

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

Proposal: To construct and operate a part 10 / part 11 level commercial building at 538 Karangahape Road with ground level retail, and food and beverage activities, upper levels used for office / commercial space, and a two-level basement carpark accommodating 48 vehicles along with end of trip facilities, servicing, and plant areas. Demolition of remaining structures on site and a large scale cut earthworks required to implement the proposal.

This resource consent is **REFUSED**. The reasons are set out below:

Application numbers:	BUN60427502 (LUC60427504, DIS60427503, WAT60427505)
Site address:	538 Karangahape Road, City Centre
Applicant:	James Kirkpatrick Group Limited
Hearing commenced:	Thursday 28 November, 9.30am
Hearing panel:	Janine Bell (Chairperson) Bridget Gilbert Heike Lutz
Appearances:	<p><u>For the Applicant:</u> Douglas Allan, Legal James Kirkpatrick, Corporate Jeffrey Fearon, Architectural Matthew Jones, Landscape Adam Wild, Historic Heritage Ian Munro, Urban Design Mark Benjamin, Planning</p> <p><u>On-Call:</u> Alan England, Visual Simulations Craig Fitzgerald, Noise and Vibration David Ouwejan, Geotechnical Mitchell Smith, Infrastructure Kevin Peddie, Wind Engineering Thomas Guernier, Transport</p> <p><u>For the Waitematā Local Board:</u> Alexandra Bonham, Board Member Allan Matson, Board Member</p> <p><u>For the Submitters:</u> Christopher Dempsey Jett Gannaway</p>

	<p>UrbanismPlus Ltd represented by Kobus Mentz, Corporate</p> <p>Geraldine Gannaway</p> <p>Hopetoun Residences Body Corporate Committee represented by Geraldine Gannaway</p> <p>Samson Corporation Limited represented by:</p> <ul style="list-style-type: none"> - Jeremy Brabant, Legal - Rebecca Skidmore, Urban Design and Landscape - Graeme Burgess, Heritage Architecture - Jeff Brown, Planning <p><u>For Council:</u></p> <p>Karen Long, Team Leader Bradley Peens, Reporting Officer Elisabeth Laird, Plans & Places Gabrielle Howdle, Landscape Architect Chris Butler, Urban Designer William Howse, Heritage Specialist</p> <p><u>On-Call:</u></p> <p>Andrew Temperley, Traffic Engineer Karen Jodinata, Development Engineer Bin Qiu, Noise / Vibration Specialist Pat Shorten & Richard Simons, Groundwater Specialists Fiona Rudsit, Contamination Jennifer Jack, Waste Solutions Mica Plowman, Archaeology James Shao, Watercare Yasenko Krpo, Healthy Waters Neil Stone & Vignesh Divakar, Auckland Transport</p> <p><u>Senior Hearings Advisor:</u> Patrice Baillargeon</p>
Hearing adjourned	Friday 29 November 2024
Commissioners' site visit	21 November 2024
Hearing Closed:	19 December 2024

Introduction

1. This decision is made on behalf of the Auckland Council ("**the Council**") by Independent Hearing Commissioners Janine Bell (Chairperson), Bridget Gilbert and Heike Lutz ("**the Panel**") appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("**the RMA**").

2. This decision contains the findings from our deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
3. The application was publicly notified on 8 May 2023. Thirty-six submissions were received. Of the submissions received, 13 were in support, 22 in opposition and 1 neutral.

Background

4. In April 2021 a resource consent was approved that authorised the development of a 6-level building with a gross floor area of around 5,200 m² (Resource consent BUN60369382). The application involved the proposed alteration to the ground floor and basement of the existing mixed-use building and the construction of an additional three-levels of office on top of the existing building. The change in levels across the site from north to south resulted in an essentially three level development on the Karangahape Road frontage, with a setback fourth level, which became a sixth level as the site dropped down to the south (two basement levels). From Abbey Street the building was three levels.

Summary of proposal and activity status

Proposal

5. In December 2023, an application was lodged to construct and operate a part 10 / part 11 level commercial building at 538 Karangahape Road. The ground level spaces are to be utilised for retail, and food and beverage activities, with the upper levels used for office / commercial space, and a two-level basement carpark accommodating 48 vehicles along with end of trip facilities, servicing, and plant areas. Demolition of remaining structures on site and extensive earthworks to form the basement levels and foundations are required. The scale and massing of the proposal was influenced by the notification of Plan Change 78 (PC78).
6. In July 2024, the Application plans were amended to remove an intrusion onto the neighbouring property to the west (which had been proposed for wind management purposes), refine the interface with that property, and alter the elevational design and reduce the bulk and massing on the western side of the proposed building.

Reasons for Consent

7. The modified proposal requires resource consent for the following reasons:

Land use consents (s9) –LUC60427504

Auckland Unitary Plan (Operative in Part)

District land use consents

D17 Historic Heritage Overlay

- Demolition of the remaining structure on a non-contributing site within the Karangahape Historic Heritage Area (**HHA**) is a controlled activity under rule D17.4.3.(A27).
- Construct a new building on a non-contributing site within the Karangahape HHA is a restricted discretionary activity under rule D17.4.3.(A34).
- Signage on a non-contributing site within the Karangahape HHA not otherwise specified, is a restricted discretionary activity under rule D17.4.3.(A37).

E12 Land Disturbance - District

- To undertake general earthworks over an area of approximately 1,600m² with a total volume of approximately 9,500m³ within the Business – City Centre Zone and the Karangahape Road Historic Heritage Overlay, which are **restricted discretionary activities** under rules E12.4.1.(A10), and E12.4.2.(A30) and (A33).

E23 Signs

- To install comprehensive development signage is a **restricted discretionary activity** under rule E23.4.2(A53).

E25 Noise and Vibration

- Demolition and constructions activities that do not comply with the permitted activity Standard E25.6.28 and Standard E25.6.30(1)(b) which is a **restricted discretionary activity** under rule E25.4.1(A2):
 - Demolition and piling associated with the construction work with a total duration greater than 15 consecutive calendar days that exceed the maximum noise level of 75 dB LAeq Monday to Friday 6.30am-10.30pm and Saturday 7am-11pm:

582 Karangahape Road

- Up to 84dB LAeq over a period of 2-4 weeks during demolition.
- Up to 77dB LAeq over a period of 1-2 weeks during piling.
 - Demolition and construction activity adjacent to the boundary of 582 Karangahape Road which may exceed the amenity vibration levels of 2 mm/s PPV when works are within approximately 12m of this boundary.

E27 Transport

- Accessory parking and access that does not comply with the standards for parking and access is a **restricted discretionary activity** under rule E27.4.1(A2):

- One on-site loading bay is provided where two are required under Table E27.6.2.7. (T109) and (T113).
- Two parking spaces are provided with 2.0m vertical clearance which is below the 2.3m required under Standard E27.6.3.5.(1)(b).
- On-site loading is provided requiring a 3.8m vertical clearance and accessible parking is provided requiring a vertical clearance of 2.5m under Standards E27.6.3.5.(1)(d) and (c) and a vertical clearance of 2.3m is provided.
- The on-site loading space is 2.4m x 5m which is less than the required 3.5m x 8m under Table E27.6.3.2.1 (T138).
- The proposed vehicle access that adjoins the road does not provide a 6m long 1:20 safety platform as required under Standard E27.6.4.4.(3). A stopping platform of approximately 4.4m is provided.
- The proposed internal ramp connecting basements has a maximum gradient of 1:4 which exceeds the maximum gradient of 1:6 permitted under Table E27.6.4.4.1 (T159).
- Construction and use of a vehicle crossing located 8.4m from the intersection of Gundry Street and Abbey Street, which does not meet the requirement of a 10m separation distance from intersections under standard E27.6.4.1.(3)(a), which requires consent as a **restricted discretionary activity** under rule E27.4.1. (A5).

H8 Business – City Centre Zone

- New buildings are a **restricted discretionary activity** under rule H8.4.1.(A32).
- Demolition of buildings is a **controlled activity** under rule H8.4.1.(A32A).
- Buildings that exceed the basic floor area ratio specified for the site in Standard H8.6.10 are a **non-complying activity** under rule H8.4.1.(A44). The proposal involves the construction of a building with a gross floor area of 10,453m² which equates to a floor area ratio of 6.55:1. The basic floor area ratio specified for the site is 3:1.
- Buildings that exceed the maximum total floor area ratio specified in Standard H8.6.21. are a **non-complying activity** under rule H8.4.1.(A45). The proposal involves the construction of a building with a gross floor area of 10,453m² which equates to a floor area ratio of 6.55:1. The maximum total floor area ratio specified for the site is 3:1.
- The proposal involves use and development under rules H8.4.1 (A9), (A10) and (A32) that fails to meet the following standards and is a **restricted discretionary activity** under rule C1.9(2).

H8.6.2. General building height

- a) The height of the building must not exceed 15m. The proposed development exceeds the height by 27.763m from the Karangahape Road mean street level and by 35.196m from the Abbey Street mean street level.

H8.6.26. Verandahs

- b) The proposal involves the construction of a verandah where the maximum height of the verandah above the footpath along Karangahape Road is 4.29m which is 0.29m higher than the 4m maximum permitted under Standard E8.6.26.(5)(a).

I206 Karangahape Road Precinct ("the Precinct")

- New buildings are a **restricted discretionary activity** under rule I206.4.1(A2).

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

- To undertake general earthworks over an area of 1,600m² and with a volume of 9,500m³ that exceed the permitted thresholds for land disturbance under the NES:CS of 25m³ per 500m² where a Detailed Site Investigation (DSI) has been undertaken that identifies HAIL activities have occurred on the site, but contaminants do not exceed the standards, is a **controlled activity** under NES:CS Regulation 9(1).

Proposed Plan Change 79 Decision Version (PC79 DV)

- The application was lodged on 20 December 2023. Since then, the Proposed Plan Change 79 Decision Version (PC79 DV) was notified on 9 August 2024. This replaces the Proposed Plan Change 79 notified version. While this application is afforded the same activity status as when it was lodged (s88A(1)), resource consent(s) are required under PC79 DV for the following reasons:

E27 Transport

- The proposal includes accessory parking and provides 2 accessible parking spaces where 8 are required under standard E27.6.3.2(A)(1), which is a **restricted discretionary activity** under rule E27.4.1(A2).

Auckland Unitary Plan (Operative in part)

Regional land use (operative plan provisions)

Discharge consent (s15) – DIS60427503 (Contaminated land disturbance)

E30 Contaminated land

- Discharge of contaminants into air, or into water, or onto land that does not meet permitted activity standards E30.6.1.2 and E30.6.1.4. as a volume of 9,500m³ of earthworks is proposed which is more than 200m³ and concentrations of target contaminants exceed AUP(OP) criteria, but the proposal meets controlled activity standards in E30.6.2.1 as a detailed site investigation, site management plan / remedial action plan will be prepared for the site and all conditions in E30.6.2. complied with. This is a **controlled activity** under rule E30.4.1(A6).

Water permit (s14) – WAT60427505

E7 Taking, using, damming and diversion of water and drilling

- The two-level basement will result in the groundwater drawdown and/or dewatering that does not meet permitted activity standards, E7.6.1.6.(2) and (3) as the water take is likely to occur for at least 30 days during construction and will continue after construction, which is a **restricted discretionary activity** under rule E7.4.1(A20).
- Excavations of up to 9m deep that will result in the diversion of groundwater that does not meet the permitted activity standards, E7.6.1.10.(3) and (5)(a) as penetration of groundwater level by up to 2.1m is expected and the adjoining site/building is closer to the proposed excavation which extends below groundwater level, than the depth of the proposed excavation, which is a **restricted discretionary activity** under rule E7.4.1(A28).

The reasons for consent are considered together as a **non-complying activity** overall.

Relevant statutory provisions

8. 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 104D and 108.

Relevant standards, policy statements and plan provisions

Section 104(1)(b)

9. 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
 - National Policy Statement on Urban Development (**NPS UD**);
 - Auckland Unitary Plan Operative in Part (**AUP (OP)**).

Plan Change 78

10. On 18 August 2022, the Council notified PC 78 which involves a number of changes to the AUP(OP) provisions in response to the government's National Policy Statement on Urban Development 2020 (amended in 2022) and requirements of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.
11. PC 78 includes modifications to the objectives, policies and standards in Chapter H8 Business – City Centre Zone. These modifications seek to maximise the benefits of intensification and proposes amendments to the objectives, policies and standards including the removal of the floor area ratio control and increases in the general building height rules. In the case of the application site, PC 78 proposes the general height standard is increased from 15m to 35m.
12. We note that while the applicant placed significant weight on the 'more enabling' provision of PC 78, this view was not shared by the Council or the submitters. The Council officers advised us that only modifications related to the objectives and policies have legal effect from the date of notification and the other provisions such as the rules and standards had no legal effect. The only exception being proposed amendments to those rules and standards related to the protection of historic heritage.
13. While the Independent Hearing Panel have held the City Centre PC 78 hearings, no recommendations have been made to the Council. Therefore, in terms of the proposed amendments to the objectives and policies, the Council's advice was we should place lesser weight on the objectives and policies of PC 78 with the proposed amendments to the City Centre zone rules and standards, including the removal of the floor area ratio standard and 35m general height standard, having no legal effect. These rules and standards will only have legal effect once the Council's decisions on the Independent Hearing Panel's PC 78 recommendations are made and notified.

Waitematā Local Board comments

14. **Ms Alexandra Bonham** and **Mr Allan Matson** appeared at the hearing on behalf of the Waitematā Local Board. They spoke to the Board's comments provided to the reporting officer. The principal concern for the Board is the scale of the development.
15. Ms Bonham outlined that the Board liked "sticking to plans" as the most democratic and fair way to manage the development of a city. She commented that that the area was identified as a HHA and the Ponsonby and Karangahape ridge are character led, and a considerable amount of work has been done to define the areas, and what sort of development is appropriate. Within that context, the Board are unsure whether this proposed development fits. They considered the proposal to be a speculative development that is currently not provided for and may or may not be in the future. She considered the proposal should be considered post PC78. She advised that there was currently no need for any further commercial space in this area, that there was already a lot of vacant commercial space in the area and

the city centre. There was however demand for housing and that a mixed-use development would be preferred.

16. Ms Bonham advised that the Board considered that any development on the site should include flexibility in its design so it could be used either by commercial or residential activities. The proposed glass cladding would make any conversion to residential very difficult. Referring to the existing approved development for the site, which proposes three levels on Karangahape Road going up to six storeys in other parts, the Board considers this to be entirely appropriate and would like to see that development proceed.
17. In terms of the current proposal, she was sceptical of the applicant's claims that the development would not impact on surrounding residential areas, citing the number of submissions lodged by residents to the south of the development. This is a mixed-use area, and she believed the number of residents was only likely to grow. She was, however, supportive of the incorporation of the ground floor commercial retail activities.
18. In terms of onsite parking, she felt the bicycle parking was adequate but was concerned at the level of onsite parking due to the level of development growth and the lack of onsite parking in the local area. She expressed concern at the proposed on-street servicing and emphasised that all servicing and loading needs to take place on site, not kerbside, for a development of this size and nature. As a mixed-use area, waste collection at night was not acceptable and inappropriate.
19. Mr Matson made some comments on the proposed bulk and location, highlighting that one of the Local Board Plan's objectives is that the character and heritage of their neighbourhoods is valued and conserved within their urban landscape. He was concerned about the bulk and dominance of the proposed building in this area, and the emphasis the applicant had placed on what might come with PC78. That this was a HHA, and the attempts made to breakdown and differentiate this site from other sites within the area was, in his view, to denigrate the need to comply with the area's overall statement of significance in the AUP(OP).
20. He considered the proposal addressed the right things needed to fit in with the existing fabric, but felt it was a little underdone and seemed somewhat monolithic. The bottom line is that the building is part of the HHA and just because there was not a contributing building on the site, what should have happened is, that there should have been a building designed of size and scale commensurate with the statement of significance. He was concerned that the application provided no explanation of why the building needed to be so high. He reminded the Panel that historic heritage was a Qualifying Matter and felt it was disingenuous for the applicant to suggest that just because there were taller buildings in Hopetoun Street that this site should have higher height. In response to the 72m height limit proposed by PC 78 on the opposite of the road, he reminded the Panel this may never actually happen.
21. Mr Matson concluded by reminding the Panel that the HHA overlay had only been introduced to this area through the AUP(OP) process and that it was the largest

and most significant area. He was concerned there had been no discussion about the cumulative effects of the proposal on that. It was a finite resource.

Summary of evidence

22. 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 here. In accordance with s103B, the Council's planning officer's report and the statement 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 and 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.

Applicant

23. **Mr Douglas Allan**, legal counsel, appeared on behalf of the applicant. In his opening submissions, he outlined the site and its context, the proposal, the relevant Unitary Plan provisions, emphasising the relevance of the site's physical context to the Panel's assessment of the proposal against the HHA and Karangahape Road Precinct provisions. He also outlined the statutory and regulatory context including identifying the relevant National Planning instrument for our consideration and discussed the implications of the Council's PC 78 to the development. He outlined the implications and benefits of the proposed office development would bring to the area, as well as addressing the issue of private views from the Hopetoun Street Apartments.
24. He advised the applicant's evidence is *"that the site and the western end of the Precinct and HHA more generally have a different and much less sensitive character than does the balance of Karangahape Road"*¹. He outlined the application had been lodged in December 2023 and that the scale and massing of the proposal is influenced by PC78, which was initially required to be made operative by March 2024, but successive ministerial decrees had now pushed this date out to March 2026.
25. In July 2024, the application was modified to remove the intrusion onto the neighbouring property to the west, refine the interface with that site and alter the elevation design to reduce the bulk and massing on the western side of the building. It is this proposal which is addressed in the applicant's evidence.
26. He explained, that in response to the Council's s42A report, the applicant's architect, Mr Fearon had been asked to explore ways to further emphasise the distinction between the podium and the tower elements. These were detailed in Mr Fearon's evidence which included a modified version of the façade which reduced the extent of the 'wintergarden' on the Karangahape Road frontage to approximately 50% to create a greater physical and visual distinction. That said, the

¹ Douglas Allan, Opening legal submissions, page 3, paragraph 2.1

applicant's consultants preferred the July 2024 design and considered it as an appropriate response to the HHA and Precinct provisions.

27. Mr Allan outlined the overlapping Unitary Plan provisions applied to the site which he advised "*seem to lack a coherent rationale and are to a certain extent contradictory.*"² He noted that while the City Centre zone applies to the full length of Karangahape Road through to Ponsonby and Newton Roads, with the land to the east of the motorway overbridge having a 35m height standard, while the balance of the land through to Newton Road is subject to a 15m height, which he advised was a remnant of historic zoning patterns.
28. The site was also subject to the Karangahape Road Precinct which applies to the full length of the road, with some minor exceptions which includes the service station directly across the road. As a result, the site forms a largely isolated adjunct. He also noted the frontage and height restrictions that apply to most street frontages in the Precinct, do not apply to the site. He went on to explain that the full length of Karangahape Road, including the Mobil service station site, was included in the HHA overlay, although the site, the Mobil service station site and the vacant land on the eastern side of Gundry Street are allocated 'non-contributing' status.
29. Turning to PC 78, the Council's Intensification Planning Instrument (IPI) required by statute to give effect to Policy 3(a) and Policy 4 of the NPS-UD, he noted that while no changes are proposed to the Precinct or HHA provisions, modifications are proposed to the development intensity and height standards. These modifications include removal of the floor area ratio control, increasing the proposed height standard on the site and all other sites fronting the southern side of Karangahape Road between Edinburgh Street and Newton Road to 35m, and sites south of the Karangahape Road to the motorway to 72.5m height. The sites fronting the northern side of Karangahape Road between Howe Street and the Mobil service station site would have a 35m height standard while the Mobil service station site would be 72.5m. While he considered these changes produced a series of anomalies, he considered that the proposed changes indicated that the Council was comfortable with significantly taller buildings forming part of the HHA and Precinct or being located immediately on the periphery and accepts that marked differences in scale and height at the western end of Karangahape would not necessarily compromise the HHA and Precinct values.
30. He acknowledged that while only the objectives and policies of PC 78 were relevant to the assessment under section 104D of the RMA, he submitted that the PC 78 rules are relevant in terms of any analysis under s104. PC78 was worthy of being given weight as the Council was statutorily required to introduce the IPI and the applicant understood that no submissions on PC 78 opposed the height standard for the site or surrounding area. He referred the Panel to the letter of legal opinion from Berry Simons (dated 14 November 2023) that was included with the application. He also responded to the statement and points raised in in the Council's s42A report which set out that lesser weight was being placed on the objectives and policies of PC 78.

² Ibid, page 4, paragraph 3.1

31. Mr Allan considered that a key difference between the experts who supported the proposal and those who opposed it related to the relationship between and relative weight given to the HHA and Precinct provisions and the physical context in the immediate vicinity of the site at the western end of HHA and Precinct. The applicant's proposal reflected a careful consideration of the surrounding context and included architectural responses to that context. The design incorporated features such as the 14m datum, the verandah design, variations in façade treatments and materials, and the use of massing to complement the HHA and Precinct values in the vicinity; and integrated the "podium" and "tower" elements of the building. It was up to the Panel to assess whether the methods adopted by the architects were adequate.
32. He considered a second key difference between those experts who support and those who oppose the proposal related to the relationship between adverse effects and the HHA and Precinct policy framework. He refuted the suggestion from the Council and submitter's experts that a proposal that does not contain the characteristics described in the HHA and Precinct will generate adverse effects on the environment. He advised these policy frameworks do not require replication in a new building of the scale and architectural characteristics exhibited by heritage and special character structures, rather consideration is required of whether the proposal is compatible with, complementary to, and respectful of the areas.
33. In relation to HHA policy provisions, he advised only policies (8) and (9) referred to new buildings within scheduled historic heritage places. The construction of a building at the western end of the HHA well away from the concentration of heritage and character buildings cannot have any adverse effects on the broader heritage values. He submitted the manner in and extent to which historic heritage values can be maintained and enhanced on a site will depend in part on the extent to which they are present and readily apparent in the vicinity.
34. In relation to the Karangahape Precinct provisions, he advised that it was not necessary for the new building to be designed to match or replicate the existing character but whether it maintains and enhances that character. He directed the Panel to the evidence of Mr Wild and Mr Munro which state that the proposal accomplishes this by incorporating a modern building of different scale references to the Precinct's character. *"Given the relative paucity of such values around the Site, the appropriateness of the Proposal is reinforced by the higher order imperative in Policy 3(a) of the NPS-UD to intensify within the City Centre zone"*³.
35. He went on to outline the positive benefits a large office building would bring to the City Centre; in particular supporting public transport services being located some 550m from the forthcoming Karanga-a-Hape Station on the City Rail Link.
36. In response to the submissions lodged by the Hopetoun Apartment Building regarding the loss of views to Maungawhau, he referred the Panel to the relevant case law including *Wynyard Quarter Residents Association Inc v Auckland Council [2023] NZHC 1938* that reflect the longstanding position that while effects on views and outlook are to be considered in the context of effects on amenity, there is no

³ Ibid, page 17, paragraph 7.5

protection of private views in terms of the RMA or its predecessor legislation, unless the relevant district plan provisions have that effect.

37. **Mr Andrew (James) Kirkpatrick** the CEO and Managing Director of James Kirkpatrick Group, a position he has held for 15 years, provided a written statement of evidence. He outlined that the Company is an Auckland-based, family-owned, property investment company with over 65 years' experience in the Auckland market. He advised that the development at 538 Karangahape Road represents a flagship project aiming to set a new benchmark for sustainable commercial development in New Zealand.
38. The proposed development represented a "*transformative opportunity to revitalise a key site on one of Auckland's most iconic streets*"⁴ on a site owned by the Company since 1988. He outlined the key aspects of the proposal including targeting a 6 Green Star, the highest possible sustainability rating. He noted that the development aims to be an exemplar build replacing a vacant site with a modern, sustainable structure that would provide much needed premium office space in a fringe location, enhance the street level amenity, contribute positively to the regeneration of Karangahape Road, set a standard for sustainable commercial development in Auckland, and contribute to a strong entry to the City Centre zone from the west. He concluded that the proposed development represents a significant opportunity to contribute positively to Auckland and New Zealand's urban fabric.
39. **Mr Jeffrey Fearon**, the project architect, provided supporting architectural evidence in relation to the proposal in which he emphasized the design's responsiveness to both the heritage and Precinct context. The architectural brief, as described by Mr Fearon, required a proposal to transform the site from a partially demolished 1970s structure into a modern commercial and retail development, aiming for a 6Green Star sustainability rating which emphasises high-quality, sustainable design with a focus on operational efficiency and tenant flexibility. In addition, his task included to incorporate expressed mass timber components to create a biophilic and innovative building. He explained to us how the structural design impacted on the useable floor space for a building of this type.
40. In his evidence, Mr Fearon explained a number of key strategies he implemented in response to the site's heritage and Precinct context. These include a 14-meter podium that establishes a grounded structure aligned with historic building heights in the Precinct, and a continuous setback above the podium that differentiates it from the upper-level massing, intended to create a relationship with the heritage streetscape.
41. The retail shopfronts on Karangahape Road are under a continuous canopy to reinforce the historical retail edge. He described that he designed the main commercial entrance with an inviting lobby and canopy along Gundry Steet, with smaller retail spaces and pedestrian/cyclist amenities to integrate with the finer-grain streetscape in Abbey Street. Stepped upper levels with landscaped terraces are designed to break down the building's bulk and provide a visual connection to

⁴ Statement of Evidence James Kirkpatrick, page 2, paragraph 3.1

the street. The 'wintergarden' element towards Karangahape Road is considered to introduce a lightweight, transparent upper structure contrasting with the grounded podium. The facade integrates fine glass sheathing with vertical fritting for partial opacity and carefully positioned verandah stays, collectively envisioned to reference the rhythm and materiality of surrounding heritage buildings.

42. Mr Fearon noted that the differentiation between the podium and upper levels is proposed to be enhanced through material contrasts and architectural articulation, including pilasters and horizontal "cornice" lines. In his view, the sawtooth roof form adds a distinctive profile while respecting the Precinct's ridgeline.
43. **Mr Matthew Jones**, an experienced landscape architect, provided evidence in relation to the landscape (including visual) effects of the proposal. Mr Jones set out the key aspects of the proposal relevant to his assessment, and then went on to describe the site and local area, and the relevant planning provisions.
44. Mr Jones assessed the visual effects of the proposal using a series of representative viewpoints. This analysis was assisted by Visual Simulations⁵ for some of the viewpoints, and photographs of the site and local area. This graphic material included modelling of the potential development scenario on the site and local area assuming a development outcome applying the AUP(OP) and PC 78 development standards.
45. He also commented on the effects of the development on the urban landscape context, landscape matters raised in submissions, and responded to the comments made by Gabrielle Howdle, the Council's landscape expert. In explaining his opinion, Mr Jones repeatedly referenced what we understood to be the 'moderating influence' of the development change throughout the local area anticipated by the PC 78 provisions.
46. Mr Jones' summary statement of evidence presented at the hearing, also briefly referenced the landscape and urban design evidence of Rebecca Skidmore on behalf of Samson Corporation.
47. In summary, it was Mr Jones' opinion that "when considered in the round, any potential adverse effects will be low (minor) and effectively mitigated by the building's design and amenity outcomes".⁶ Mr Jones also considered that the development will generate positive effects. We understood this to relate to the landscape related benefits of the proposal in developing a vacant lot, and the positive aspects (in his opinion) of the development in terms of the proposed building design and its contribution to the local streetscape, Precinct and broader urban landscape character.
48. Relying on his effects evaluation, he advised us that he did not agree with submitters' concerns relating to the proposed building's height, scale, bulk and

⁵ A3 printed colour copies of the Visual Simulations and Photographs were provided to the Panel.

⁶ Statement of Evidence Matthew Jones, page 3, paragraph 1.9.

potential dominance effects, including in relation to closer range vantage points and residential properties.

49. In response to questions from the Panel, Mr Jones explained that the building appearance modelled in the visual simulations had been carefully developed in collaboration with the architects and his effects assessment was based on that specific building appearance outcome. He went on to comment that there would be a subtle difference between the various glazing treatments, but that they would be different.
50. Mr Jones advised the Panel that it was his view that a 'wintergarden' building element corresponds to an element that has a softer or more lightweight appearance, with vegetation also contributing to that impression in the development. At this point, Mr Fearon stepped in to explain that vegetation proposals as part of the development are limited to the top of the Karangahape Road 'wintergarden' element fronting Karangahape Road, and the (open) Abbey Street terrace. From this description it was the Panel's understanding that the vegetation modelled internally in the building in the Visual Simulations (including within the 'wintergarden' element), does not form part of the application.
51. **Mr Adam Wild**, an experienced conservation architect provided a summary statement in addition to his pre-circulated statement of historic heritage evidence in support of the proposal. His evidence focused on the proposed development at 538 Karangahape Road and its impact on the surrounding Karangahape Road HHA and the Precinct. Mr Wild noted that the site is identified as a "non-contributing" site within the HHA. Mr Wild considered that the western end of the HHA, where the site is located, is less cohesive compared to the central and eastern sections. He reasoned that this fragmentation is indicated by a higher concentration of "non-contributing" sites, the presence of modern structures, such as a service station and other non-heritage buildings, and the limited visual and architectural connection to the older buildings concentrated east of the motorway overbridge.
52. In his view, the Karangahape Road HHA is valued for its Victorian and Edwardian-era buildings, historical association with Auckland's commercial and residential development from the colonial period through to the mid-20th century. In his opinion, the site itself holds no existing heritage value, making it suitable for development that complements the area's character. He opined that the modern additions (e.g., Ironbank, Artspace Aotearoa, Samoa House) contribute new values that complement the area's evolving character.
53. In his view, the design respects the area's heritage values by avoiding mimicry and opting for a contrasting contemporary style, which he noted, is preferred in historic heritage practice to preserve the authenticity of original structures. The development does not result in the loss of heritage fabric, obscure existing heritage features, or diminish the area's overall significance in his assessment.
54. He recorded, the proposed design incorporates a 14m height datum, aligning with architectural references in the area and is therefore maintaining scale and coherence in his view.

55. Mr Wild's evidence argued that the proposal represents a balanced and context-sensitive addition to the HHA and the Precinct, enhancing the western end of the area without compromising its heritage values, and presents an opportunity to introduce a new, high-quality design that references key Precinct values while enhancing the area's urban character.
56. **Mr Ian Munro**, an experienced urban planner and designer spoke to his pre-circulated statement of evidence which focused on the urban design matters associated with the proposal. Drawing from his Urban Design Report, Mr Munro's evidence in chief described both the site and the proposal's key urban design characteristics evidence, identified matters that were not, in his opinion, of urban design concern or need for particular analysis, and provided an analysis of the key urban design matters and overall merit.
57. Mr Munro's evidence addressed points of agreement and disagreement between himself and Chris Butler (Council's urban design expert) and Bradley Peens (Council's reporting planner). This included commenting on the proposal in light of the provisions relevant to an urban design assessment.
58. Overall, it was Mr Munro's conclusion that the proposal could be supported from an urban design perspective due to: the high quality, interesting and characterful building design; the positive contribution the development would make to a currently low character part of the Karangahape Road corridor; what he considered to be the considered and appropriate references to the heritage context that are incorporated into the design and which make the development compatible with the AUP (OP) values identified for the Karangahape Road corridor.
59. Mr Munro also provided comment on the amended 'wintergarden' proposal introduced by Mr Fearon, explaining that he preferred the original proposal but could support the amended design from an urban design perspective.
60. In his summary evidence at the hearing, Mr Munro acknowledged that he had read and considered the evidence of Rebecca Skidmore and Jeffrey Brown (planning evidence on behalf of Samson Corporation).
61. Mr Munro explained that it was the significant positive effects of the proposal in terms of urban design outcomes, that weighed heavily in favour of his support for the proposal. Of particular relevance in this regard, is the scale of the proposed commercial development in close proximity to a CRL station. Further, it was Mr Munro's view that very few other sites in the local area could be developed at this scale, and in so doing, the proposed development amounted to a 'shot in the arm' for the CRL development in this part of the city.
62. Mr Munro acknowledged agreement with Mr Brown that positive effects may not overall outweigh adverse effects, however commented that is not the relevant test for an urban designer. Rather it was Mr Munro's view that positive effects directly inform what an acceptable outcome is for an urban designer.
63. Mr Munro drew the Panel's attention to the absence of a GFA cap in PC 78 which in his view, signals a potential tolerance for larger scale buildings (in terms of their

horizontal form), rather than the small-scale footprints associated with the heritage building fabric of the area.

64. Mr Munro encouraged the Panel to distinguish between the effects of the proposal in terms of the 'real-world' setting (i.e. what is there now) and the effects of the development in terms of the plan provisions. On these matters, we understood his evidence to be that the 'real-world' character of the western end of the Precinct displays a different character to the balance of the Precinct due to the vacant sites and influence of the Mobil service station site. Within that specific context, it was his view that the proposed development was appropriate.
65. In terms of his analysis against the relevant plan provisions, we understood Mr Munro's evidence to be that the proposal is appropriate due to: the vacant nature of the site which means that it does not contribute to the special character values of the Precinct; the different character associated with the western end of the Precinct; and, the sophisticated architectural design proposal that responds to the special character context without reverting to mimicry.
66. Mr Munro commented on the inelegant configuration of the western end of the Precinct, going so far to suggest that, in light of the coherence objectives expressed in the Precinct provisions, it was his view that the Mobil service station site is likely to be deserving of inclusion in the Precinct, with the Precinct frontage control applied to the site.
67. With respect to dominance effects, it was Mr Munro's view that the corner site location (i.e. not a site flanked on either side by a consistent patterning of lower height buildings), along with the bend in the alignment of Karangahape Road, and the immediate context of 'exceptions' (in terms of special character sites) in the vicinity of the site were important factors in managing adverse dominance effects.
68. In response to questions from the Panel, Mr Munro explained that he considered the 'wintergarden' to mediate between the tower and podium, however in his opinion, both the 'reduced' and a 'no wintergarden' option would be acceptable urban design outcomes. In the case of the latter option (i.e. 'no wintergarden'), it was his view that façade differentiation across that part of the building would still be required.
69. Mr Munro also confirmed that his 'real-world' analysis had factored in the proximate special character context at the southern end of Ponsonby Road.
70. **Mr Mark Benjamin.** an experienced planner. provided a statement of planning evidence and summary statement in support of the application. His statement outlined the background to the proposal including the earlier consent granted in April 2021, the design process undertaken, the reasons for consent under the provisions of the AUP(OP), confirming the proposal was classed as a non-complying activity. He outlined the influence the NPS-UD had on the proposed redevelopment of the site, including the requirement that Auckland Council notify a plan change to amend the Unitary Plan City Centre Zone provisions to "enable building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification."

71. He advised that based on the NPS-UD provisions and the Ministry for the Environment guidance on the likely content of the intensification plan change, the applicant paused the development of the site and awaited the notification of the plan change which occurred on 22 August 2022. In response to the more permissive standards proposed by PC 78, the applicant proceeded to formulate a development proposal in line with this emerging plan context. The scale and massing of the proposal was influenced by proposed PC 78, whilst still being consistent with the relevant plan objectives and policies, which are not substantially altered by PC 78. The proposal was lodged with the Council in December 2023 and publicly notified in May 2024. Following the closing of submissions, a number of design changes were made to the proposal. In summary, these changes altered the elevational design and reduced the bulk and massing of the western side of the building, to address concerns raised by the neighbouring landowner (at 582 Karangahape Road) and to ensure that the proposal was compliant with AUP(OP) standards in terms of pedestrian wind impacts.
72. Mr Benjamin noted the many positive effects of the development which he described as providing “a high design quality which will deliver a significant amount of new retail, commercial and office space on a currently vacant and underutilised City Centre site” He considered the building will have a street frontage interface which provides a highly engaging and active frontage, along with enhanced pedestrian amenity provided by the verandah coverage on the Karangahape Road and part of Gundry Street. He also noted the positive financial and economic effects arising from employment opportunities both during and post construction.
73. In his opinion *“all potential adverse effects associated with the proposed works would be avoided, remedied or mitigated so that they are no more than minor in scale and appropriate in nature, while consistency with Auckland Unitary Plan (Operative in part) provisions as well as emerging Plan Change 78 provisions would also be achieved”⁷.*
74. In terms of the landscape and visual amenity effects, he referred the Panel to the conclusions reached by the applicant’s landscape expert. This assessment concluded the proposed design will contribute positively to the cityscape and skyline of Auckland, was not out of scale in this location, and provides a visually interesting building form and façade treatment, including when viewed from a distance. The building will continue the tradition of buildings built along this ridgeline, which highlights the city’s topography. He considered that any potential adverse effects from the wider landscape are sufficiently mitigated and managed through the design of the building and are of an acceptable level.
75. Mr Benjamin acknowledged that the key matters of contention were the built form and street scene appearance and effects of the proposal. With the site being located within the Karangahape Road HHA as well as the Karangahape Road Precinct he considered there is extensive overlap between building design and appearance, streetscape, and historic heritage effects. In his opinion, the overall

⁷ Statement of Evidence Mark Benjamin (13 November 2024), Page 1, paragraph 1.3

proposal has been carefully designed to respect the area's unique character and heritage values.

76. He referred the Panel to the evidence of Mr Jones, Mr Munro and Mr Wild noting these experts concluded that the built character and street scene effects of the proposal are overall acceptable, and the design and massing of the building would not result in any unacceptable visual dominance impacts in terms of Karangahape Road or in terms of the other street frontages of the site. He considered that in the context of the built form variation along Karangahape Road, the design and appearance of the building would be sufficiently sympathetic, with the adoption of the 14m datum in the building design being a sufficiently obvious visual feature along the Karangahape Road facade as well as *"the sophisticated rhythm and proportions of the building's frontage form"*.
77. In terms of the massing and design of the 'wintergarden' element, he considered the design positively addresses the corner at Karangahape Road and Gundry Street, with the four-storey element providing vertical emphasis and highlighting the corner. This emphasised and complemented both the Karangahape Road and Gundry Street frontages where there is a clear difference between the fritted glass on the lower levels and the respective clear glazed 'wintergarden' element above.
78. In terms of the historic heritage effects, he agrees with Mr Wild that while the proposed development will be appreciable from a range of places, the site is sufficiently separated from nearby historic heritage sites to have no adverse (or cumulative) impacts on their significance through changes within the setting of those buildings. In his opinion the development does not result in the loss of any fabric that contributes to the heritage values or change in the level of significance of the Karangahape Road HHA and will not result in any of the existing historic features or collective values of the Karangahape Road HHA being obscured, decontextualised, or reduced in significance.
79. Mr Benjamin advised that he considered *"the overall effects of the proposal to be acceptable, taking into account the range of mitigation methods to be employed either through specific details of the application proposals or via consent conditions specific to this application which have been agreed as acceptable by the applicant"*. In response to questions from the Panel regarding what he meant by the effects being acceptable, Mr Benjamin advised that in terms of section 104D and the reporting planner's conclusion that the effects of the proposal were significantly adverse, he considered the adverse effects to be no more than minor and that overall, the effects of the proposal were positive.
80. In relation to the relevant planning provisions, Mr Benjamin's assessment was that the proposed development achieves a high level of consistency with the *"vast majority of the relevant planning provisions and the applicable objectives and policies"*⁸. This includes the relevant objectives and policies of the City Centre Zone, the Karangahape Road Precinct and the Karangahape Road HHA. He concluded that the proposed development was consistent with the relevant

⁸ Ibid, page 12, paragraph 1.67

planning documents including the NPS-UD, the NPS Contaminated Land, and the Auckland Unitary Plan.

81. He concluded that the proposal would result in the sustainable management of Auckland's natural and physical resources and as such was in accordance with the purpose of the Resource Management Act. He considered that consent could be granted subject to the proposed conditions.

Other Evidence

82. For completeness, we record that we received the following pre-circulated statements of evidence on behalf of the applicant:
- Allan England, Associate Geospatial Specialist on the visual simulation production,
 - Craig Fitzgerald, Acoustic consultant addressed the noise associated with the construction and the proposed commercial activities,
 - David Ouwejan, Principal Geotechnical Engineer addressed the settlement effects on neighbouring properties,
 - Kevin Peddie, a Chartered and Registered Engineer outlined results of the pedestrian wind assessment undertaken for the proposal,
 - Mitchell Smith, a Chartered Professional Engineer addressed the proposed civil infrastructure including earthworks, flooding and overland flow, stormwater, wastewater, and water supply infrastructure.
 - Thomas Guernier, Principal Transport Consultant and Chartered Professional Engineer dealt with the traffic generation potential of the proposed development, impacts on the transport network, parking, access, servicing and loading.
83. Having read these pre-circulated statements of evidence, the Panel had no questions for these specialists and did not require them to attend the hearing.

Submitters

Christopher Dempsey

84. **Mr Christopher Dempsey**, a member of Bike Auckland and secretary of Cycling Action Network, spoke to his private submission to the application which related to the adequacy of bike parks. He congratulated the applicant on increasing the number of cycle parks noting that the current proposal provided 76 bike parks when only 53 are required.
85. Referencing the recent study undertaken by MRCagney and information held by Auckland Transport, he highlighted the increased number of cyclists using the Karangahape cycleway and expected these numbers to increase when the CRL was opened. In response to these factors, he encouraged the applicant to increase

the number of bike parks to 120. He was also concerned that the current bike facility did not adequately provide for the needs of e-bikes and e-cargobikes. He saw the provision for these bikes as a positive support for the benefits cycling has on the environment and reduced the heavy negative effects on the environment arising from the use of motor vehicles.

Jett Gannaway

86. **Mr Jett Gannaway** addressed the Panel via the MS Teams platform. He advised he had been a resident in the area since 2019. He was familiar with the site and had been a frequent visitor to the Torpedo7 store in his youth. He had studied surveying and considered the “rules are rules” and should be adhered to. He expressed discomfort with the proposal, the impact it would have on views to Maungawhau from the Hopetoun Residences, and the effects on the HHA. He considered the height, scale and bulk of the proposed development is entirely inappropriate for the receiving environment. Ponsonby and Karangahape Road are characterised by medium density, heritage developments of 2-4 stories. The proposed development was of a scale expected in the centre of the city, and that there was a step down to more low-rise development as development moved towards the suburbs.
87. He expressed support for the presentation by the Local Board representatives in relation to PC 78 and that the proposal should not be able to ‘jump ahead’ of the decisions on the plan change. He also noted that those who had submitted in support of the proposal did not reside in the area.
88. Mr Gannaway concluded by advising that he would be delighted to see the site redeveloped but not with a 13-level building, and that the proposed building is inappropriately large, and the application should be declined.

UrbanismPlus Limited (Kobus Mentz)

89. **Mr Kobus Mentz** is an experienced urban designer and Director of Urbanismplus Limited, an urban design consultancy based in Auckland. He spoke to the submission prepared by himself and his Senior Associate Wayne Bredemeijer in support of the proposed development.
90. In Mr Mentz’s view, the advantages of additional height outweigh any potential disadvantages. In response to questions from the Panel, Mr Mentz explained that such disadvantages in a city centre location related to potential shading effects on residential properties or the obstruction of protected views.
91. In his presentation at the hearing (via the Microsoft teams platform), Mr Mentz emphasised the benefit of providing employment in the city centre to the overall vitality of a city and the maximisation of infrastructure.
92. It was Mr Mentz’s opinion that the most interesting part of the proposed building is the over height portion, and that more generally, he considers over height buildings in a city centre location to be aspirational.

93. Mr Mentz strongly encouraged the Panel to focus on the sustainability credentials of the proposal and described the proposal as a sophisticated response to its heritage setting. Drawing from his previous work in relation to urban design studies for both the Karangahape Road and Ponsonby Road corridors, Mr Mentz commented that if we were persuaded that the proposal adequately responded to the Karangahape Road character context, the similarity of the southern end of Ponsonby Road meant that it also was appropriate within that context.
94. Mr Mentz also encouraged us to think of the site as a 'bookend' to the Karangahape Road corridor rather than a 'gateway'.
95. In response to questions with respect to the appropriateness of the podium height within that context, it was Mr Mentz's view that it was acceptable, noting that if the podium were lower, the taller tower element is likely to be more dominant. Mr Mentz went on to explain that it was his view that the busy arterial traffic route of Karangahape Road strongly (in his view), supported taller buildings. We understood Mr Mentz's comments on this matter to be that taller buildings in such a context serve as a counterbalance to the busyness of the street itself.

Geraldine Gannaway

96. **Ms Geraldine Gannaway** spoke to her submission in opposition to the proposed development. She is a resident of the Hopetoun Residences. She outlined to the Panel her experience of living in the neighbourhood and that she welcomed inner city development and was not opposed to the earlier Kirkpatrick development. The new proposal she found beyond comprehension and considered entirely out of keeping with the distinctive character of the area. In her opinion, the proposal fails to comply with the distinctive character of the area, the heritage requirements and its bulk and mass was inappropriate for the area. She expressed concern at the impact the proposed development would have on her view of Maungawhau and expressed her view that the proposed building has no place in the [Karangahape] streetscape.

Hopetoun Residences Body Corporate Committee (Geraldine Gannaway)

97. Ms Geraldine Gannaway also appeared in support of the submission lodged by the Hopetoun Residences Body Corporate Committee (Body Corporate). The submission opposed the development raising concerns about the proposed building's design and scale, particularly its height and bulk, construction noise, vibration and disruption, and traffic congestion. Ms Ganaway advised that the Body Corporate are not opposed to change but considered the proposed Kirkpatrick development was totally out of keeping with the current distinctive character of the area and contrary to the objectives of the Auckland Unitary Plan. She rejected the applicant's argument that the proposal was similar to the Western Park and Hopetoun Street apartments, as these developments, unlike the proposal, do not sit on the ridgeline and are set back from the road. While acknowledging that the Hopetoun Residences was increased in height when converted from office to living space, she considered it does not have the same impact on the horizon as this new proposed building. She was concerned that the views enjoyed by residents of

Hopetoun Residences with a southwest orientation will be severely impacted - especially those on the lower floors. She urged the Panel to take into consideration the impact of the loss of views of a substantial proportion of the apartment owners.

98. Ms Gannaway was also concerned that those who had submitted in support of the proposal did not live in the area. She concluded by requesting the Panel decline the application.

Samson Corporation Limited

99. **Jeremy Brabant**, barrister for the Samson Corporation Limited (Samson), spoke to his pre-circulated legal submissions. He commenced by recording that Samson does not oppose commercial redevelopment in heritage areas being the owners of an extensive portfolio of heritage redevelopment projects within Karangahape Road and greater Ponsonby. The redevelopment, however, of heritage or character areas must be appropriate and sympathetic to the environment in which they exist and address the relevant matters in the Unitary Plan. In Samson's view, the current proposal does not do so.
100. He didn't believe there were significant legal issues that he needed to address rather the focus would be on Samson's expert witnesses. Having heard the applicant's presentation, he advised that to a certain degree the gap between the applicant's and Samson's experts had narrowed and a number of issues in Samson's original submission had fallen away. Broadly what remained in contention for Samson was the height of the proposed development which is too high, too bulky and there were also some observations around materiality. He advised that Samson's experts did not agree with the proposal in its current form.
101. In his written submissions, he reminded the Panel that if the Application cannot pass through at least one of the gateway tests in s104D, it cannot, as a matter of law, be considered under s104. Noting that there is alignment between Samson's experts and Auckland Council's reporting team that the proposal fails both gateway tests, Samson considered the application in its current form is not deserving of consent under s104. *"While the site could accommodate increased height, the design, scale and bulk must be consistent with the relevant provisions of the Karangahape Road Precinct and the Karangahape Road HHA"*⁹.
102. Mr Brabant considered context to be important in this case. With respect to PC 78 he advised that while it underpins an intention for intensification, it does not give the Panel a "blank cheque" in that regard, nor does it allow the applicant to automatically generate and create the outcomes that might be possible in the context of the new standards. He reminded the Panel it was important not to lose sight of the Precinct and heritage provisions and the classic "push and pull factors" which, the Panel, would need to reconcile in the context of the proposal.
103. With reference to the HHA and the Precinct provisions, he advised that the applicant's approach that the proposal should be read in its immediate context and vicinity, was inappropriate. These provisions were seeking to protect the collective

⁹ Jeremy Brabant, Legal Submissions, page 2, paragraph 7.

heritage integrity and “*creating an artificial or overly refined distinction between areas or clusters of buildings runs counter to the protections afforded under the AUP by atomising the overall outcome sought in [a] manner which will then undermine those outcomes*”¹⁰.

104. He highlighted the importance of the reference to “coherence” in the Precinct’s description and submitted that this characteristic can be undermined by inappropriate development. That there is some character variation in the Precinct doesn’t automatically support a finding that there is “breathing room” at the western end of the Precinct, rather the Panel is required to assess new buildings against the outcomes sought by the Precinct to maintain and enhance the streetscape character of Karangahape Road as a whole. These observations are also true in relation to the HHA. He submitted that “*the correct application of the relevant Precinct and HHA provisions requires new buildings to be of a compatible height, scale, style and materiality which achieves those outcomes.*”¹¹
105. Responding to the applicant’s contextual argument, Mr Brabant submitted that “*the Precinct and HHA require new developments to deliver an appropriately sympathetic design which enhances the Precinct, including the western end, and positively contributes to the Precinct’s overall cohesive character*”¹².
106. In reference to PC 78, he made the point that while Samson has taken issue with the height of the proposed development, it was not suggesting that the building should be “crunched down” to 15m or something similar. Samson has indicated that something of the order of 35m, as proposed by PC 78, may be appropriate. There was agreement that elements of scale and height are required to get a good outcome but for the reason set out by Samson’s experts, this proposal goes too far.
107. In response to a question from the Panel regarding whether the modified proposal still failed to meet either of the gateway tests of s104D, Mr Brabant advised that the concerns about the height and bulk of the proposed development meant that in Samson’s view neither limb of the s104D is met. With appropriate amendment, however, it is something that could be surmounted.
108. **Ms Rebecca Skidmore**, an experienced landscape architect and urban designer, provided evidence in relation to the urban design and landscape effects.
109. Ms Skidmore’s evidence discussed the relevant planning provisions for the site and local area, commented on points of disagreement between herself and the other landscape and urban design experts’ description and analysis of the site and its context, acknowledged the positive aspects of the proposal, and then discussed specific concerns that she had with the proposal in terms of the building scale and form, materiality, and street engagement. She also commented on the alignment of the proposal with the Precinct objectives and policies.
110. It was Ms Skidmore’s view that while the proposal would make a positive contribution to the Precinct, she considered that overall the proposed scale and

¹⁰ Ibid, page 8, paragraph 31.

¹¹ Ibid, page 11, paragraph 39.

¹² Ibid, paragraph 40.

form achieves intensification at the cost of the character and amenity of the Precinct to a degree which is more than minor, and which is not deserving of the grant of consent.

111. Ms Skidmore went on to recommend a number of changes to ensure that the proposal is contextually appropriate. These included changes to the 'wintergarden' to include a setback from the base element and greater openness; the introduction of greater solidity and variation of materiality in the podium element; the introduction of additional pedestrian access points to Karangahape Road; and a reduction in overall height to more closely align with a 35m high building height.
112. In presenting her evidence, Ms Skidmore commented that, in her view, the key difference between the landscape and urban design evidence related to whether, because the site is vacant, there is scope to look at a proposal that is quite different to its Precinct/special character context.
113. In response to questions from the Panel, Ms Skidmore advised that she was comfortable with the proposed range of glazing materials to assist with breaking down the bulk and massing of the building, as long as the overall height was lowered, and greater solidity was introduced into the podium form. Ms Skidmore explained her preference for a 'wintergarden' setback as proposed by Mr Fearon but did not support the removal of the 'wintergarden' element in its entirety (as suggested by Mr Munro).
114. With respect to adverse dominance effects in relation to the more immediate streetscape context, referencing Visual Simulation Viewpoint 1 in particular, it was Ms Skidmore's opinion that adverse effects would rate as 'moderate – high'. We understand that this corresponds to a more than minor adverse effect applying the effects rating scale relied on by Mr Jones (and as set out in Te Tangi a te Manu, the NZILA Landscape Assessment Guidelines).
115. Ms Skidmore also explained her support for the extent of the Precinct at its western end across the site, however, like Mr Munro, queried the exclusion of the Mobil service station site.
116. **Mr Graeme Burgess**, an experienced heritage architect provided a pre-circulated statement of evidence in which he raised concerns regarding the appropriateness of the proposed development. He emphasized that the HHA is defined to preserve and enhance the area's heritage qualities. This requires all developments to respect these characteristics, even if a site is identified as 'non-contributing'. He believed the proposal does not align with the historic built form character and fails to be sensitive to the area's heritage context.
117. While he agreed that the western end of the HHA has fewer Victorian and Edwardian structures compared to the eastern end, Mr Burgess argued that this does not justify less rigorous heritage management in the western area. In his view, new development must still maintain compatibility with the HHA 's overall character. He critiqued the proposed building's bulk and mass, describing it as "overwhelming" within the HHA and visually incompatible with its historic character. The flat curtain wall design, minimal detail, and use of fritted glass were insufficient to establish a

meaningful connection to the Victorian and Edwardian architectural features, in his opinion.

118. While acknowledging that new buildings should be distinguishable from old ones, Mr Burgess agreed with Mr. Howse that the proposed development does not adequately reference the scale, materiality, and detail of existing heritage buildings.
119. He highlighted that examples like the Ironbank building are successful contemporary responses to the heritage context because of their thoughtful articulation and materiality, which he considered the proposed development lacks.
120. Mr Burgess argued that the HHA and Precinct controls are interconnected and aim to guide sensitive development. The current design does not meet the objectives and policies of the Regional Policy Statement, nor does it contribute to the distinctive sense of place that characterises Karangahape Road, in his opinion.
121. While Mr Burgess acknowledged some improvements in the revised design, such as the setback of the 'wintergarden' element and articulation of vertical and horizontal facade lines, he found these changes insufficient. In his view, the revisions mitigated some impacts but did not significantly reduce the building's dominance, leaving it out of scale with its HHA context.
122. **Mr Jeffery Brown** provided a pre-circulated statement of planning evidence and tabled some additional observations at the hearing. He outlined that subsequent to Samson's initial submission, they have sought technical advice and revised their reasons for objection to the proposal. The two remaining reasons relate to the proposed building height and related building design matters.
123. Mr Brown's initial comments discussed the permitted baseline stating that there is none in this instance, as all new buildings require consent as a restricted discretionary activity and this proposal was for building heights well above the 15m anticipated in the Business – City Centre zone. The proposed heights were also well above an existing approved resource consent for the site (BUN60369382) which approved a height infringement of 6.085m. Further the proposal was 8m to 15m above the proposed 35m maximum building height limit proposed by PC 78. In his opinion the additional building height proposed in PC 78 cannot be taken as a baseline or representative of the existing environment and regardless, resource consent for the additional height would still be required.
124. The following observations of the proposal within the surrounding area, form the basis of Mr Brown's assessment of effects:
 - a) The building height would not look out of context of existing tall buildings in the vicinity of Hopetoun Street and Hereford Street, when viewed from afar at various locations outside of the Karangahape Road Precinct.
 - b) The Precinct and Karangahape Road HHA have a distinct character and there are few buildings that interrupt this character.
 - c) The street front character continues for the length of the Precinct and HHA.

- d) Close views of the building would show a significant departure from the established character of Karangahape Road, in relation to height, scale and materiality.
125. Mr Brown identified two elements of building height that are relevant to assessment of the building's height. These were stated as: *"the height of the building frontage at Karangahape Road, and the overall building height."*¹³
126. With regards the building frontage height, Mr Brown agreed with the evidence of Ms Skidmore and Mr Burgess that the *"since the design does not respect the established scale and character along the Karangahape Road frontage – both in relation to the character of the precinct and the HHA values – the increased height and associated scale cannot be accommodated"*¹⁴.
127. Mr Brown did not consider the proposal's attempts to reduce the scale and bulk of the building along the road frontage with the use of the proposed 'wintergarden' to demarcate the 14m height datum along Karangahape Road to be sufficient. He referred to Ms Skidmore's evidence that the building would continue to rise on the same vertical plane as the base element of the building, and Mr Burgess' evidence that the break in the flat glass façade at the 14m level would be too subtle and not a sufficient response to the heritage characteristics set out in the HHA statement of significance. The proposed building height at the frontage with Karangahape Road would present as dominant and inconsistent with the predominant frontages of the HHA that generally follow the 14m datum.
128. He concluded that the proposed height of the building, both the 'wintergarden' element and the overall height, would adversely impact the respective character and values of the Precinct and the HHA, and would have adverse effects that would be more than minor.
129. Mr Brown also addressed the effects on the Karangahape Road Precinct in terms of building scale and materiality along with its location within the Precinct. Mr Brown referred to the discussion of Mr Munro and Ms Skidmore about the qualities and conditions of the site and immediate neighbouring sites. Mr Brown preferred Ms Skidmore's evidence that the lack of qualities generally sought within the Precinct does not pose an opportunity for diversion but instead presents an opportunity to reinforce the qualities sought by the Precinct. Mr Brown noted that Precinct Assessment Criteria within I206.8.2 of the AUP(OP) includes consideration of whether buildings incorporate design elements that acknowledge and are consistent with the existing human scale and character of the Precinct. As previously outlined, the design and height of the road frontage is ultimately incongruous with the pattern and design of the Precinct and thus, adverse effects on the Precinct would be more than minor, in his view.
130. With regards to the effects on the HHA, Mr Brown agreed with the evidence of Mr Burgess. In particular, he agreed with Mr Burgess' rebuttal of Mr Wild's evidence that due to the reduced number and concentration of scheduled sites at the

¹³ Statement of Evidence of Jeffery Brown (20 November 2024), page 4, paragraph 4.6

¹⁴ Ibid, page 5, paragraph 4.12

western end of the HHA, this part of the HHA is more capable of absorbing the proposed new development, than the east.

131. Mr Brown noted that the HHA has been set to define a wider area than that solely containing individual scheduled sites. The heritage qualities of the HHA are to be respected and enhanced within these boundaries. The existing lack of these qualities does not justify reduced consideration when assessing new development.
132. The proposed building was assessed as being inconsistent with the HHA with regards to its mass and materiality (glass façade) and was thus considered overall to be out of character in the HHA. Mr Brown concluded that adverse effects on the associated historic heritage values would be more than minor.
133. He did acknowledge the positive effects identified by Mr Peens and Mr Benjamin but did not consider them to outweigh the adverse effects discussed.
134. Mr Brown's evidence also considered the relevant objectives and policies of the AUP(OP) outlined in the Council's s42A report. He broadly agreed with the assessment of the proposal contained in section 15 of the s42A report. With reference to the previous assessment of effects in relation to building height and scale and its appropriateness within the Precinct and HHA, Mr Brown considered the proposal to be contrary to the following objectives and policies:
 - a) Business – City Centre zone Policy H8.3(30) particularly clauses (c) and (d), and Policy H8.3(34).
 - b) Karangahape Road Precinct Objective I206.2(1), Policies (I206.3(1) and (2).
 - c) Karangahape Road HHA Objectives D17.2(1), (2), (3) and Policies D17.3(4), (6), (7), (8), and (9).
135. PC78 does not propose changes to either the Precinct Chapter I206 or the HHA Chapter D17. Mr Brown identified the relevant changes to Chapter H8 – Business – City Centre zone including Objectives H8.2(3), (4), (8) and (13) and Policies H8.3(12A), (30) and (30A). He noted that these changes include consideration of Qualifying Matters and respecting the existing built form and character for new development. The Precinct and HHA are Qualifying Matters. Referencing his discussion of effects on the Precinct and the HHA, Mr Brown stated in his view the proposal is not consistent or compatible with the character of the applicable Qualifying Matters and thus contrary to the objectives and policies of Chapter H8 and the changes proposed by PC78. He considered the NPS-UD is only relevant in this instance as the proposal is an example of urban development.
136. Having heard the evidence presented on behalf of the applicant, he maintained his opinion that the proposal does not pass either of the gateway tests set out in s104D of the RMA. He emphasised that the objectives and policies of the Business – City Centre zone, the Precinct and the HHA require that new development should respect the distinctive character and sense of place of the area. In his opinion, this proposal does not do that.

137. In his additional observations, he acknowledged the logic of PC 78 adopting an increased height limit of 35m for the western end of Karangahape Road, to reflect the height limit in the wider Karangahape Road area. However, the proposed building remains significantly higher than 35m and the height of the building frontage to the road still compromises the scale and character values of the Precinct and HHA.
138. Mr Brown advised that he liked Mr Fearon's alternative scenario of a more emphasised setback above the 14m frontage height on Karangahape Road. He advised that if the total height of the building were to be reduced to "more or less" the PC 78 limit of 35m and the frontage setback from Karangahape Road was increased, he considered the proposal would be a much better fit, with the Precinct and HHA provisions relating to scale and form. If this scale and form was adopted in the design, he considers the proposal would pass both tests of S104D. The effects on the streetscape, the qualities of Karangahape Road Precinct and the Heritage Area would be "not more than minor", and the objectives and policies would be fulfilled.

For the Council

139. The Council's officers were asked to comment on any matters raised by the applicant and the submitters and to indicate whether these had in any way changed their recommendations on the application. The Panel also had questions and points of clarification for the Council experts arising from the s42A report and the specialist review reports.
140. **Ms Elisabeth Laird**, a Senior Policy Planner who is involved with the Council's PC 78 work and was the lead council planner for the City Centre topic provided some background information to the Panel on the NPS-UD policy direction 3 (a) to enable intensification for both residential and business activities and Policy 4 which allows the plan to modify height or density requirements only to the extent necessary to accommodate a Qualifying Matter. She outlined that the Council's s32 process looked at every provision in the City Centre Zone and Precincts to determine whether to restrict the height or density of urban form, and whether they provided for a Qualifying Matter. This process had determined that the Karangahape Road Precinct provisions and general height limits provided for Qualifying Matters and should be retained, however, the Council had recommended amending the height from 15m to 35m. She advised changing the extent of the Precinct was out of scope of the IPI process. A similar exercise was undertaken for the historic heritage overlays.
141. She confirmed that while the City Centre hearings had occurred in January, February and August 2024, no information was currently available on when the Independent Hearing Panel might issue its recommendations. She reminded the Panel that the standards in PC 78 currently have no legal effect, with the focus on the proposed objectives and policies. With respect to the Karangahape Road Precinct objectives and policies, PC 78 continues to focus on development respecting the scale, form and character of the Precinct.

142. **Ms Gabrielle Howdle**, a qualified landscape architect, prepared a specialist review of the landscape (including visual) effects of the proposal for the s42A report. It was Ms Howdle's view that the proposal will have 'moderate' to 'moderate-high' adverse landscape (including visual) effects at a local level. In Ms Howdle's opinion, this was due to the incongruous scale and pattern of the proposed building within the context of existing built development along the Karangahape Road ridgeline; and the visual dominance of the building which would diminish the integrity of the existing coherent built environment of the local area and immediate streetscape.
143. In her presentation at the hearing, Ms Howdle confirmed her position as stated in her Memorandum and commented that in her opinion, the point of difference between the landscape experts related to the closer range effects of the proposal.
144. Ms Howdle went on to explain her support for the relationship between the tower and podium along the Gundry Street and Abbey Street frontages as a consequence of the finer grained arrangement of setbacks and outdoor terraces to form a successful mediating element.
145. **Mr Chris Butler**, a qualified and experienced urban designer, prepared a specialist review of the urban design matters associated with the proposal for the s42A report. Mr Butler concluded that the development would result in a number of positive urban design outcomes including development of a currently vacant site; provision of activation and passive surveillance along all three street frontages; a building designed in the round to minimise blank walls; and the introduction of a building that has high architectural quality.
146. However, it was Mr Butler's view that these positive outcomes were outweighed by the adverse bulk and dominance effects on the Karangahape Road frontage of the site, due to its incongruous building scale and form within the Karangahape Road Precinct. Mr Butler also considered the development to be contrary to the AUP (OP) policy context.
147. In his presentation at the hearing, Mr Butler advised that having heard the evidence his evaluation remain unchanged.
148. Mr Butler explained his understanding of the 'real world' context for the development, which he considered extends beyond the immediate area (i.e. the carpark and Mobil service station sites) to take in the heritage buildings on the opposite side of Karangahape Road and at the southern end of Ponsonby Road (using his Appendix C annotated version of Mr Jones' Viewpoint 1), along with the broader context of the 2, 3 and 4 storey buildings on the Karangahape Road corridor as shown in his Appendix D annotated Elevation diagram.
149. Mr Butler explained that he supports the various heritage design cues described by Mr Fearon, however considers that they do not get to, what he considers, is the 'heart of the issue', i.e. the introduction of an overbearing mass along the Karangahape Road frontage.

150. In response to questions from the Panel, Mr Butler confirmed that having heard the evidence he was reasonably comfortable with the building height, and it was the massing along the Karangahape Road frontage that was the focus of his concern.
151. **Mr William Howse**, the Council's Senior Built Heritage Specialist prepared a built heritage specialist memorandum assessing the effects of the proposal for the s42A report. He noted that the site lies at a highly visible and prominent location, forming the western "*gateway*" to the Karangahape Road HHA. This area is renowned for its historical and architectural significance, characterized by Victorian and Edwardian commercial buildings, generally one to three storeys, with brick or rendered façades that reflect a cohesive scale, rhythm, and materiality. In his view, the historical pattern of development, preserved through the heritage overlay, underlines the area's importance within Auckland's urban fabric.
152. In Mr Howse's opinion, the proposed design introduces a building of a scale and massing that significantly contrasts with the established streetscape character of the HHA. The proposed structure lacks sufficient setbacks at upper levels, contributing to an overwhelming bulk that would dominate its surroundings. The extensive use of glass façades at lower levels, combined with the overall height and materiality, would result in a stark visual departure from the predominantly brick and rendered heritage buildings of the area. While some references to heritage elements, such as a continuous canopy and modulated shop fronts, are included, these gestures were too subtle and insufficient to mitigate the building's dominance or achieve meaningful compatibility with the historic environment, in his view.
153. He opined, that from a heritage perspective, the proposal would introduce significant cumulative adverse effects on the HHA. The development would disrupt the visual cohesion of the western end of Karangahape Road, diminishing its integrity as part of the heritage area, he stated. The design fails to respect the established patterns of scale, proportion, and materiality that define the Precinct, thereby detracting from the values identified in the Karangahape Road HHA. Mr Howse outlined that while the applicant argued that the site's historical association with the demolished Church of the Epiphany sets it apart from the surrounding context, the proposed bulk and form bear no resemblance to the church's original architectural contribution to the area. In his opinion, instead of preserving or enhancing the area's values, the proposed development would degrade its heritage significance.
154. Mr Howse expressed concerns regarding the setting and context of the HHA. By dominating the ridgeline and skyline of the western approach to Karangahape Road, the building would form an incompatible and intrusive backdrop that would detract from the visual amenity and experience of the area, in his view. He opined that the excessive use of contrasting modern materials, particularly glass, would exacerbate this issue by undermining the traditional solid materiality of the streetscape. Furthermore, the lack of architectural strategies to mitigate the effects of height and bulk, such as meaningful setbacks or sensitive material selection, fails to address these visual and contextual concerns.

155. Mr Howse's stated that his assessment under the AUP(OP)'s policies and objectives further highlight the proposal's shortcomings. His assessment concluded that the development does not align with the objectives of the Historic Heritage Overlay, which aim to protect and enhance scheduled heritage areas and ensures that new developments are compatible with their historic settings. The Karangahape Road Precinct policies explicitly require new buildings to respect the form, scale, and materials of existing heritage buildings. The proposed design, with its over-height structure and incompatible materiality, does not meet these criteria. Instead, it would introduce adverse effects that would compromise the Precinct's character and the integrity of its historic heritage.
156. He saw the public feedback reflecting substantial concern about the proposal's impact on the area's heritage values, and noted that of the 37 submissions received, a significant majority raised objections, citing concerns about the building's scale, bulk, materiality, and overall incongruence with the historic streetscape. While the applicant's heritage specialist argued that the development minimizes adverse effects, this view is not supported by Mr Howse. He saw the proposal as undermining the area's cohesive character and introducing a precedent for incompatible development that could further erode the heritage values of the HHA.
157. He concluded that, while the site offers an opportunity for substantial development, the current proposal fails to respond appropriately to the heritage values of the Karangahape Road HHA. The design's scale, form, and materiality would introduce significant adverse effects that would weaken the visual and historic integrity of the area, particularly at its western end. In his assessment the application cannot be supported from a heritage perspective, since the proposal does not meet the requirements of the AUP(OP) objectives and policies, or the Precinct's guidelines for new development.
158. **Mr Bradley Peens**, the Council's reporting planner who prepared the s42A hearing report, advised the Panel that, having considered the evidence presented by the applicant and submitters, his position remained largely unchanged. The reason for this was due to the visual dominance to Karangahape Road and the incompatible massing and materiality with the character of the Precinct and the HHA. The one exception was the position he had taken in respect to the protection of private views from Hopetoun Street properties. He advised that the AUP(OP) does not seek to protect these views and that the purpose of the height standard in the City Centre zone is not to protect residential amenity but rather visual amenity on the streets and public places.
159. He advised he agreed with Mr Butler and his points around context. He emphasised that while the Mobil service station site and carpark site to the east do not add anything to the Precinct and do not relate to the character of the area, the site is partially opposite buildings that do align with the distinctive character that is identified in the Plan and the proposed building will be seen in the context of these sites, as demonstrated by Mr Jones' viewpoints C and 1. In terms of this part of the Karangahape Road frontage there are a number of character buildings in terms of the Precinct and contributing sites adding to the HHA.

160. While he had not referenced the character buildings on the western side of the south end of Ponsonby Road in his s42A report, he advised that from a “real world experience”, these buildings do contribute to the context and continue the character feel of Karangahape Road onto Ponsonby Road, noting the Mobil service station and carpark sites are exceptions to this context.
161. He agreed with the views expressed by the other specialists who considered the proposed six storey frontage to Karangahape Road would appear visually dominant and does not respond to the distinctive character of the Precinct and the HHA, nor the scale of the building frontages in proximity to the site. In his opinion the protruding ‘wintergarden’ exacerbates the over height nature of the frontage.
162. In relation to the NPS UD, he considered the overall development was in accordance with the intent of the NPS, but in terms of Policy 4 the intention is not to intensify at all costs and that Qualifying Matters come into play. He reminded the Panel that under PC78 (which gives effect to the NPS UD), the provisions have not changed, and these matters need to be considered.
163. In terms of height, he advised the Panel that he considered the site was capable of handling additional height beyond what was provided in the Operative Plan. The reason for this was that from wider views the building will be seen in the context of the taller buildings on the ridgeline, that there were taller buildings in Karangahape Road including the Lighthouse Apartments and Ironbank and these buildings have been sensitively integrated with the streetscape. He also considered that the proximity of the location to public transport and the City Rail Link meant that the area lends itself to having larger buildings. He also noted that shading and wind effects of the proposed building were acceptable and no more than minor. However, it is important that the building be integrated with the streetscape of Karangahape Road, more so because the applicant is seeking a building that exceeds the height standard.
164. Mr Peens also commented on Mr Fearon’s alternative proposal for the ‘wintergarden’. He considered the reduction in the depth of the ‘wintergarden’ feature would assist in reducing the dominance of the building on Karangahape Road. He would, however, like to see the relationship with the streetscape strengthened to give effect to the character of the area which is marked by buildings of generally two-three storeys, as referenced in the HHA statement. In his opinion, this is the direction the AUP(OP) is seeking, noting that the objectives and policies were not just about respecting but also enhancing and maintaining the existing values and character.
165. In response to questions from the Panel, Mr Peens confirmed that the departure from the zonal height and floor area ratio standards would be acceptable in this case as long as the proposed development accords with the general direction of the objectives and policies of the Karangahape Road Precinct and HHA. He was particularly concerned about the building’s relationship with the context at the streetscape. He advised that if this relationship can be maintained or enhanced, he considered this accorded with the zone policies and the direction provided by the

Precinct, and if this is achieved then a departure from the standards would be acceptable.

166. He confirmed that while in his opinion the proposed building achieved good urban design and met many requirements for a new building in the city centre generally, he maintained the view that the proposed building contrasts with the distinctive character of Karangahape Road in terms of scale and materiality and creates dominance on the Karangahape Road frontage. He confirmed to the Panel, that the earlier advice in his s42A report still held and that the adverse effects in terms of built form and appearance were more than minor.
167. Lastly, **Ms Karen Long**, the Council's Team Leader, advised the Panel that, from her experience, the use of proposed conditions to reconcile the architectural differences raised in the hearing was fraught, and while it has been done with other applications, this has occurred where the design was "almost there". In this case the differences appear to be much wider, and she felt it would in effect be creating a secondary delegated approval.

Right of Reply

168. Mr Allan concluded with an oral reply to the matters raised in the hearing and helpfully submitted a written version. He reiterated that he saw the key differences between the experts being:
- (a) the relative weight to be given to the:
 - (i) HHA and Precinct provisions; and
 - (ii) The physical context in the immediate vicinity of the site and at the western end of HHA and Precinct.
 - (b) The relationship between adverse effects and the HHA and Precinct policy framework.
169. He advised that the applicant remains of the view that:
- (a) Assessment of the proposal against the HHA and Precinct provisions requires acknowledgement of the physical context within which it is located.
 - (b) The range of design options available will differ within the HHA and Precinct, depending on the nature and characteristics of development in the vicinity of the site.
 - (c) The proposal responds appropriately to the HHA and Precinct provisions having regard to the physical context within which the site is located.
170. He also highlighted the broader difference in approach between the supporters and opponents of the proposal, related to the long-term vision held for the site and the western end of the HHA and Precinct with the applicant seeing the proposal as an opportunity to provide *"a striking, attractive, large, modern, and appropriate office building that acts as a catalyst for future development and intensification in this part*

of the city, while respecting and complementing the historic heritage values of the area and special characteristics of the Precinct”¹⁵. He submitted the alternative view “appears to minimise the distinctiveness and positive contribution of the new building, arising from a fear that it will otherwise overwhelm the existing character”¹⁶. Such an approach resulting in a “much less interesting building and a much less interesting and attractive Precinct and HHA in the future.”¹⁷

171. Mr Allan submitted that planning needs be concerned with the future, that whatever was built on the site will have at least a 50-year life, if not longer and that the Panel should approve the proposed development as it would be a distinctive yet complementary, respectful addition to the urban fabric of this part of the city.
172. He recapped on the architectural approach undertaken to design the building and the elements incorporated in the design. He rejected the criticism made by some experts that the elements referencing the HHA and Precinct are too nuanced and subtle.
173. In terms of the proposed height, he highlighted that none of the professional witnesses considered compliance with the operative standard to be necessary. In particular, Ms Skidmore had suggested a building height aligned with the 35m standard while other experts were comfortable with the overall proposed height with appropriate setbacks from the Karangahape Road frontage and an appropriate interface with Karangahape Road above the 14m datum. The applicant’s submission is that it is the height and treatment of the street façade that members of the public perceive; and that above a 15m or 20m height the absolute height of a building does not significantly affect the perception at street level.
174. In terms of the ‘wintergarden’ element, Mr Allan outlined that while Mr Fearon had presented an amended treatment that reduced the depth of the feature by 50%, the applicant’s experts preferred the proposed design as lodged. He suggested that if the Panel preferred the alternative design this could be achieved through an amendment to proposed Condition 20. In terms of the building’s materiality, if the Panel agreed that greater solidity was required on the Karangahape Road frontage this could be dealt with through conditions.
175. Mr Allan also responded to Commissioner Gilbert’s question regarding the relationship between the proposed development and the Ponsonby Road Special Character Area. He confirmed that the applicant’s witnesses have taken this into account as part of the physical and planning context. He did however note that any intensive development on the Mobil service station site would likely block views from the southernmost point on Ponsonby Road.
176. In response to questions regarding the implications of central government’s proposals to amend and replace the RMA, Mr Allan advised that the Panel needed to deal with the legislation as it currently exists. He did however, highlight that Minister Bishop’s cabinet paper on replacing the RMA indicates his view that he does not believe that *“councils should be able to use resource management to ...*

¹⁵ Douglas Allan, Reply submissions, page 2, paragraph 1.3 (a)

¹⁶ Ibid, page 3, paragraph 1.3(b)

¹⁷ Ibid.

apply blanket special character protection in urban areas ..., amongst other things” and the “management of historic heritage would be better served through development of dedicated policy interventions, rather than as part [of] resource management planning and consenting processes.”

177. Mr Allan concluded by reminding the Panel that when addressing heritage and character issues it is important to *“pick the battles that matter rather than constraining development in circumstances where there would be little, if any, adverse effect on either character or heritage”*. He submitted that these circumstances apply in this case, where the absence of any heritage or character building on the site should be seen *“as an opportunity to regenerate a rather tired part of the city rather than to constrain development in a way that will not practically benefit the broader HHA and Precinct”*.

Principal issues in contention

178. Under the provisions of the AUP (OP) the site is zoned Business – City Centre and subject to the Karangahape Road HHA and Karangahape Road Precinct provisions. We agree with the Council’s planner that the key resource management matters requiring assessment relate to the additional height and floor area proposed for the building and the associated effects from the built form and scale of the development on the distinctive character of the area, historic heritage values, and effects on adjacent public streets, and sites.
179. We acknowledge that there are other matters requiring assessment include the proposed earthworks, construction effects, operational traffic and transport effects, geotechnical, land disturbance involving contaminated soil, and archaeological effects. There was, however, general agreement between the applicant and the Council’s specialists on these matters.
180. Therefore, the principal issues in contention between the parties are the:
- Building height, bulk, massing and materiality.
 - Compatibility with the Karangahape Road HHA and Karangahape Road Precinct

Main findings on the principal issues in contention

Introduction

181. We generally agree with the description of the site and surrounding environment provided in section 2 of the Assessment of Environmental Effects. The site is located on the southern side of Karangahape Road at the western end approximately 37 metres from the intersection of Newton Road, Great North Road and Ponsonby Road. In terms of the amended proposal, the site is bounded by Karangahape Road, Gundry Street and Abbey Street and has a total site area of 1,597m².

182. The proposed development now seeks consent to construct and operate a part 10 / part 11 level commercial building at 538 Karangahape Road with ground level retail, and food and beverage activities, with the upper levels used for office / commercial space and a two-level basement carpark accommodating 48 vehicles along with end of trip facilities, servicing, and plant areas. Demolition of remaining structures on site and large scale cut earthworks are required to implement the proposal.

Building height, bulk, massing and materiality

183. By way of context, the application site is zoned Business City Centre zone. The zone description (H8.1) states:

“The Plan enables the greatest intensity of development in terms of height and floor area to occur in the city centre. Within the city centre itself, development potential is concentrated in the core central business district. Development potential reduces towards the ridgelines and transitions to lower heights on the waterfront and landward periphery whilst allowing for variation and interest in built form outcomes. The zone also manages the scale of development in order to protect important special character areas, sunlight admission to parks and public spaces, significant views to the volcanic cones and other landmarks including identified views to historic heritage places and to maintain and enhance the distinctiveness of particular areas.”

184. The specific objectives applied to development in the City Centre zone (H8.2) are:

- (8) *Development in the city centre is managed to accommodate growth and the greatest intensity of development in Auckland and New Zealand while respecting its valley and ridgeline form and waterfront setting.*
- (9) *The distinctive built form, identified special character and functions of particular areas within and adjoining the city centre are maintained and enhanced.*

185. These objectives are reinforced by policies dealing specifically with city form (H8.3.(30)) that seek to manage adverse effects associated with building height and form by:

- (a) *transitioning building height and development densities down to neighbourhoods adjoining the city centre and to the harbour edge;*
- (c) *requiring the height and form of new buildings to respect the valley and ridgeline form of the city centre and building design to be complementary to existing or planned character of precincts; and*
- (d) *managing the scale, form and design of buildings to:*
 - (i) *avoid adverse dominance and/or amenity effects on streets and public open space; and*

186. These policies are implemented by the application of a 15m general building height control and a basic and maximum total floor area ratio control of 3:1. The stated purpose of the building height control is to *“manage the height of buildings within the city centre to:*
- *enable the tallest buildings within the core central business district and transition heights down to neighbourhoods adjoining the city centre and to the harbour edge;*
 - *respect the valley and ridgeline form of the city centre and the existing or planned character of precincts; and*
 - *avoid adverse dominance, shading and/or visual amenity effects of building height on streets and public open spaces.”*
187. While the stated purpose of the basic floor area ratio control is to *“manage the scale of development in the city centre”* and the maximum total floor area ratio control is to *“manage the overall scale of development in the city centre”*. Collectively these standards are intended to shape the urban environment of the site and its immediate setting.
188. Layered onto the planned built form is what Mr Munro described as the ‘real world’ context of the site which captures the nuances of the existing urban environment at the western end of Karangahape Road that includes the carpark site and the Mobil service station site respectively to the east and northwest of the site.
189. From the evidence presented by the respective landscape and urban design experts, there was general agreement that the proposed development is of an appropriate height and design when viewed from afar.
190. Further, the urban design experts are in agreement on the positive aspects of the proposal, including: the development of a currently vacant site; the proximity of the development to Karanga-a-Hape train station; the location on good bus and active mode routes; the activation and passive surveillance along three street frontages implicit in the proposal; the basement carparking and servicing strategy; the flexible floor plates; and the innovative design, particularly in terms of the sustainability aspirations. There is however a difference in the weighting of these positive aspects across the evidence, with the applicant’s experts applying greater weight.
191. Where the experts fundamentally disagree is in relation to the effects of the building on the more immediate streetscape of Karangahape Road. It is our understanding that the submitter and Council experts consider that the proposal will result in more than minor adverse dominance effects on such views and undermine the impression of coherence associated with the Karangahape Road corridor, due to the significant departure from the established character of Karangahape Road, in relation to the building height, scale, form and materiality.
192. Having visited the site and local area and carefully reviewed the evidence (including Mr Jones’ Visual Simulations), we agree with Ms Skidmore that when considered (and experienced) as a whole, the Karangahape Road corridor and

particularly the way buildings relate to Karangahape Road itself, does exhibit a strong built cohesion that reflects the historic pattern of development and contributes to the creation of a collectively distinctive built form and streetscape character. Particular aspects of this character relevant to our consideration of the proposal include the generally two to three storey building height (acknowledging that there are taller buildings interspersed throughout this pattern), the fine grain of development and the reasonably consistent built form character comprising brick and masonry with window and door openings punctuating the solid facades.

193. While we acknowledge what Mr Butler described as the 'exceptions' with respect to this pattern at the western end of the Karangahape Road corridor that include the site itself, the carpark, the Ponsonby Road corner site and the Mobil service station site, we consider that the 'real world' visual connection of the western end of Karangahape Road to the character buildings along the southern end of Ponsonby Road goes some way to mitigating the influence of these 'exceptions' on the impression of cohesion. In coming to our conclusions on this point, we agree with Mr Mentz that the built form character at the southern end of Ponsonby Road is very similar to many of the heritage buildings throughout the Karangahape Road corridor, and Ms Skidmore's observation that the continuous ridgeline location of both Ponsonby and Karangahape Roads reinforces the connection between the two areas.
194. We also agree with Ms Skidmore that within this context, the vacant properties on either side of Gundry Street (including the site), present the opportunity to stitch together gaps in the existing corridor.
195. Turning to the question of dominance, we understand the main drivers of expert disagreement stem from the overall building height within the immediate context, and the massing or form of the building along the Karangahape Road frontage.
196. The latter issue generally relates to the design of the podium and 'wintergarden' element and how they relate to Karangahape Road. We agree with Ms Skidmore and Mr Butler, that within the specific context of the site, the 'wintergarden' element forms a poor transition between the podium and tower elements, due to the physical form, building use and relatively limited differentiation in materiality. Noting that we understood their evidence to be that the issue of materiality differentiation also applied to other parts of the building.)
197. In response to Mr Fearon's evidence, both Ms Skidmore and Mr Butler confirmed to us that they were satisfied that there was adequate differentiation in terms of materiality.
198. However, we note Mr Fearon's comments during his explanation of the materials, where he advised us that prototypes would be required to test the sort of fritting that would work for the development in terms of matters such as the preferred external appearance and the management of solar gain within the building. While we acknowledge that fritted glass is a high-quality material that has been used successfully in high profile international buildings, Mr Fearon's comments left us with some uncertainty with respect to final visual appearance of this material which

we understand is proposed across the majority of the building. Mr Jones echoed this uncertainty in answering questions from the Panel with respect to the technical reflectivity or transparency characteristics of the various glazing materials.

199. With respect to the amended 'wintergarden' proposal put forward by Mr Fearon, we are inclined to agree with Ms Howdle and Mr Butler that the conceptual nature of the material provided means that we are unable to clearly understand the design and appearance of the alternate design, and how it integrates with the balance of the building 'in the round'.
200. On this point, we also note Ms Long's comments that managing an alternate design approval process via a consent condition is typically appropriate for minor design refinements. We agree that the alternate 'wintergarden' design is appreciably more than a minor design refinement and consider that this is borne out in the variance of expert opinion expressed during the hearing on the appropriate design and appearance of this element. For example, Ms Skidmore preferred a setback 'wintergarden' that was more 'openable'; Mr Munro supported the original proposal, the alternate (setback) design and advised us that he also supported a 'no 'wintergarden'' option during the hearing; Ms Howdle and Mr Butler expressed discomfort in commenting on any alternate 'wintergarden' design in the absence of more detail; and Mr Butler went on to comment that in his opinion, the issues of bulk would likely remain regardless of whether the 'wintergarden' was set back or more open.
201. In a similar vein, Ms Skidmore and Mr Butler expressed tentative support for the enhancement of the solid elements in the podium as described in Mr Fearon's evidence. However, the conceptual nature of the material presented meant that neither expert could comment with certainty as to whether the design revisions would address their concerns.
202. For these reasons, we have not considered the merits of the alternate 'wintergarden' design or a potential revised podium design further.

Findings

203. Overall, taking into account the real-world context of the site outlined above, along with the scale of the proposed AUP(OP) building height and floor area ratio infringements, we consider that the proposed height and form of the new building will be of an incongruous scale and form and not complementary to the existing or planned character of the Karangahape Road Precinct. Rather the building will read as a dominant element that undermines the impression of coherence evident along the Karangahape Road corridor.
204. In its current form the proposal provides insufficient distinction between the podium and tower with the 'wintergarden' element providing a poor transition between the podium and tower elements, due to its physical form, proposed use and what we understand to be a relatively uncertain differentiation in materiality. In terms of the alternate 'wintergarden' proposal put forward at the hearing, we agree with the Council officers that the conceptual nature of the material provided means that we

are unable to clearly understand the design and appearance of the alternate design, and how it would integrate with the balance of the building.

205. For completeness, we are not persuaded that the location of the site at the western end of Karangahape Road means that it does, or could, function as a 'gateway', or 'bookend' to the corridor that justifies a taller building. We think the real-world context of the site that we have described above overrides such an interpretation of the site location. We also considered that such a development would be contrary to a number of elements of the City Centre zone operative and proposed policies dealing with city form (H.8.3(30) (a), (c), (d)(i) and (ii)).
206. We are also cognisant of Mr Munro's observation that all of the technical evidence for PC 78 supports the capability for substantial height on the site without compromising the special character and heritage context. For the reasons outlined earlier in this decision, we have not factored the PC 78 standards into our decision making as they have no legal effect at this time.

Compatibility with the Karangahape HHA and Karangahape Precinct

207. While the Business – City Centre zone seeks to enable the greatest intensity of development in terms of height and floor area, this is tempered by the desire to manage the scale of development and to protect a number of matters including "special character areas" and "to maintain and enhance the distinctiveness of particular places". In this case the Karangahape Road HHA and the Karangahape Road Precinct.
208. The AUP(OP) aims within the Historic Heritage framework to protect historic heritage places *"from inappropriate subdivision, use and development"*¹⁸. The Historic Heritage values of Karangahape Road include the significance of the area as having had commercial and residential (emphasis added) land use in the past. To propose a large office building of this scale is not in keeping with the HHA character in this respect.
209. In the case of the Karangahape Road HHA, the provisions set out that:
- "[T]he provisions of the Historic Heritage Overlay manage the protection, conservation, maintenance, modification, relocation, use and development of scheduled heritage places"*¹⁹. It also records that "[S]ome precincts contain more detailed information and specific rules relating to a scheduled historic heritage place/s. Where this is the case the more specific precinct rules will replace the rules in D.17.4"²⁰.
210. The Karangahape Road HHA (ID 02739) is included in Schedule 14.1 and more fully defined and described in Schedule 14.2 in the maps and statement of significance which summarises the heritage values of the area and relative importance of the values. It states the significance of Karangahape Road relates to *"its historical association with the commercial and residential development of*

¹⁸ Auckland Unitary Plan (AUP(OP)), B5.2.1(1) and D17.2(2)

¹⁹ Ibid D17.1. Background, page 1

²⁰ Ibid

*Auckland, from the time of the city's colonial establishment through to the mid-20th century. The area retains considerable significance due to the predominance of Victorian and Edwardian-era buildings that have survived modern redevelopment. The decorative physical appearance of these buildings combined with the unity of scale and form reflects the historical pattern of development and creates an urban landscape that is distinctive within Auckland*²¹.

211. The site is also included within the Karangahape Road Precinct. This Precinct provisions seeks *"to maintain and enhance the area's distinctive built form and streetscape character. This distinctive character is derived from its:*
- ridge top location, orientation and aspect;*
 - concentration of historic heritage and special character buildings and features; and*
 - diverse and multi-cultural mix of activities."*²²
212. All experts agreed that the HHA and the Precinct are not contiguous throughout the area, however, this is expected in the AUP(OP). The existing character was clearly articulated by all and seemed undisputed. It appears the planned character is where differing views arise.
213. The experts also concurred that generally a new building is not in contrast with the HHA or Precinct values per se, however, where the experts differed was in the appropriateness of the height proposed, the architectural design, and the level of effects on heritage and character values of this application.
214. At the hearing, Mr Wild and Mr Fearon described how the design draws relevant cues from the existing values of the HHA, such as the 14m datum, and the differentiation and break down of the massing using variously different fritted glass facades, to achieve a sympathetic proposal within the HHA and the Precinct provisions. Mr Fearon, however, noted that it still needs to be determined how the fritting will work on this proposal and that samples are required to establish that the effects that are envisaged are possible to be achieved.
215. In contrast, Mr Burgess and Mr Howse argued that the development is inappropriate in this location. In Mr Burgess' view *"...the material form and massing of the older buildings within the HHA is very consistent, and a key element in the HHA Statement."*²³, and the material form, massing and height of the proposed development is not respecting this key element.
216. Mr Howse had similar concerns, noting that the proposal would have significant adverse effects on the HHA because of its incompatible scale, massing, and materiality, resulting in significant adverse effects from a historic heritage perspective²⁴.

²¹ AUP(OP)Schedule 14.2.12., page 42

²² AUP(OP), I206.2(1)

²³ Statement of Evidence Graeme Burgess (20 November 2024), page 3, paragraph 11

²⁴ William Howse, Built Heritage Specialist Memo, 21 October 2024, paragraphs 7.3 and 7.4

217. On the other hand, there was agreement that a modern building can be appropriate in the HHA and Karangahape Road Precinct, however, the experts disagreed on the level of architectural cues that need to be taken from the existing, and the subtlety or readability of these cues, that establish a link with the existing character.
218. Mr Fearon told us, confirmed by Mr Wild, that the cues taken can and should be subtle to avoid mimicry of an older building, which they stated is neither required nor appropriate. They considered that the 14m datum is apparent, and the protruding 'wintergarden' element and gap in between provides for a clear distinction between the podium and the upper levels of the building on the Karangahape Road frontage. In addition, the verandah stays are positioned to reflect the rhythm of the older building facades. The Gundry Street frontage features a setback above the 14m datum, and the tower is also set back and centred within the building mass.
219. Mr Howse and Mr Burgess were not convinced of the readability of the verandah stay rhythm, the datum and the successful distinction between the podium and upper levels. In his memo, Mr Howse noted that the building does not respond to identified values of the HHA, and that the proposal lacks sufficient setbacks to mitigate the dominance of the upper levels. In his view, the extensive use of glass facades does not complement the typically more solid facades of the HHA and would result in cumulative adverse effects on the heritage values of the place (Karangahape Road HHA).²⁵
220. Throughout the hearing emphasis was put by the applicant's experts on the values of individually scheduled buildings within the HHA, which they stated are not affected, since they are located at a reasonable distance from the development site. The AUP(OP) refers to historic heritage places, which could be understood as individual places only. Following questions from the Panel to all heritage experts they agreed that the places referred to also include areas (as a larger 'place') and these larger areas are to be treated in relation to their protection similar to an individual building, as a whole (hence Mr Howse's clarification regarding the values of the 'place' above).
221. Mr Burgess explained in his evidence²⁶ that:
- "This is an overlay designation, not an individual site designation. In considering the effects of the proposed development under D17.8, it is my understanding that the HHA must be considered as the primary scheduled item on which the effects must be evaluated not individual scheduled sites within the HHA. Mr Howse has taken this overall approach in his assessment of the proposal, as stated at 8.1 of his memo. Mr Wild, in his HIA and streetscape study, suggests that the western end of the HHA has a very different character to the Eastern end of the HHA. I agree that the particular attributes of the overlay are mixed and that there is a greater number of surviving Victorian and Edwardian buildings at the Eastern end of the area. I do*

²⁵ Ibid, paragraph 7.8

²⁶ Statement of Evidence Graeme Burgess (20 November 2024). Page 2, paragraph 8.

not consider that this means that the western end of the area should not be managed in order to maintain the overall Heritage values of the HHA”.

222. Mr Howse noted in relation to the ‘weaker’ western end of the area:

“The proposed building would strongly contrast with and detract from the predominant heritage character of the area. I consider that the addition of strong contrast in this location would accumulatively [sic] weaken the contribution of the western end of the HHA, and would negatively impact the ‘gateway’ to the HHA.”²⁷

223. With respect to the more distant individually scheduled buildings, Mr Wild considered that the western end would provide for a greater opportunity to accept a very distinct and contemporary design, which seems in contrast with his view that the area needs to be treated as a whole.

224. We agree with Mr Burgess and Mr Howse in respect that the assessment of effects requires considering the values of the scheduled area first and foremost, and is less concerned with the effects on individually scheduled buildings; and the area needs to be assessed as a whole. While Mr Wild generally agrees with this notion, as noted above, we find he contradicts this by affording this site more freedom of design due to its location at the ‘weaker’ end.

225. We prefer Mr Burgess’ and Mr Howse’s assessment that the site forms part of the HHA and the Precinct, and that the planned environment seeks to maintain and enhance the HHA with its values of smaller scale buildings, including lesser height, and more solid facades that reflect, and are sympathetic to, the already existing and valued character.

226. When asked by the Panel, how he considers that the proposal reflects the requirements of the Precinct for new designs in terms of style, scale, material, colour and detailing²⁸, Mr Wild did believe that *“the proposal is not necessary what the Precinct seeks, but what this site within the Precinct generates”*. He noted that the site as found is a non-contributing site and provides an opportunity for such a design, due to its location opposite another empty site (car park) and the Mobil service station site across the street. In his view, the proposed design strengthens the ‘weaker’ western end of the HHA, and particularly the Precinct.

227. Mr Howse unreservedly disagreed and stated that:

“I consider that this site’s contribution to the wider area would change as a result of the proposal – it would no longer make a neutral contribution or no contribution to the HHA, but rather would detract from the HHA in a significant manner.”²⁹

228. Mr Wild concurred that the historic fabric of the HHA consists of Victorian and Edwardian, and unreinforced and at times rendered two to three storey buildings. However, he was of the opinion, in contrast to both other heritage experts, that the

²⁷ William Howse, Built Heritage Specialist Memo, 21 October 2024, paragraphs 7.9

²⁸ AUP(OP) I206.3(2)

²⁹ William Howse, Built Heritage Specialist Memo, 21 October 2024, paragraphs 7.29

design reflects this, in reference of the body of the Precinct and HHA, and considered the contrasting proposal an appropriate response.

229. Mr Burgess disagrees with Mr Wild in so far as he stated that a development of such bulk will have an effect on the interpretation of the HHA. He argued that while the design may be compatible with buildings on Hopetoun Street, which are not part of the HHA, that within the HHA the design would have an overwhelming presence³⁰.
230. He criticised the use of the glass curtain wall, that is only broken at the 14m datum through a recess and the verandah stays, yet above this the curtain wall is flat and has no other surface detail than the variation in fritting. In his view, these minor elements are not sufficient to reference the values of the HHA and the character of the Precinct. He considered that there are many architectural responses possible to reference these values without slavishly copying or mimicking existing designs, but the proposed design is not such an appropriate response.
231. Mr Fearon responded offering an option of an alternative design, that provides for more solidity in the podium design. However, we had no details on how this could be integrated and therefore could not give any weight to that option.
232. The Ironbank building to the east of Karangahape Road has been noted by all experts as an example of a contemporary building that has successfully incorporated the area's values by providing height, yet with a considerable setback above the datum, the use of more solid materials, and an overall much smaller scale.
233. The applicant offered a number of additional changes to the Karangahape Road façade (e.g. setback of the 'wintergarden' by 50%, introduction of further greenery etc). Mr Burgess considered that these might assist in a minor way, although he would need to see the alternate design to be certain, but that the height of the building would continue to create a dominance that is detracting from the values and character of the area. When asked whether a reduction in height, as suggested by some submitters, to 35m would overcome the concerns he has, he believed that this height would not be appropriate either.
234. Regarding the effects of a lower height, Mr Howse, in contrast was of the view, when asked the same question, that above a certain height the actual height of a building does not matter anymore, since it is not having any additional adverse effect.

Findings

235. We prefer Mr Burgess' assessment and agree that the proposed building is dominant. The view of the building from any location is not two dimensional, but three dimensional. While the visual simulations directed the eye of the viewer in a particular direction, as we could appreciate during our site visit, when standing on the street (from various viewpoints), one has a much more dynamic and expansive

³⁰ Statement of Evidence Graeme Burgess (20 November 2024), page 4, paragraph 14 4

view of the site and its surrounds, which enables an appreciation of its height in comparison to the existing built form context.

236. Both Mr Burgess and Mr Howse confirmed at the hearing that in their assessment the proposed design, even if it is changed as offered by the applicant at the hearing, is not consistent with the relevant objectives and policies, and does not contribute to the distinctive sense of place of Karangahape Road.
237. Listening to Mr Burgess and Mr Howse, we understand that it is not the fact that the building is new and distinguishable, which we agree is appropriate, but that they are concerned about its lack of compatibility and sympathetic design and the overall dominance of the proposed building. In their view, the design does not reflect the values of the HHA and the Precinct with regard to the materiality, massing, and relative height of buildings, and the Panel concurs with their view.
238. The Panel also agrees with Mr Howse's assessment that the proposal will not be in accordance with the objective to protect the scheduled Karangahape Road HHA from inappropriate development. The Panel agrees equally that the proposed incompatible bulk, form, and materiality will not maintain or enhance the HHA³¹.
239. We agree with the assessment by Mr Burgess and Mr Howse, the development does not sufficiently protect and reflect the scheduled historic heritage values of the area, and the design is overly dominant, and as a result overwhelming the character of the HHA.
240. With regards to the requirements in the Precinct provisions, the Panel finds that the proposal does not maintain or enhance the distinctive built form and streetscape character of the Precinct, due to its substantial height and massing well in excess of the existing and planned built form for the site.
241. It is a particular Precinct policy for new buildings to manage height and building setbacks and to respect the general scale and form of existing buildings, which the proposal does not achieve. Moreover, the policy seeks to avoid adverse dominance effects, and as demonstrated by Mr Burgess, these dominance effects have not been evaded or even mitigated in a successful manner.
242. In saying that, we accept the applicant's statement that the proposal would positively contribute to the continuity of pedestrian interest and vitality for the Precinct.

Statutory Assessment

Section 104D determination

243. The application cannot be granted unless it satisfies either the minor adverse effects threshold of section 104D(1)(a) or the 'not contrary' to the objectives and policies of the relevant plans test in section 104D(1)(b).

³¹ William Howse, Built Heritage Specialist Memo, 21 October 2024, paragraphs 7.28

244. To summarise the discussion above we find that the proposal is likely to have effects particularly on character and amenity that are more than minor. In this respect the proposal does not meet the first leg of S104D(1)(a).
245. We also find that the proposal is contrary to significant and important objectives and policies in the AUP(OP), in particular those relating to development respecting the existing and planned form and character of the city centre zone, the Karangahape Precinct and the Karangahape HHA. In terms of the height and massing, the proposal in its current form fails to avoid the adverse dominance and amenity effects on Karangahape Road and Gundry Street. Therefore, we consider the proposal does not meet S104D(1)(b).
246. Accordingly, we find that the proposal does not pass either test in s104D.

Overall Conclusions

247. 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. We consider that the applicant's experts have demonstrated that many of the adverse effects arising from the development proposal such as traffic, parking, noise, vibration, infrastructure contaminated land disturbance and ground water dewatering and diversion can be appropriately mitigated. However, the adverse effects related to built form and appearance, the streetscape, historic heritage and the Karangahape Precinct have not been sufficiently avoided, remedied or mitigated such that the effects on the environment will be more than minor.
248. As outlined in our findings, the areas of particular concern are the overall height, bulk and massing of the building, including whether there was sufficient distinction between the podium and tower, the façade treatment and materiality. We acknowledge that the specialist evidence before us is generally supportive of the proposed increase to the general height standard at the western end of the Precinct included in PC 78. However, the provision has no legal effect, and the proposed development is significantly higher than the proposed 35m height, and the building frontage to the road still compromises the scale and character of the proposed values of the Karangahape Road HHA and the Karangahape Road Precinct provisions.
249. The Karangahape Road HHA and the Karangahape Road Precinct provisions overlay the City Centre zone. There was general agreement amongst the experts that the HHA and Precinct provisions do not require replication in a new building of the scale and architectural characteristics exhibited by existing heritage and special character structures. Rather the HHA and Precinct provisions seek to protect the collective heritage integrity, and that any new building proposal needs to be viewed in this overall context not its immediate context and vicinity. We were not persuaded that the site or for that matter the western end of the Karangahape HHA and the Karangahape Road Precinct more generally has a considerably different, less sensitive character to the balance of Karangahape Road.

250. Therefore, any new development requires assessment in terms of the outcome sought by the HHA and the Precinct provisions which is to maintain and enhance the streetscape character of Karangahape Road as a whole, and needs to be of a compatible height, scale, style and materiality. We consider the proposed development inappropriate and unsympathetic when assessed against the provisions of both the Karangahape Road HHA and the Karangahape Road Precinct provisions and fails to address the relevant matters in the AUP(OP).
251. During the hearing it was suggested that the Panel could consent to a modified proposal. Modifications suggested included reducing the overall height of the building, acceptance of Mr Fearon's alternate 'wintergarden' option or removal of this element altogether and to impose conditions with respect to materiality. As a Panel we do not believe we have sufficient information before us to understand the effects of these changes on the existing environment and to determine whether the amended proposal would be contrary to the relevant AUP(OP) objectives and policies.
252. We do, however, acknowledge that the proposal does incorporate many positive and beneficial elements including the potential for new retail, commercial and office space within walking distance of the Karanga-a-Hape Station, the street level activation along the Karangahape Road frontage, the provision and detailing of the proposed verandahs, the fine grained treatment of the Gundry Street and Abbey Street frontages and the stated objective to achieve a 6 Green Star rating. However, we do not consider that these positive effects of the proposal outweigh the adverse effects that would arise.
253. In terms of the objectives and policies of the AUP(OP) and proposed PC 78, we find that the proposal is contrary to the overlapping objectives and policies of the City Centre zone, the Karangahape HHA and the Karangahape Road Precinct.
254. The applicant was clear that the scale and massing of the proposal was influenced by the notification of PC 78 which included amendments to the City Centre zone objectives and policies, the removal floor area ratio control and increases in the general building height rules. At the time of lodging the application, it was anticipated that Council's decisions on the PC 78 would be released by March 2024 and there may have been an expectation on the applicant's behalf that PC 78 provisions, including any new standards, would have legal effect. This did not occur, with the date for notification of decisions now expected in March 2026.
255. Therefore, in terms of weighting afforded to the objectives and policies of both the operative and proposed plan provisions, we record that PC 78 is still at an early stage in the planning process and therefore, the Panel has given limited weight to the proposed amendments to the City Centre zone objectives and policies. Although we agree with the respective planning witnesses that the relevant City Centre objectives and policies are not substantially altered by PC78.

Decision

In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104 and 104D and Part 2 of the RMA, we determine that




resource consent to construct and operate a part 10 / part 11 level commercial building at 538 Karangahape Road with ground level retail, and food and beverage activities and the upper levels used for office / commercial space, with a two-level basement carpark accommodating 48 vehicles along with end of trip facilities, servicing, and plant areas.. Demolition of remaining structures on site and a large scale cut earthworks. required to implement the proposal at 538 Karangahape Road, City Centre is **refused** for the reasons set out below.

Reasons for the decision

1. In terms of section 104D of the RMA, the proposed development fails to meet either test of s104D. The proposal would have adverse effects on the environment that are more than minor, and overall would be contrary to the objectives and policies of the AUP(OP). However out of an abundance of caution we have also considered the application under s104.
2. In accordance with an assessment under s104(1)(a) of the RMA, the proposed development when viewed in the context of the surrounding environment and the form of development anticipated by the City Centre Zone, the Karangahape Historic Heritage Area and the Karangahape Precinct would result in adverse effects that cannot be avoided, remedied or mitigated to a minor level.
3. In accordance with an assessment under s104(1)(ab) of the RMA, the proposed development incorporates many positive and beneficial elements however these do not outweigh the adverse effects that arise from the proposal.
4. In accordance with an assessment under s104(1)(b) of the RMA, the proposal is inconsistent with, and contrary to, the key objectives and policies within chapters H8 Business City Centre Zone, D17 Historic Heritage Overlay and I206 Karangahape Road Precinct of the Auckland Unitary Plan (Operative in Part) and Proposed Plan Change 78. These objectives and policies relate to:
 - avoiding, remedying or mitigating adverse effects associated with building height and form;
 - requiring new buildings to be complementary to the existing and planned character of precincts;
 - managing scale, form and building design to avoid adverse dominance effects on streets;
 - ensuring the maintenance and enhancement of the historic heritage values of the place; and
 - in the Karangahape Road Precinct ensuring new buildings managing height and setbacks above the street frontage in manner that respects the general scale and form of existing buildings and avoids adverse dominance effects.

These are notable issues which impact upon the integrity of the City Centre Zone, the Karangahape Historic Heritage Area and the Karangahape Precinct and the key outcomes sought by these provisions.

5. In terms of s104(1)(c) of the RMA, there are no other matters considered relevant and reasonably necessary to determine the application
6. We find that the proposal satisfies the provisions of sections 105 and 107 in that the management measures proposed within the Contaminated Soil Management Plan will minimise the potential environmental and health risks during the land disturbance activities.
7. Any consideration of an application under s104(1) of the RMA is subject to Part 2. The Court of Appeal in *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 has held that, in considering a resource consent application, the statutory language in section 104 plainly contemplates direct consideration of Part 2 matters, when it is appropriate to do so. Further, the Court considered that where a plan has been competently prepared under the RMA, it may be that in many cases there will be no need for the Council to refer to Part 2. However, if there is doubt that a plan has been “competently prepared” under the RMA, then it will be appropriate and necessary to have regard to Part 2. In the context of this application, we find that there is no need to go beyond these provisions and look to Part 2 in making this decision as an assessment against Part 2 would not add anything to the evaluative exercise.

		
Janine A. Bell (Chair) Independent Hearing Commissioner	Bridget Gilbert Independent Hearing Commissioner	Heike Lutz Independent Hearing Commissioner

Date: 07 February 2025