden including the demolition of all existing buildings on site, associated earthworks, parking, loading is **REFUSED** for the reasons set out below.

Reasons for the decision

- a. In terms of section 104(1)(a) of the RMA and having regard to any actual and potential effects on the environment of allowing the activity it has been determined that overall, the adverse effects of the proposal to construct a new multi-level mixed use development would be unacceptable. The excess height and associated bulk and form of the proposal will result in adverse visual, shading and dominance effects on the character and amenity of the surrounding neighbourhood, in particular the Business: Eden Valley Special Character overlay and the surrounding Special Character Overlay – Residential: Isthmus A, (i.e. the residential zone to the east of the site).
- b. In terms of section 104(1)(b) of the RMA, the proposal is considered inconsistent with some of the key objectives and policies of the AUP, particularly those related to:
 - the scale and intensity of development within the local centres being in keeping with planned outcomes identified in the AUP for the surrounding environment (per H11.2(7), H11.3(3)(a) and H11.3(14));
 - managing the height and bulk of development to minimise visual dominance effects to adjoining sites and developments (H6.3(5));
 - the demolition of character – supporting buildings in the Special Character Areas Overlay - Business not eroding the identified special character and disrupting the cohesiveness of the streetscape and wider character area (D18.3(10)).
- c. The scale and intensity of the proposed activity is not considered to meet the relevant provisions of Part 2 of the RMA as the proposal does not promote the sustainable management of natural and physical resources of the surrounding environment and does not adequately allow for the reasonable maintenance and enhancement of amenity values. While the proposed mixed use development will provide many positive benefits including additional housing opportunities on a major transport route and new retail opportunities in the Eden Valley local business centre, the adverse effects of the proposal, particularly the bulk, dominance and shading and the loss of the Universal Buildings will mean that any

social and economic wellbeing benefits to the community that could arise from the proposal would be outweighed by its dis-benefits.

- d. In terms of section 104(1)(c) of the RMA, there are no other matters considered relevant and reasonably necessary to determine the application.

		
Janine A. Bell (Chair) Independent Hearing Commissioner	Cherie Lane Independent Hearing Commissioner	Richard Blakey Independent Hearing Commissioner

10 August 2018