

The National Policy Statement Urban Development

Independent Hearings Panel

Auckland

Recommendation Report Hearing Topics - City Centre, City Centre Precincts and relevant Qualifying Matters

**Prepared by the Independent Hearing Panel pursuant to clauses 99
and 100 of Schedule 1 of the RMA and released to Auckland Council
on 8 May2025**

Note: Decisions on Plan Changes 79-83 can be found in separate reports.

This report sets out the Panel's recommendations on the provisions of the IPI covered by the report, including the Panel's recommendations on the matters raised in submissions. The report states the Panel's reasons for accepting or rejecting submissions, identifies any recommendations that are outside the scope of the submissions and where relevant forms a further evaluation in accordance with s32AA.

This report may also include—

(a) matters relating to any alterations necessary to the IPI as a consequence of matters raised in submissions; and

(b) any other matter that the Panel considers relevant to the IPI that arises from submissions or otherwise.

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1. Topic Description and Summary

- [1] This recommendation report addresses a number of different topics which relate to the City Centre Zone and Precincts.

Hearing topic number	Hearing topic name	Chapter number and name
010F	Qualifying Matters (Other) – City Centre Character Buildings	H8 Business – City Centre Zone
010G	Qualifying Matters (Other) – City Centre Built Form controls	H8 Business – City Centre Zone
016A	Business – City Centre zone provisions	H8 Business – City Centre Zone
020A	Precincts – I201 Britomart	I201 Britomart Precinct
020B	Precincts – I205 Downtown West	I205 Downtown West Precinct
020C	Precincts – I206 Karangāhape Road Precinct	I206 Karangāhape Road Precinct
020D	Precincts - I207 Learning	I207 Learning Precinct
020E	Precincts – I209 Quay Park	I209 Quay Park Precinct
020F	Precincts – I210 Queen Street Valley	I210 Queen Street Valley Precinct
020G	Precincts – I211 Viaduct Harbour	I211 Viaduct Harbour Precinct
020H	Precincts – I212 Victoria Park Market	I212 Victoria Park Market Precinct
020I	Precincts – I214 Wynyard Precinct	I214 Wynyard Precinct

The following hearing topics were heard to the extent that they apply in the City Centre Zone and Precincts (see section 2.1 below for further information).

Hearing topic number	Hearing topic name	Chapter number and name
001G	Plan making and Procedural Plan Interpretation (Chapter A and Chapter C)	Chapter A Introduction
009A	Qualifying Matters A-I Appropriateness of QMs (A-I)	Chapter D 14 Volcanic Viewshafts and Height Sensitive Areas Overlay D21 Sites and Places of Significance to Mana Whenua Overlay D26 National Grid Corridor Overlay

Hearing topic number	Hearing topic name	Chapter number and name
		H22 Strategic Transport Corridor Zone Chapter K Designations
009G	Qualifying Matters A-I Maunga Viewshafts and Height Sensitive Areas	Chapter D 14 Volcanic Viewshafts and Height Sensitive Areas Overlay
009I	Qualifying Matters A-I Relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga	D21 Sites and Places of Significance to Mana Whenua Overlay
009K	Qualifying Matters A-I National Grid	D26 National Grid Corridor Overlay
009M	Qualifying Matters A-I Strategic Transport Corridors	H22 Strategic Transport Corridor Zone
009Q	Qualifying Matters A-I – Designations	Chapter K Designations
010A	Qualifying Matters (Other) Appropriateness of QMs (Other)	D13 Notable Trees Overlay
010B	Qualifying Matters (Other) Auckland Museum Viewshaft	D19 Auckland War Memorial Museum Viewshaft Overlay
010D	Qualifying Matters (Other) Notable Trees	D13 Notable Trees Overlay
012A	Qualifying Matters (Infrastructure) – Appropriateness of QMs	N/A
012C	Qualifying Matters (Infrastructure) – Combined wastewater network	N/A
013	Qualifying Matters – Additional	N/A
016B	Business - Metropolitan Centre Zone provisions	H9 Business – Metropolitan Centre Zone*
016C	Business – Town Centre Zone provisions	H10 Business – Town Centre Zone*
016D	Business – Local Centre Zone provisions	H11 Business – Local Centre Zone*
016E	Business – Neighbourhood Centre Zone provisions	H12 Business – Neighbourhood Centre Zone*
016F	Business – Mixed Use Zone provisions	H13 Business – Mixed Use Zone*

Hearing topic number	Hearing topic name	Chapter number and name
016G	Business – General Business Zone provisions	H14 Business – General Business*
016H	Business – Business Park Zone provisions	H15 Business – Business Park Zone*
020J	Precincts – General	Chapter I Precincts

**Only in relation to the general objectives and policies*

2. Introduction

2.1. Background and PC78 timeline

- [2] This recommendation is made to Auckland Council (**Council**) by an Independent Hearing Panel (“IHP”) comprising hearing commissioners Matthew Casey, KC (Chairperson), Sarah Shaw, Dr Stephanie Mead, Julianne Chetham and Richard Knott (**Panel**) appointed under clause 96 of the First Schedule to the Resource Management Act 1991 (**RMA**).
- [3] The Panel was appointed by the Council to make a recommendation on Plan Change 78: Intensification (**PC78**) to the Auckland Council Unitary Plan Operative in Part (**AUP**).
- [4] The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Enabling Act**), now incorporated into the RMA, required the Council to notify an Intensification Planning Instrument (**IPI**) which must incorporate the Medium Density Residential Standards (**MDRS**) into every relevant residential zone, must (for a tier 1 territorial authority like the Council) give effect to Policies 3 and 4 of the National Policy Statement on Urban Development 2022 (**NPS-UD**), and may also contain related provisions (including objectives, policies, rules, standards, and zones) that support or are consequential on the MDRS or Policies 3, 4, and 5 of the NPS-UD, including qualifying matters (**QMs**). PC78 is that IPI.
- [5] PC78 was required to be prepared and notified on or before 20 August 2022 using the Intensification Streamlined Planning Process (**ISPP**) specified in the Schedule 1 to the RMA, and in accordance with any requirements specified by the Minister in a direction made under s 80L¹. The Council must not notify more than one IPI, must not use the IPI for any purpose other than the specified purposes, and must not withdraw the IPI once notified.
- [6] PC78 was notified on 18 August 2022 together with a suite of companion plan changes (including PC79: Transport, PC 80: RPS, PC81 and PC82: Historic Heritage, and PC83: Notable Trees) and variations.

¹ References to section numbers in this Report are to sections of the RMA unless otherwise indicated.

- [7] On 11 April 2022 the Minister issued a direction requiring the Council to notify its decisions on the IHP's recommendations on PC78 by **31 March 2024**.
- [8] On 6 April 2023, in response to a request from the Council, the Minister issued a further direction extending the time for the Council to notify decisions on the IHP's recommendations on PC78 by one year to **31 March 2025**. The Minister stated expectations that during the one year extension the Council would:
- a) Investigate impacts arising from the significant flooding and landslides caused by extreme weather during Auckland Anniversary weekend and Cyclone Gabrielle in 2023, and the implications for land-use planning, infrastructure, and other policy settings.
 - b) Determine if a variation is required in order to:
 - i. Apply QMs to recognise and provide for matters of national importance, in particular the management of significant risks from natural hazards.
 - ii. Ensure that through PC78 intensification is enabled in low natural hazard risk areas and ensure new development is avoided in high natural hazard areas unless the level of risk can be reduced to a tolerable level.
- [9] Following the October 2023 general elections the incoming government announced its intention to make significant changes to the resource management system including to MDRS, and the abandonment of Auckland Light Rail, both relevant to PC78.
- [10] On 26 March 2024, in response to a further request from the Council, the Minister issued a further direction extending the time for the Council to notify decisions on the IHP's recommendations on PC78 to **31 March 2026**. The Minister stated expectations that the Council would:
- a) Notify a plan change, or similar, to address the management of significant risks from natural hazards by 30 April 2025.
 - b) Enable intensification within the Auckland Light Rail corridor, and ensure intensification is enabled in appropriate areas by 30 April 2025.
 - c) Continue to progress the parts of PC78 subject to NPS-UD Policy 3 and Policy 4 where practicable given the expectations outlined in (a) and (b).
 - d) Prior to notifying plan changes, or similar, on natural hazards, and to implement the NPS-UD and the MDRS in the Auckland Light Rail corridor, notify the Minister on the impacts on Auckland's development capacity.
 - e) Work closely with Ministry for the Environment officials on workable solutions to implement the expectations.
- [11] The Panel determined that it was practicable to continue with hearings on the Business - City Centre Zone and Precincts and to set down hearings on the Business - Metropolitan Centre Zone and Precincts.

- [12] The Panel had already heard submissions on the City Centre Zone and Precincts from 20 February 2024. A further hearing on outstanding matters relating to the City Centre Zone and Precincts (including QMs) took place from 21 August 2024
- [13] The Panel heard submissions on the Metropolitan Centre Zone and the Syliva Park Precinct from 25 November 2024. A further hearing on outstanding matters relating to the Metropolitan Centre Zone and Precincts (including QMs) is scheduled for June 2025.
- [14] On 12 March 2025, in response to a further request from the Council, the Minister issued a further direction that the Council must notify decisions on the IHP's recommendations on the parts of PC78 subject to NPS-UD Policy 3(a) (that is, the City Centre Zone and Precincts) no later than **30 May 2025**, but not otherwise amending the requirement for the Council notify decisions on all other aspects of PC78 by 31 March 2026. The Minister also revoked the expectations stated in the 25 March 2024 direction, and the Council is therefore no longer expected to notify plan changes or variations with respect to natural hazards and the Light Rail Corridor.
- [15] This background and timeline sets out how the Panel has come to make recommendations on the City Centre Zone and Precincts (and relevant qualifying matters) separately from, and in advance of, hearings and recommendations on the remainder of PC78.
- [16] While significant delays in progressing PC78 have resulted in some changes to the commissioners appointed to the IHP, we record that the current Panel all sat on both hearings related to the City Centre Zone and undertook the relevant site visits and deliberations.

2.2. Site visits

- [17] The Panel undertook multiple site visits throughout the hearings process and as part of our deliberations. Our site visits took place on 26 and 27 March, 30 May, 24 and 25 June, and 3 September 2024 and were based on locations throughout the city centre as suggested by the Council and the submitters. These greatly assisted the Panel in understanding the issues put forward by the various witnesses. Where particularly relevant, we have referred to the site visits in some recommendations below. For the avoidance of doubt, our site visits have informed all of the Panel's recommendations.

3. Issues in contention at the hearing

- [18] The Council's witnesses provided evidence which addressed a number of submissions, which those submitters did not subsequently challenge. The Panel accepts the Council's uncontested evidence on those matters. We likewise accept the Council's updated wording of the PC 78 provisions produced at the close of the hearing, other than the changes needed to give effect to our recommendations set out below.

3.1 The Panel's approach to scope

- [19] This issue does not relate to specific provisions of the AUP. It rather establishes the principles set out by the Enabling Act and the NPS-UD which directs how the IHP must make its recommendations.

3.1.1 Statement of issue

- i. The scope of PC78 as an IPI.
- ii. The scope of relief sought in submissions.

3.1.2 Panel recommendation and reasons

- [20] In April 2023 the initial IHP held a preliminary hearing to consider legal submissions on issues of statutory interpretation of the IPI provisions in the RMA relating to the scope of an IPI as well as issues relating to the scope of relief sought in submissions. The initial IHP issued Interim Guidance on these matters on 12 June 2023 (**Interim Guidance**). We discuss the Interim Guidance further in this section of the report.

The scope of PC78 as an IPI and the Waikanae decision

- [21] In June 2024, between the first and second hearings relating to the City Centre Zone, the High Court decision *Kapiti Coast District Council v Waikanae Land Co Ltd* [2014] NZHC 1654 (**Waikanae**) issued. The *Waikanae* decision interprets the IPI provisions in the RMA and several parties addressed the matters raised in *Waikanae* at the second hearing.
- [22] The facts of *Waikanae* were that Waikanae Land Co Ltd owns land that a local iwi asserts is a wāhi tapu. The IPI notified by Kapiti Coast District Council purported to add the land to the schedule of wāhi tapu sites in the district plan. Scheduling would result in some permitted activities on the land becoming restricted discretionary or non-complying activities. The issue for the High Court to determine was whether in these circumstances including the wāhi tapu scheduling in the IPI was valid. The Court undertook a detailed analysis of the residential intensification amendments made to the RMA by the Enabling Act.
- [23] The Court observed that the purpose of the amendments was to rapidly accelerate the supply of housing in urban areas where demand for housing is high, and that the provisions were designed to result “promptly and permanently” in more permissive standards by incorporation of the MDRS in two ways:
- “Promptly” implemented via the compulsory, single-use and time limited ISPP that avoided the usual degree of appellate oversight; and
 - “Permanently” implemented as a matter of ongoing obligation under the more general intensification requirements in the RMA via the standard Schedule 1 process including full inquisitorial appeal.
- [24] The Court observed that while s 80E(1)(b)(ii) provides that an IPI may also amend or include only “related provisions ... that support or are consequential on” the MDRS,

the more general intensification requirements in the RMA (implemented by the standard Schedule 1 process) are not required to be “consequential on” the MDRS.

- [25] It concluded that in s 80E “consequential on” requires IPI provisions strictly to moderate the effect upon the status quo that the MDRS would otherwise have, including to maintain the status quo by declining to apply the MDRS where a qualifying matter is relevant. Section 80E does not empower councils to limit the level of development previously permitted, which would require a plan change following the standard Schedule 1 process.
- [26] While *Waikanae* was determined in the context of the MDRS, no party submitted to us that the decision has limitations for application to the Policy 3(a) intensification applicable to the City Centre Zone. Section 80E applies to an IPI with respect to both the MDRS and NPS-UD Policies 3, 4 and 5. We consider that the decision is of direct relevance to determining the scope of PC78 and the scope of relief sought in submissions, and we have been assisted in our deliberations by the Court’s analysis of the two contrasting processes for implementation of intensification provisions.

The scope of relief sought in submissions

- [27] The Interim Guidance addressed the approach to scope of submissions “on” plan changes in *Clearwater*² and *Motor Machinists*³ and in the context of a “full plan” in hearings for the PAUP in *Albany Landowners*.⁴
- [28] The Interim Guidance summarised the *Clearwater* and *Motor Machinists* two “limbs” as:
1. Whether the submission addresses the change to the status quo advanced by the plan change; and
 2. Whether there is a real risk that persons potentially affected by such a change have been denied an effective opportunity to participate in the plan change process.
- [29] The Interim Guidance recorded the initial IHP’s preliminary views:
- With respect to the first limb, that PC78 is not a narrow plan change, given that it encompasses most of the Auckland region and substantially alters the status quo for land use intensification in both residential and commercial areas, and pursuant to s 75(3) it must give effect to the NPS-UD as a whole. The ambit of PC78 is wide and bears a closer resemblance to a full plan review than it does to more discrete plan changes or variations. Whether the subject matter of a submission is specifically discussed in the Council’s s 32 report is not necessarily determinative. Submissions that fairly and reasonably raise matters that go to its broad purpose have a strong likelihood of being “on” the plan change.

² *Clearwater Resorts Ltd v Christchurch City Council*, HC Christchurch AP34/02, 14 March 2003.

³ *Palmerston North City Council v Motor Machinists* [2013] NZHC 1290.

⁴ *Albany North Landowners v Auckland Council* [2017] NZHC 138.

- With respect to the second limb, PC78 is unique in the AUP context because, as it is an IPI, the Council had limited discretion to set its parameters. In the context however of a plan change with broad spatial extent, effecting significant change across the urban environment, landowners should exercise a reasonable level of diligence with respect to reviewing the summary of submissions and making further submissions.

[30] The Interim Guidance was issued prior to the *Waikanae* decision.

[31] The Panel records that while we generally agree with the Interim Guidance with respect to PC78's wide spatial extent and substantial impact on the status quo, *Waikanae* has clarified the nature of PC78 as a particular type of expedited plan change with specific constraints as compared to a comprehensive plan change or a "full plan" review which would have been undertaken in accordance with the standard Schedule 1 process.

[32] As such with respect to the scope of submissions to be "on" PC78 the Panel consider that particular rigour is required to consider whether the relief sought in submissions falls outside the explicit limited statutory purpose of an IP and in particular the s 80E(1)(b)(ii) strict requirement that an IPI may also amend or include only "related provisions ... that support or are consequential on" the MDRS or NPS-UD Policies 3, 4 and 5.

[33] The scope of particular submissions is addressed as they arise in the balance of our Report.

3.2 The Panel's approach to NPS-UD Policy 3(a)

[34] This issue does not relate to specific provisions of the AUP. It rather establishes the principles set out by the Enabling Act and the NPS-UD which directs how the IHP must make its recommendations.

3.2.1 Statement of issue

- i. What does NPS-UD Policy 3(a) require in terms of density and height in the City Centre Zone.

[35] Relevant to the Panel's consideration of these policies are NPS-UD Objective 1 and Policy 1 which relate to the concept of a 'well-functioning urban environment' (**WFUE**) for the purposes of the NPS-UD.

[36] Policy 1 provides a non-exhaustive list of factors that contribute to a WFUE, including provisions that support a range of housing types and business sectors, provide good accessibility, support reductions in greenhouse gas emissions and are resilient to the likely current and future effects of climate change.

[37] The New Zealand Coastal Policy Statement 2010 (**NZCPS**) is also relevant to a number of the City Centre hearing topics, including the Viaduct Harbour and Wynyard Precincts (see sections 3.41 and 3.42 of this report).

- [38] During the hearings, it became evident that the interpretation of NPS-UD Policy 3(a) would underpin the structural analysis the Panel must undertake in our recommendations.
- [39] NPS-UD Policy 3(a) requires:
- In relation to tier 1 urban environments, regional policy statements and district plans enable:*
- (a) In city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification.*
- [40] The NPS-UD and the RMA do not define or provide other assistance as to the interpretation of the phrase 'to maximise benefits of intensification'. Likewise, the use of "realise" introduces a new directive verb which has no prior use in the resource management hierarchy. These factors have resulted in diverging approaches from the parties in determining the starting point from which to consider how strongly the NPS-UD directs the Council to enable height and density in the City Centre Zone.
- [41] The interpretation of Policy 3(a) remained unresolved following expert conferencing held on 23 May 2023 and the Panel requested that legal submissions address this matter of statutory interpretation. The Council and several submitters presented both legal submissions and planning evidence on this issue.

3.2.2 Panel recommendation and reasons

- [42] The evidence and legal submissions put forward by submitters can be broadly categorised into two interpretations based on the Policy 3(a) phrase 'to maximise benefits of intensification'. We describe these as the 'qualifier' interpretation and the 'purposive' interpretation.
- [43] The 'qualifier' interpretation reads 'to maximise benefits of intensification' as qualifying (and moderating) the immediately preceding phrase 'to realise as much development capacity as possible'.
- [44] The 'purposive' interpretation reads 'to maximise the benefits of intensification' as a statement of purpose, describing that the benefits of intensification will be maximised by realising as much development capacity as possible in the City Centre.
- [45] The Council and submitters such as Stratis Body Corporate, Eke Panuku, Viaduct Harbour Bodies Corporate and the Wynyard Quarter Residents Association generally advanced the qualifier interpretation of Policy 3(a). (During the hearings the Council relied heavily on Policy 3(a), while the s 32 report based its approach on Policy 6(c), but both approaches were expressed in terms of achieving a WFUE). In summary the reasons advanced for a 'qualifier' interpretation were:
1. PC78 must give effect to the whole of the NPS-UD. Policy 3(a), read in the context of the NPS-UD in its entirety, must also achieve the overarching concept of a WFUE as set out in Objective 1 and Policy 1. Rather than maximising

intensification or capacity, the clear thrust of the NPS-UD is to achieve the overarching concept of WFUEs.

2. Policy 3(a) would have expressly (and simply) called for unlimited capacity if that was intended. The phrase 'to maximise benefits of intensification' should therefore be seen as a qualifier – that there is a tipping point whereby intensification is no longer maximising benefits. More capacity is not always better, even in the City Centre.
3. PC78 must also give effect to the NZCPS, particularly as it applies to coastal developments as is the case in the City Centre, which the NPSUD directs as being resilient to the effects of climate change.

[46] The submitters Precinct Properties, SkyCity, Viaduct Harbour Holdings Ltd, Sanford and Orams advanced the purposive interpretation of Policy 3(a). This is summarised as:

1. The phrase 'to maximise benefits of intensification' does not qualify the Policy 3(a) direction, but instead simply explains it.
2. Policy 3(a) does not use language that indicates a qualification such as 'while' or 'provided that'.
3. The High Court has found that the word 'possible' is an option that is 'technically feasible ... is possible, whatever the cost'⁵. Therefore 'as much development capacity as possible' is a strong direction which indicates that any restrictions should be very narrow and considered.
4. Policy 4 and s 77O set out the express (and only) exception to that strong direction by the use of qualifying matters, prescribe the particular circumstances in which the exception provisions apply and set a clear evaluative framework for the analysis needed to justify any limits on development capacity. The phrase 'to maximise benefits of intensification' therefore does not need to be a qualifier.
5. The 'qualifier' approach is contrary to the statutory direction that a council 'may modify the requirements set out in Policy 3 to be less enabling of development than provided for by Policy 3 if authorised to do so under s 77O.
6. The structured tests under Policy 4 are the intended pathway for identifying exceptions rather than by resort to an ambiguous qualifier in Policy 3(a) which 'sidesteps' a clear evaluative process.
7. The scaling within Policy 3(a) to 3(d) targets intensification where benefits can be realised.
8. The NPS-UD background documents - while the Panel is not bound by them - also support a purposive reading of 'to maximise benefits of intensification'. Policy 3(a)

⁵ *Tauranga Environmental Protection Society Incorporated v Tauranga City Council* [2021] NZHC 1201, at [149].

was intended to be prescriptive (as compared to Policy 3(d) which is descriptive). The Regulatory Impact Statement records that a prescriptive approach was taken to intensification in city centres because those are the areas with the greatest evidence of benefits.

- [47] The Panel acknowledges the arguments in favour of the ‘qualifier’ interpretation of the phrase ‘*to maximise benefits of intensification*’ within Policy 3(a), including that it must be assigned some meaning. However, we prefer the ‘purposive’ interpretation and the structured analysis of the submitters who supported this. A purposive interpretation is consistent with the understanding of the NPS-UD and the Enabling Act as supply-based instruments with strong, prescriptive interventions. A purposive interpretation allows for a transparent evaluative process by way of Policy 4 and s 77O rather than the potential for an evaluative sidestep enabled by the alternative ‘qualifier’ interpretation.
- [48] This does not preclude giving effect to the entirety of the NPS-UD or other relevant national direction such as the NZCPS. The purposive interpretation instead reinforces that QMs provide the evaluative framework which informs the structured analysis necessary under the RMA. We note that in *Waikanae* the Court observed that for an IPI, Objective 1 confirms that councils may decline to apply intensification where a QM is relevant.
- [49] We emphasise that our findings on this issue are not determinative of our recommendations on the PC78 provisions. Rather, they identify the starting point, acknowledging that the appropriate level of enablement may then be moderated. Put another way, we consider that NPS-UD Policy 3(a) recognises the City Centre as the location best able to support intensification and only limit it where there is a proper reason by way of appropriately tested QMs via Policy 4.
- [50] The extent of those limits will be one of degree and include a consideration of a wide range of matters. In this regard, we note that the inclusion of the words ‘realise’ and ‘as possible’ must be intentional and acknowledge that height and density of form is unlikely to be absolute. Nonetheless, the path for these limits must be through QMs that are predicated on the strength of the evidence and submissions put forward to the Panel and whether those successfully navigate the tests of Policy 4 as directed by ss 77O, 77P, 77Q, and 77R.
- [51] For completeness, the Panel considered the economic and planning evidence put forward by the Council and submitters but did not think it necessary to make a finding on the evidence as it relates to the Policy 3(a) interpretation issue which is primarily a matter of statutory interpretation. The Panel will refer to the appropriate evidence when making its findings on the relevant planning provisions.

3.3 The Panel's approach to Qualifying Matters

- [52] This issue does not relate to specific provisions of the AUP. It addresses the principles set out by the Enabling Act and the NPS-UD which direct how the Panel must make its recommendations.

3.3.1 Statement of issue

- i. Application of ss 77O, 77P, 77Q and 77R when determining the appropriateness of a 'qualifying matter'
- ii. Approach taken to evaluating QMs and recommending provisions
- iii. Approach taken to identifying QMs in s 32 evaluation and evidence
- iv. Economic impact of accommodating QMs in the City Centre (ss 77O, 77Q and 77P)

3.3.2 Panel recommendation and reasons

- [53] We preface this section by noting as a matter of procedure that in order to complete our hearings and recommendations on the City Centre Zone we have had to bring forward consideration of the "appropriateness" of qualifying matters relevant to the City Centre Zone. We have not considered the appropriateness of any QMs that are not relevant to the City Centre Zone.
- [54] Our recommendations on the merits of any QMs in this report are only in the context of the City Centre Zone, as that is the only evidence we have considered for this report.

Application of sections 77O, 77P, 77Q and 77R

- [55] The appropriate application of the QM statutory 'tests' is a corollary of a purposive interpretation of Policy 3(a). While the evidence and legal submissions presented to the Panel generally related to the merit / application of specific QMs, there remains an overarching issue for us to determine.
- [56] The initial IHP set out the following relevant observations in the Interim Guidance:
- Any party (not just the Council) can propose a new, or extension of an existing, qualifying matter (subject to the additional requirements for the corresponding section 32 evaluation and that it was "on" PC78); and
 - A 'site-specific' analysis does not equate to a 'site-by-site' analysis and can relate to areas.
- [57] The Panel agrees with the position stated in the Interim Guidance (and, we understand, not contested by any party) that the Council and any submitter may seek to introduce QMs, but the issue then becomes what information is required in support of such a request or recommendation. We agree that any recommendation we may make supporting an additional or extended QM needs to be sufficiently comprehensive to satisfy the additional requirements for a s 32 evaluation specified in ss 77P, 77Q and 77R as relevant to the nature of the QM in question.

- [58] We also agree that the onus would be on the party promoting a new QM or seeking to extend a QM to additional sites/areas, to provide sufficiently comprehensive evidence so that the level of information before the Panel is sufficient for us to produce a s 32AA evaluation to support the new or extended QM.
- [59] We likewise agree that a QM would need to be 'on' PC78, and this will depend on the nature of the QM at issue, including whether, as proposed it would have wide application across the Auckland region, and the overall effect of the plan provisions proposed by the submitter to accommodate the QM.
- [60] The Interim Guidance also addressed the requirement for a "site-specific analysis" outlined in ss 77L and 77R with respect to "other" QMs. We agree that these provisions recognise that QMs can relate to areas, and that a "site-specific analysis" does not equate to a 'site-by-site' analysis of the range of appropriate options, as many QMs exist at a broad scale. Accordingly, an individual analysis on a detailed single-site basis would not produce an effective or efficient analysis as the whole QM is greater than the sum of the constituent parts.
- [61] The wide effect of PC78 and the existence of s 77O(j) 'any other matter' indicate that the test of whether a resource management issue *could* be a qualifying matter is a simple one. Its procedurally correct identification under s 77O is sufficient.
- [62] The substantive evaluative matter then becomes one of whether a matter *ought* to be addressed by the planning instrument. The following parts of the RMA are relevant when assessing the corresponding s 32 evaluation:
- Section 77P for a **new** QM identified under s 77O(a)-(i); or
 - Section 77Q for an **existing** QM identified under s 77O(a)-(i); or
 - Section 77R for any **"other"** QM identified under s 77O(j).
- [63] The Panel considers that even if there are no submissions on a particular QM, it is able (subject to the statutory tests) to recommend a new QM or the extension of a QM as – pursuant to clause 99 of Schedule 1 - we are making a recommendation "on the IPI" and are not limited to being within the scope of submissions.
- [64] While the Panel accepts that there are valid criticisms of the Council's s 32 evaluation reports for QMs, we must also be satisfied that there are evidential grounds (and any s 32AA evaluation) for the counterfactual positions. With this in mind, the Panel provides its recommendations on the relevant QMs in the respective sections of this report.
- [65] We have already recorded that *Waikanae* held that qualifying matters serve to moderate the effect upon the status quo that the intensification provisions would otherwise have, including to maintain the status quo where appropriate by declining to apply intensification (but not so as to reduce the level of development previously permitted).

Approach taken to evaluating QMs and recommending provisions

- [66] The Panel notes that it is important not to conflate QMs with the proposed standards themselves. We observe that:
- Section 77O (before identifying a list of qualifying matters in sub-s (a)-(j)) refers to ‘qualifying matters that are present’.
 - Section 77P (3) states ‘...in relation to the proposed amendment to accommodate a qualifying matter...’
 - Section 77R(a) states ‘...identify the specific characteristics that makes the level of urban development required...inappropriate’
- [67] Taken together, we consider that the legislation intends for qualifying matters and the provisions to be separate entities, and that QMs are the resource management matter (or ‘characteristic’) which then guide the development of plan provisions. The hierarchy of the requirement of s 77P vs s 77R signals that the intent of s 77O(a)-(i) as being characteristics which the RMA has identified, absolving the need for the territorial authority to identify as such, whereas s 77O(j) any other matters requires the characteristic to be identified by the territorial authority subject to the statutory tests of s 77R.
- [68] Wherever a QM has been identified (by the Council, a submitter or by the Panel) and provisions proposed to accommodate the QM, we have undertaken a two-step analysis to satisfy ourselves:
- First, that the relevant QM has been identified and evaluated in a procedurally correct way under ss 77O, 77P, 77Q and 77R.
 - Secondly, that the requirements of Policy 3(a) are modified to be less enabling of development “only to the extent necessary” to accommodate the identified QM.
- [69] The correct procedure for the first step differs based on whether the relevant QM is existing, new, or “other”.
- [70] Existing QMs are defined in the RMA as a QM listed in s 77O(a) to (i) that is operative in the Plan when the IPI is notified. In each instance we have satisfied ourselves that the identified matter properly falls within the s 77O(a) to (i) listed criteria, was operative in the AUP when PC78 was notified, and that the matters listed in s 77Q(1)(a) have been addressed. These include identifying the location, specifying the alternative density standards proposed, identifying why QMs apply, and describing the difference between development enabled by Policy 3(a) and that enabled by accommodating the QM.
- [71] New QMs are those listed in s 77O(a) to (i) that are not existing QMs. In each instance we have satisfied ourselves that the identified matter properly falls within the s 77O(a) to (i) listed criteria, and that the matters listed in s 77P(3) have been addressed. These include identifying the area, demonstrating why the area is subject to a QM and why the QM is incompatible with the level of development enabled by Policy 3(a), and assessing the impact that limiting development will have on capacity and the costs and broader impacts of imposing limits.

- [72] “Other” QMs are described in s 77O(j) as any other matter - not listed in s 77O(a) – (i)) -that makes the development enabled by Policy 3(a) inappropriate in an area. In each instance we have satisfied ourselves that:
- The pre-conditions listed in s 77R(1)(a) have been met. These include identifying the specific characteristic that makes the level of development enabled by Policy 3(a) inappropriate, justifying that in light of the national significance of urban development and the NPS-UD objectives, and undertaking the required site-specific analysis; and
 - The matters listed in s 77P(3) (described above in relation to new QMs) have been addressed.
- [73] If satisfied that a QM has been identified and evaluated in a procedurally correct way, we have then satisfied ourselves - as required by s 77O - that the provisions we recommend are less enabling of development only to the extent necessary to accommodate the QM. The evidence was not always explicit that provisions supported by witnesses met this requirement. During the hearing we questioned witnesses and sought confirmation on this point. Where we recommended provisions we have been satisfied that those are less enabling of development only to the extent necessary to accommodate the identified QMs.
- [74] In undertaking our two-step analysis we have relied on the Council’s s 32 evaluation, any relevant s 32 evaluation prepared by submitters, the evidence we heard and our site visits. Our report comprises our s 32AA further evaluation.
- [75] To avoid repetition and lengthening our report we record our procedure here and have not repeated these explanations as we evaluate each QM.

Approach taken to identifying QMs in s 32 evaluation and evidence

- [76] The Panel makes the following observations about QMs in light of our findings about the preferred approach to the interpretation of Policy 3(a) of the NPS-UD.
- [77] As the result of Council adopting the interpretation of Policy 3(a) as being qualified by the phrase ‘maximising benefits of intensification’ so as to achieve a WFUE, its evidence for the City Centre hearings sometimes focused on the relationship of standards to a WFUE rather than the identification of an appropriate QM to justify restrictions on intensification.
- [78] Evidence for submitters opposing the Council’s approach was generally premised on Policy 3(a) requiring extensive liberalisation of development standards (‘no limits’) unless an identified QM applied. Notwithstanding this, most of those submitters’ experts accepted in the Joint Witness Statement (**JWS**) and in their evidence that some limits on development in the City Centre remain appropriate, without themselves identifying a QM to support that position.
- [79] The Panel has concluded as above that:
1. modification of the effect of Policy 3(a) is only authorised by an appropriate QM; and

2. the Panel can itself identify QMs.

[80] As such, where the evidence indicates that modification of the effect of Policy 3(a) is appropriate but does not identify a relevant QM in order to do so, the Panel has proceeded to consider the appropriateness of a QM.

Economic impact of accommodating QMs in the City Centre (ss 77O, 77Q and 77P)

[81] As discussed above, the s 32 evaluation for an IPI must:

- For existing QMs, describe the difference between development enabled by Policy 3(a) and that enabled by accommodating the QM (s 77Q(1)(d)); and
- For new QMs and “other” QMs, assess the impact that limiting development will have on capacity and the costs and broader impacts of imposing limits (s 77P(3)(b) and (c)).

[82] Dr. Fairgray prepared a s 32 Economic Report for PC78 and economic evidence for the City Centre hearings. His evidence compared Policy 3(a) “building heights and density of urban form to realise as much development capacity as possible” (unlimited development) with the level of development proposed in PC78 (accommodating QMs) for the City Centre divided into 44 geographic areas.

[83] Dr. Fairgray’s evidence is germane to the Panel’s consideration as it provides the only assessment of costs for potential limits on development capacity across the whole City Centre arising from the accommodation of QMs.

[84] He stated that the level of development enabled by PC78 as notified would be very unlikely to materially affect the level of development and future economic activity for the City Centre as a whole. His view was that PC78 as notified has nil or negligible opportunity cost in terms of foregone built capacity and economic activity at the whole City Centre level, and at the whole of Auckland level. He concluded that the net benefit of PC78 as notified is larger than an ‘unlimited’ Policy 3(a) outcome because the different provisions accommodating QMs would realise a range of social, environmental, cultural and economic benefits in the City Centre.

[85] Mr. Colegrave was the only economic witness to challenge Dr. Fairgray’s evidence, in the specific context of the Quay Park, Viaduct Harbour and Wynyard precincts. Mr. Colegrave relied on a cost benefit analysis by Price Waterhouse Cooper which found that, for Auckland, intensification benefits exceeded costs by more than five to one. Dr. Fairgray considered that the modelling underlying that cost benefit analysis evaluated a hypothetical city of Auckland’s size rather than Auckland itself, and that general city-wide findings could not be appropriately applied to the City Centre.

[86] The Panel prefers Dr Fairgray’s economic evidence that the overall quantum of development in the City Centre provided for by PC78 as notified (accommodating QMs) would be the same as an unlimited Policy 3(a), even though the pattern of development within the City Centre would be different; and that the identification of QMs results in a net benefit.

3.4 The Panel's approach to NPS-UD Policy 6

- [87] This issue does not relate to specific provisions of the AUP. It addresses the principles set out by the Enabling Act and the NPS-UD which direct how the Panel must make its recommendations.

3.4.1 Statement of issue

- i. The relevance of NPS-UD Policy 6(a) and (b) when implementing Policy 3(a) in the City Centre Zone and Precincts through PC78.

3.4.2 Panel recommendation and reasons

- [88] The Panel's view is that Policies 6(a) and 6(b) are relevant when implementing Policy 3(a) in the City Centre Zone and Precincts, but only in respect of planning documents that "have been given effect to", which in the case of PC78 is the RPS as amended following PC 80.

- [89] Policy 6 states:

*When **making planning decisions** that affect urban environments, decision-makers have particular regard to the following matters:*

- (a) the planned urban built form anticipated by those RMA planning documents **that have given effect to this National Policy Statement***
- (b) that the planned urban built form in **those RMA planning documents may involve significant changes** to an area, and those changes:*
 - (i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and*
 - (ii) are not, of themselves, an adverse effect*
- (c) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)*
- (d) any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity*
- (e) the likely current and future effects of climate change.*

[**Emphasis** added]

- [90] "Planning decision" is defined in the NPS-UD as a decision on (inter alia) a district plan or proposed district plan. "Proposed plan" is defined in s 43AAC of the RMA as a plan change that has been notified but not become operative, including an IPI. PC78 relates to the district plan component of the AUP. There is no dispute that the Panel's recommendations on PC78 relate to a "planning decision" (a decision that the Council will make) on a proposed district plan and that Policy 6 is generally applicable.

- [91] The issue arises because Policy 6(a) refers to “those RMA planning documents *that have given effect to*” the NPS-UD, while Policy 6(b) refers to “those RMA planning documents”. “RMA planning documents” is defined in the NPS-UD as meaning (inter alia) the district plan. The matter for the Panel to determine is whether Policy 6(a) and 6(b) are relevant to the “planning decision” on PC78 which is a plan change (IPI) to give effect to the NPS-UD.
- [92] Some submitters and experts, such as Mr. Roberts for Ngāti Whātua Ōrākei Group (**NWO**), were of the view that Policy 6(b) reinforces the proposition that the NPS-UD is an enabling document by emphasising the ‘planned urban form’ which may include changes which can detract from the amenities of the existing urban built form. Their reasoning is that as PC78 will become a planning document once it has given effect to the NPS-UD, Policy 6(b) means that it should bring about “significant changes” to urban form.
- [93] The Panel agrees with the Council’s position that Policy 6(a) and 6(b) are relevant once the relevant RMA planning document has been made operative. The Panel considers that the words ‘those RMA planning documents’ in Policy 6(b) have the same meaning as ‘those RMA planning documents that have given effect to’ the NPS-UD in Policy 6(a).
- [94] We therefore conclude that Policy 6(a) and 6(b) apply to PC78 only to the extent that (following PC80) the RPS has been amended to give effect to the NPS-UD.

3.5 Qualifying matter – Appropriateness of QMs

- [95] This issue relates to and applies to the City Centre Zone and Precincts.

3.5.1 Statement of issue

- i. Appropriateness of the Council’s application of s 77O(a)-(i) qualifying matters
- ii. Appropriateness of the Council’s application of s 77O(j) any other qualifying matters
- iii. Plan methodology to give effect to qualifying matters

3.5.2 Panel recommendation and reasons

- [96] The Panel recommends that the Council identified QMs are appropriate in the sense that they provide for a pathway under which the appropriate merits-based determination must still be undertaken subject to ss 77P, 77Q and 77R. In some instances the Panel recommends an alternative QM where we are not satisfied with the Council’s identification of a QM or where the Council or submitters did not identify a QM. We refer to the respective sections of this report for the detailed findings relating to substance of the various QMs.
- [97] The Panel is particularly mindful that despite the comprehensive evidence heard on the matter of significant natural hazards (being a s 77O(a) QM) the Council has decided to wait until later hearings to present its case with respect to this QM due to

ongoing work on natural hazards. While we acknowledge the importance of the issue, we are only able to recommend acceptance of the appropriateness of identifying a significant natural hazards QM but not its actual provisions. (see also our findings in sections 3.40 and 3.42 below).

Appropriateness of the Council's application of s 77O(a)-(i) qualifying matters

- [98] Mr. Shields gave planning evidence on behalf of the Council. He summarised the Council's approach in PC78 whereby it reviewed the AUP in the context of the s 77O(a)-(i) matters and identified parts of the AUP (operative since 2016) that could potentially be identified as QMs. His view was that as the provisions were operative at the time of PC78 notification, they are existing QMs in terms of s 77Q. The Panel accepts this factual description of the process and, without evidence challenging the Council's position, agrees with Mr. Shields on the identification of s 77O(a)-(i) existing QMs as appropriate pathways to assess the provisions which are addressed in the following sections of our report dealing with each QM.

Appropriateness of the Council's application of s 77O(j) any other qualifying matters

- [99] Mr Shields explained the Council's approach whereby existing AUP provisions were reviewed and where they did not correspond to a s 77O(a)-(i) matter, a s 77O(j) "other" QM was identified. He noted that while they are not 'existing' in the context of s 77Q, they are matters which are largely operative and were subject to the statutory process leading to the AUP. The Panel accepts Mr Shields' evidence as to the Council's approach. The appropriateness of a s 77O(j) "other" QM and of the corresponding provisions require a merits assessment under the relevant statutory tests which are addressed in the following sections of our report dealing with each QM.

Plan methodology to give effect to qualifying matters

- [100] Mr. Shields' evidence explained that the Council has proposed minimal changes to the plan architecture when addressing QMs. PC78 continues to use a mix of plan provisions and methods (zones, overlays, rules, precincts, schedules, designations) depending on the particular QM and the best corresponding AUP structure, as modification of the plan structure through extracting provisions and inserting them into different parts is inefficient and will complicate the implementation of the AUP.
- [101] Some submitters, such as Coalition for More Homes and Kāinga Ora, sought that QMs should be consistently addressed by Overlays which would sit atop zoning.
- [102] The Panel agrees with Mr. Shields that the RMA does not specify methods by which QMs are, or are not, to be implemented and the Council's approach of using the various methods currently utilised by the AUP is the most efficient and effective.
- [103] As identified in *Waikanae*, the Panel considers that PC78 and the ISPP are intended to "promptly" implement the intensification requirements of the NPS-UD and cannot be used for broader purposes. To this end, we accept that PC78 is not the avenue to address all real or perceived shortcomings of the AUP, including whether its planning

methods are consistent. This could require a re-write of the AUP which is well beyond the scope of PC78.

3.6 City Centre Zone – general objectives and policies

[104] This issue relates to general business objectives and policies (**the general objectives and policies**) which apply to the Centres, Mixed Use, Business Park, and General Business zones which form the business zones of the AUP. In terms of Chapter H8 Business – City Centre Zone, they are:

- H8.2 (1)(2)(3)(4) and (5)
- H8.3 (1)(2)(3)(4)(5)(6)(7)(8)(9)(10)(11)(12)(12A)(13) and (14)

[105] The Panel notes that this section is confined to the general objectives and policies only. The other objectives and policies of the City Centre Zone are amended to the extent of changes recommended elsewhere in this report.

3.6.1 Statement of issue

- i. Appropriateness of amendments to the general objectives and policies

3.6.2 Panel recommendation and reasons

[106] The AUP contains an overarching framework of objectives and policies which are repeated across all business zones, comprising the Centres, Mixed Use, Business Park, and General Business zones. This structure is intended to ensure a consistent outcome around design matters, distribution of business activities and the role of the centres network.

[107] Mr. Pollard's planning evidence for the Council explained that PC78 proposed to amend the general objectives and policies to:

- a) Recognise and provide for qualifying matters;
- b) Enable building heights of at least six storeys within a walkable catchment;
- c) Support the roles of centres; and
- d) Reinforce that development should contribute towards a WFUE.

[108] Counsel for the Council summarised Mr. Pollard's recommended amendments to the notified PC78 general objectives and policies, in response to submissions as:

- Amendments to general policies H8.3(2), H9.3(2), H10.3(2), H11.3(2), H12.3(2), H13.3(2) H15.3(2), H8.3(13), H9.3(13), H10.3(13), H11.3(13), H12.3(13), H13.3(13), H14.3(13), and H15.3(13) to provide greater recognition of and to accommodate the values of qualifying matters;
- Removing reference to the 21m height metric from Polcie H8.3(12A), H9.3(12A), H10.3(12A), H11.3(12A), H12.3(12A), H13.3(12A), and H15.3(12A); and
- Including the reference to 'mapped' walkable catchments in Policies H8.3(12A), H9.3(12A), H10.3(12A), H11.3(12A), H12.3(12A), H13.3(12A), and H15.4(12A).

- [109] The Panel heard corporate evidence from Mr Ligget, relying on the earlier planning evidence of Mr. Lindenberg and Mr. McCall, expressing the view of Kāinga Ora that general policy 12A is unnecessary in the business zones but rather more appropriately applied in the zone chapter of the land within a walkable catchment and to make reference to the height variation control to enable additional height in the Local Centre, Neighbourhood Centre and Mixed Use zones.
- [110] The Panel prefers the planning evidence of Mr. Pollard. We are satisfied with his explanation of the Council's approach, and by extension that of Ms. Laird and Ms. Wong, that the purpose of proposed policy 12A applies to all business zones hence its removal would fundamentally alter the established structure of the AUP. We are likewise satisfied that Mr. Pollard's explanation that the notified Policy 12A reference to 'at least six storeys' read in conjunction with notified changes to Policy 13 which enables greater building heights within the height variation control sufficiently gives effect to Policy 3(c).
- [111] Other submitters did not provide evidence which challenged the Council's position. We agree with Council's legal submission that the changes sought by the Retirement Villages Association raised scope and jurisdictional issues as their relief does not support, and is not consequential on, Policy 3 of the NPS-UD, and therefore falls outside s 80E(1)(b)(iii). For the reasons above, the Panel adopts the position as outlined by Mr. Pollard for the Council.

3.7 Height of development in the City Centre Zone

- [112] This issue relates to the following provisions:

- H8.4.1 (A32)
- H8.6.2 General building height
- Map H8.11.3 General height controls

3.7.1 Statement of issue

- i. Appropriateness of qualifying matter relating to height in the City Centre Zone
- ii. Special Height Area
- iii. Extension of the Special Height Area
- iv. General building height of 72.5m
- v. Specific heights relating to identified qualifying matters

3.7.2 Panel recommendation and reasons

Appropriateness of qualifying matter relating to height in the City Centre Zone

- [113] The Panel has considered the Council's s 32 evaluation and the planning evidence of Ms. Laird and Ms. Wong which outlined PC78's approach to building heights in the City Centre Zone. This is summarised as:

1. No building height controls apply in the core part of the City Centre, identified as the 'Special Height Area'. PC78 did not notify any increase in the spatial extent of this area as in the AUP.
2. A 72.5m building height for areas outside the Special Height Area identified as 'general building height'. The height is based on the Business – Metropolitan Centre Zone height and is premised on implementing Policy 3(a) and a s 77O (j) "other" qualifying matter relating to the relationship between the city centre and the Waitematā Harbour but only limited to heights on the north side of Quay Street. No qualifying matters were identified in other areas of the City Centre Zone.
3. Specified lower heights identified in Map H8.11.3 General building height controls to provide for qualifying matter such as historic heritage or special character.
4. Accommodating further qualifying matters through "special height controls" such as standards H.8.6.3 Admission of sunlight to public places, H8.6.4 Aotea Square height control plane, H8.6.5 Harbour edge height control plane and H8.6.7 Railway Station building and gardens view protection plane, Appendix 11, and shown on Map H8.11.4 Special height controls (Council noted that Map H8.11.4 will need to be updated to include the final version of the notified additions to Appendix 11).
5. Specific heights in some Precincts to accommodate identifying matters.

- [114] The Panel's recommendations on special height controls and Precinct heights (4 and 5 above) are addressed in the respective sections of this report. This section focuses on height set by Standard H8.6.2, Map H8.11.3, the 'Special Height Area', 'general building height', and the specified lower heights.
- [115] The evidence on the issue of height across the wider City Centre Zone was relatively focused despite the large number of interested submitters. In broad terms, the criticisms of the Council's position related to its approach to Policy 3(a) which we have addressed above. Evidence opposing the Council's approach to height was generally premised on an interpretation of Policy 3(a) as requiring unlimited building height across the entire City Centre Zone, not just the Special Height Area in the core of the city centre, unless a qualifying matter applied. Notwithstanding this, many submitters' witnesses accepted that heights less than unlimited height were appropriate in parts of the City Centre Zone without themselves identifying a QM.
- [116] The Council's evidence with regard to the specifics of the PC78 'as notified' height of 72.5m in the general building area addressed the appropriateness of 72.5m. However, due to Council's interpretation of Policy 3(a) its evidence tended to focus on the relationship of a lower height to a WFUE rather than identifying an appropriate qualifying matter to justify the particular height restriction.
- [117] Notwithstanding this, the Panel accepts the urban design evidence of Ms. Samsudeen and the landscape evidence of Mr. Brown for the Council who articulated the potential impacts of unlimited height across the entire City Centre Zone. The Panel accordingly recommends a s 77O(j) "other" qualifying matter relating to 'City Centre Urban Form' (adopted from the Council's identified City Centre urban form

QM) which should apply to the entirety of the City Centre Zone and which relates to the following characteristics:

*i. **Built form***

The relationship and effects of the overall form of the city centre on:

- (a) the surrounding neighbourhoods;
- (b) the Waitematā Harbour; and
- (c) the importance of the City Centre's sense of place and visual identity as informed by its natural heritage.

*ii. **Amenity***

Character streets and public open spaces – seeks to avoid adverse dominance, shading and/or visual amenity effects of building height on streets and public open spaces.

Special Height Area

- [118] No evidence was provided against application of unlimited height in the City Centre Special Height Area which the Panel accepts as meeting the requirements of Policy 3(a) “building heights ... to realise as much development capacity as possible.”
- [119] We note that no QM is relevant to this aspect of the height issue as all parties accepted that unlimited height gives effect to Policy 3(a) of the NPS-UD.
- [120] The Panel recommends adoption of the notified PC78 Special Height Area on Map H8.11.3 subject to the extension discussed below.

Extension of the Special Height Area

- [121] Submitters requesting unlimited height across the City Centre Zone, spatial increases of the Special Height Area and those supporting the as notified PC78 height increases provided high-level arguments, including Part 2 RMA, NPS-UD objectives and policies and their application. Evidence expanded on the Policy 3(a) directive to realise as much capacity as possible in the City Centre along with Policies 1, 4, and 6.
- [122] No submitters provided specialist evidence to support requests for extensions to unlimited height. The Coalition for More Homes did not call planning, heritage, urban design or landscape evidence. Planning evidence was provided by Mr. Campbell (for 777 Investments Ltd and Willis Bond), Mr. Cribbens for NZTA/Waka Kotahi and Mr. Lindenberg and Mr. McCall for Kāinga Ora, however no urban design, landscape or heritage evidence was called by these submitters.
- [123] Consequently, the Panel accepts the expert urban design evidence of Ms. Samsudeen for the Council. We recommend the extension of the Special Height Area to the block bordered by Rutland, Queen, and Wellesley Streets and Mayoral Drive as shown in Figure 1 of Ms Samsudeen's rebuttal evidence as we find this will not adversely affect the City Centre urban form. We accept Ms Samsudeen's

analysis that the extension area exhibits a similar context to the Special Height Area and extends it contiguously along Queen Street.

- [124] The Panel likewise accepts Ms Samsudeen's analysis of Areas A, B and the remainder of Area C (as outlined in the evidence of Mr. Cribbens, and Mr. Lindenberg and Mr. McCall). We do not recommend the extension of the Special Height Area to incorporate those areas for the reasons stated by Ms. Samsudeen. These reasons include the location of those areas, their relationship to the core of high buildings, landform, site characteristics, and transitions along with respecting lower heights imposed by viewshafts and historic heritage; and reflecting the specific character and amenity of different areas, scale and amenity, broader views and the City Centre's sense of place and identity.

General building height of 72.5m

- [125] The Council's s 32 evaluation modelled various heights, with the preferred option of 72.5m across the General Height area which results in increased capacity and manages the interface between the City Centre and surrounding suburbs. Adverse amenity effects were identified with increased height beyond 72.5m. Ms Samsudeen's evidence and rebuttal also contributed to the analysis required to meet the s 32 requirements.
- [126] Mr. Brown's s 32 Landscape Report is likewise relevant to the City Centre to the extent it identifies the importance of the lower city/waterfront area and the key precincts within it, and addressing the relationship between the built form of the city and its landscape surrounds. Mr. Brown also highlighted that the 72.5m height will create a development profile across the City Centre and its margins that remains coherent, focused on the Queen Street Valley, and sympathetic to both the city's matrix of maunga features (notably Maungawhau/Mount Eden and Ōhinerau/Mount Hobson) and wider volcanic landforms when viewed from the harbour, Devonport, SH1 and other strategic locations that look towards the city.
- [127] The Panel accepts the evidence of Ms. Samsudeen and Mr. Brown which provide their justifications as to why an unlimited height across the entire City Centre Zone is incompatible with the characteristics relating to the s 77O(j) 'City Centre Urban Form' "other" QM recommended by the Panel. We summarise the key themes of their evidence with respect to this matter as follows:

Landscape

- Unlimited height is incompatible with the City Centre landscape and values associated with the natural environment and surrounding areas.
- Unlimited height is incompatible with values associated with the city and the relationship with maunga and the coast.
- City Centre relationship to the wider landscape context and its identity;
- Visual links between City Centre and Waitematā harbour - maintenance of connections.

- Volcanic viewshafts - heights, margins, built form, maintenance of cone's visual primacy.

Stepping down

- Unlimited height is incompatible with the urban form of a tall central core, which steps down, providing a transitioning height to neighbouring suburbs and the harbour.
- Unlimited height does not enable a gradual transition of building height and development intensity from the city centre to the neighbouring areas and the harbour edge.
- 72.5m considers the landform of the City Centre, where this height limit applies from the edges of the Queen Street Valley Precinct and/or special height area to the higher areas along Nelson/Hobson Streets, Symonds Street, and Karangāhape Road.
- 72.5m is compatible with surrounding suburbs, responds to the city centre context and allows for a range of building forms while minimising adverse effects.

Urban design

- Unlimited height will adversely affect public amenity and good quality spaces by creating overbearing buildings, overshadowing and blocking access to light and sky views.
- City centre urban form, character, heritage values, visual effects, scale related shading, amenity of different areas, amenity for residents, amenity of streets and open spaces, dominance and wind effects and impacts on heritage; maintenance of connections.
- Variations in building height reflect the specific character and amenity of different areas, including heritage places and qualifying matters; respects the lower heights imposed by viewshafts and historic heritage places.
- 72.5m allows for a range of building types and forms that can add to the city's skyline diversity and visual interest, while minimising adverse effects on sunlight access, views and wind conditions.
- Unlimited height will undermine the quality and functionality of the urban environment.

[128] As discussed above, the Panel accepts Dr Fairgray's economic evidence that the net benefit of the as notified PC78 is greater than an 'unlimited' Policy 3(a) outcome (including unlimited height) because the different provisions would realise a range of social, environmental, cultural and economic benefits in the City Centre.

[129] The Panel has also considered the specialist urban design (Ms. Samsudeen), landscape (Mr. Brown), heritage (Ms. Walker) and economic (Dr. Fairgray) evidence called by the Council in support of the notified PC78 height limits shown on map H8.11.3.

[130] The Panel prefers Ms. Samsudeen's and Mr. Brown's evidence that the City Centre has a built form and landscape which contributes to its sense of place, heritage values, visual identity and attractiveness as a WFUE.

- [131] The Council's evidence shows that the City Centre Zone covers a large area and that it has an existing urban form comprising a central core of high-rise buildings within the Queen Street Valley, a transition of building heights towards the edges of the City Centre and harbour, and limited height in elevated areas along Nelson/Hobson Streets, Symonds Street, and Karangāhape Road. The Panel agrees with the assessments by Ms. Samsudeen and Mr. Brown on the distinctive landscape, form and skyline of the City Centre along with the influence of the natural environment (maunga, Waitematā Harbour, landform). We accept that their evidence in tandem with the Council's s 32 evaluation sufficiently provide for the area based site-specific analysis necessary to satisfy the spatial limb of s 77R.
- [132] The Panel also accepts the evidence from Ms. Samsudeen that unlimited height outside the central high-rise core can have negative effects on the City Centre's relationship to the wider landscape context, its relationship to the Waitematā Harbour, maunga and its relationship to adjoining areas. We further accept that the connection between the City Centre and harbour is of visual, physical and cultural importance and reflects Auckland's identity, natural heritage, and sense of place.
- [133] The Panel agrees with evidence from Mr. Brown on managing heights so as not to erode the perception of Auckland's wider volcanic landform, focused on its sequence of cones; and that the intermediate height respects the lower heights imposed by viewshafts and historic heritage places.
- [134] Limiting height outside the central core provides for the specific character and amenity of different areas, including heritage values, visual effects, amenity for residents and visitors, amenity of streets and open spaces, effects of dominance, scale related shading and wind. Reducing height away from the central core also ensures a gradual transition of building height and development intensity from the city centre to the neighbouring areas and the harbour edge.
- [135] The Panel considers that restriction of building height is necessary to manage the urban built form of the city and amenity values. We consider limiting height to 72.5m outside of the Special Height Area is necessary to accommodate a s 77O(j) "other" QM relating to 'City Centre Urban Form'. We note that other QMs may further limit heights to below 72.5m.

Specific heights relating to identified qualifying matters

Specific heights - 16m, 20m, 30m, 35m Height Controls

- [136] As noted above, the Panel accepts the s 77(a) qualifying matter relating to historic heritage as a s 6(f) matter. No heritage evidence was provided by submitters opposing the bespoke 16m, 20m, 30m, 35m height controls.

Sites adjacent to Victoria Park Precinct (16m, 20m height limits):

- [137] The Panel accepts Ms. Walker's specialist heritage evidence for the Council which supports retention of the notified PC78 height limits, to protect the significant historic heritage values of the Victoria Park Market industrial buildings, including its iconic

chimney. Such protection is needed from dominating effects resulting from greater heights, which would have a negative impact on the values of these Category A buildings and chimney. We therefore recommend the retention of the notified PC78 16m and 20m height limits.

2 and 2A Symonds Street (corner of Symonds Street and Alten Road) 30m height limit

[138] No heritage evidence was provided by submitters or Council for these sites. Council's s 32 evaluation for the City Centre identifies St Andrews Presbyterian Church (heritage building) height to be limited to 30m to protect heritage values under s 6(f) the protection of historic heritage from inappropriate subdivision, use, and development.

[139] St Andrews Presbyterian Church is located at 2 Symonds Street and is subject to Historic heritage overlays but 2A Symonds Street, located next to the church, is occupied by a carpark and building and is not subject to any overlays.

[140] In the absence of expert evidence challenging the Council position, the Panel recommends the retention of the notified 30m height.

99 and 131 Quay Street (Map H8.11.3 General building height limit of 35m height limit)

[141] No heritage evidence was provided by submitters or Council for these sites. Council's s 32 evaluation for the City Centre identifies that the lower heights are necessary to retain the value of the historic Ferry Building as a regional landmark.

[142] The Panel recommends the retention of the notified 35m height.

Karangāhape Road (Map H8.11.3 General building height limit of 35m)

[143] Ms. Walker for the Council was the only expert witness in relation to heritage values and height along Karangāhape Road. Her evidence was that a 72.5m height would result in development which will negatively affect Karangāhape Road's historic integrity. We agree with and accept her evidence related to the commercial streetscape and heritage values of Karangāhape Road and accordingly recommend the retention of the notified 35m height.

[144] We recommend height controls for 532 and 528 Karangāhape Road remain at 35m (see our findings in section 3.35 below). We accept Ms. Walker's evidence to the extent their proximity will result in the height of those sites continuing to have an effect on the Karangāhape Road Precinct. .

3.8 Site intensity and floor area ratio (FAR)

[145] This issue relates to the following provisions:

- H8.4.1(A32)(A36)(A44)(A45)
- H8.6.10 Basic floor area ratio
- H8.6.11 Bonus floor area ratio
- H8.6.12 Bonus floor area ratio – light and outlook

- H8.6.13 Bonus floor area – use or transfer of historic heritage and special character floor space bonus
- H8.6.14 Bonus floor area – securing historic heritage and special character floor space bonus
- H8.6.15 Bonus floor area – bonus floor space calculation for scheduled heritage buildings
- H8.6.16 Bonus floor area – bonus floor space calculation for identified special character buildings
- H8.6.17 Bonus floor area – public open space
- H8.6.18 Bonus floor area – through site link
- H8.6.19 Bonus floor area – through site links through identified blocks
- H8.6.20 Bonus floor area – works of art
- H8.6.21 Maximum total floor area ratio

3.8.1 Statement of issue

- i. Removal of floor area ratio (FAR) provisions
- ii. Implications of the removal of bonus FAR provisions for historic heritage values

3.8.2 Panel recommendation and reasons

Removal of FAR provisions

- [146] The basic, bonus and maximum FAR provisions were historically included in the AUP to manage scale of development in the city centre and to encourage built outcomes which would deliver public benefits. FAR provisions work in tandem with the height controls to limit the overall floor area which in practice encouraged a tower-podium form of development.
- [147] The Council and submitters noted that PC78 proposes the removal of FAR provisions give effect to NPS-UD Policy 3(a), as they restrict development capacity without accommodating a QM. Similarly, urban design evidence (Ms. Samsudeen for the Council and Mr. Wallace for Precinct Properties) was that FAR is a blunt instrument which may not guarantee desirable design outcomes due to the variety of factors that can influence a development. The Panel heard that a range of other methods can appropriately manage intensive forms of development in a city centre setting.
- [148] Conversely, Heritage New Zealand Pouhere Taonga and the General Trust Board of the Diocese of Auckland raised the potential negative effects on historic heritage and special character arising from the removal of the corresponding bonus FAR provisions. They sought to retain the bonus FAR provisions relating to heritage and special character. Council witnesses were sympathetic to these effects of the loss of bonus FAR but were unable to propose any alternative that would satisfy NPS-UD Policies 3 and 4. The Panel addresses the historic heritage and special character bonus FAR provisions separately below.

- [149] The Panel's approach to Policy 3(a) as outlined in section 3.2 above is consistent with what we heard on the matter of FAR. For this reason, the Panel agrees with the Council and recommends the deletion of FAR provisions.

Implication for historic heritage value

- [150] Ms. Covington, Ms. Morris and Ms. Byron gave detailed evidence on the effects of the loss of heritage incentives for historic heritage values in the City Centre. They explained that bonus FAR provisions have historically functioned as a form of Transferable Development Right (**TDR**) whereby foregone development potential, resulting from heritage protection and covenants, could be sold and transferred to other sites in the city centre. This provided a potentially significant source of funding for heritage protection and preservation. We heard that some bonus FAR has already been activated (i.e. the heritage protection already in place) but the resultant "credits" not yet realised (or fully realised) by sale to a developer, leaving unsold credits that heritage entities had expected to be able to sell in future. The removal of the bonus FAR regime was expressed as a breach of expectations in this respect, and more generally as a risk to the protection of heritage in the City Centre.
- [151] The key issue arises due to the construction of QMs under the RMA. It requires a clear causal and spatial connection between the values of a QM and any limits on height or density. Other provisions as proposed under PC78, have been put forward as continuing to protect historic heritage from inappropriate subdivision, use and development (as a matter of national significance), but on the site on which the historic heritage is located. Conversely, bonus FAR is an indirect mechanism which assists the protection and preservation of historic heritage, but by limiting development capacity everywhere in the city centre, to create a viable market for development rights ("unders and overs") to be traded.
- [152] After hearing about these issues the Panel was mindful of the merits of bonus FAR or some alternative approach to TDR in providing for historic heritage buildings in the City Centre Zone, and directed further expert conferencing.
- [153] Broadly, the experts agreed in the JWS that TDRs are a viable resource management tool in promoting positive outcomes, but that an appropriate QM is still required to apply the necessary constraints. They concluded that additional work was necessary – particularly analysis as to whether the provisions could pass the tests for QMs.
- [154] The Panel then directed further evidence from the Council (and submitters if they so wished) on possible options for the use of a height-based TDR regime to enable further consideration of this issue.
- [155] Evidence in support put forward a possible use of a 'basic height' and a 'maximum height' whereby TDRs would be used to achieve heights beyond the 'basic height'.
- [156] However, the issue of TDR necessitating a restriction on development remains. Under Policy 3(a), limits on height or density can only be to accommodate a QM. Mr.

Cook helpfully articulated the Panel's primary concern, namely that if a particular height is deemed appropriate in terms of effect, i.e. as an allowable 'maximum', then it ought to be enabled as of right and not artificially restricted so that it can be enabled by TDR. The theoretical qualifying matter and TDR regime would also have to restrict height across the entire City Centre to allow for the transferability of TDR between sites.

[157] The evidence did not sufficiently demonstrate that funding of off-site historic heritage conservation is a clear enough causal link to satisfy ss 77O -77R for a QM limiting height across the City Centre, considering the strong directive of Policy 3(a). On this basis, although sympathetic to the important role that bonus FAR has played in the management of historic heritage in the City Centre, the Panel cannot see that its retention is in keeping with the requirements of the NPS-UD and recommends the removal of the bonus FAR provisions.

[158] We encourage the Council to continue working on appropriate methods to support the funding of historic heritage conservation in the City Centre.

3.9 Bulk and location controls in the City Centre Zone form

[159] This issue relates to the following provisions.

- H8.4.1 (A32)
- H8.6.24
- H8.6.25
- H8.6.25A
- H8.6.32 Outlook Space

3.9.1 Statement of issue

The Panel heard on the above standards which together, shape the form of new building, particularly high-rises towers, in the City Centre.

- i. Appropriateness of qualifying matter relating to bulk and location controls in the City Centre Zone
- ii. Modelling assumptions
- iii. Tower controls Standard H8.6.24 Setback and tower controls and new development control H8.6.25A Setback and tower
- iv. Standard H8.6.25 Building frontage alignment and height,
- v. Standard H8.6.32 Outlook control residential only
- vi. Emergency responder servicing

3.9.2 Panel recommendation and reasons

Appropriateness of qualifying matter relating to bulk and location controls in the City Centre Zone

[160] The Panel received detailed legal submissions and planning evidence from the Council and submitters (Precinct Properties Ltd and SkyCity Auckland Ltd) on the

appropriate evaluative framework to apply when making its recommendations on bulk and location controls affecting density of form in the City Centre Zone, particularly within the Special Height Area. Consistent with its interpretation of Policy 3(a), Council's submissions and evidence were sometimes premised on the controls being necessary to achieve a WFUE and 'appropriate urban design outcomes' rather than to accommodate an identified QM. Submitters challenged this approach on the basis that PC78 incorrectly applied the NPS-UD. The Panel refers to its earlier conclusions on Policy 3(a), Policy 6 and QMs.

[161] Notwithstanding this, and as discussed with respect to our approach to QMs, the Panel considers it salient that none of the planning, urban design and architecture evidence argued for *no controls*. Rather, the submitters' experts engaged on the metric, whether it was to 'the extent necessary' and whether the provisions 'achieve the greatest heights and densities'. The Panel therefore does not accept the proposition that bulk and location controls should not exist within the city centre. Bulk and location controls can only modify the density of urban form by way of one or more QMs. As the evidence for the Council and submitters sometimes did not identify those QMs, the Panel has reverted to the Council's s 32 evaluation and considers that these controls can come within the rubric of the identified s 77O(j) "other" matter of 'City centre built form controls'. We recommend this as a distinct QM. For the avoidance of doubt, pursuant to s 77R, the Panel considers the city centre built form controls QM relates to managing the effects of building dominance and to ensure human-scaled street environments, and applies to the entirety of the City Centre Zone.

[162] The Panel relies on the Council's s 32 report, and the evidence of Mr. Cook, Mr. Johnston, Mr. Wallace, Ms. Laird and Ms. Wong, and Ms. Samsudeen in its evaluation of the PC78 density development controls against the s 77R statutory tests.

Modelling assumptions

[163] The Panel heard complex and detailed architectural modelling evidence and generally prefers the evidence of Mr. Johnston for Precinct Properties and SkyCity. Mr. Johnston's evidence was that, notwithstanding Mr. Nicholson's comprehensive architectural modelling, there were limitations in the Council's brief, namely a failure to holistically consider the impacts of the various density development controls, and realistic development assumptions around site size and existing large buildings which are unlikely to be redeveloped. Mr. Johnston's additional assumptions added granularity and therefore his architectural analysis was more comprehensive. The Panel considers that the Council overestimated the potential development capacity under PC78 and did not fully weight the costs of the proposed provisions. Accordingly, the Panel's recommendations below are informed by Mr. Johnston's analysis, although we have considered the competing evidence for each standard both separately and for the standards operating in combination. The Panel also undertook extensive site visits throughout the City Centre to inform our deliberations on the standards.

- [164] H8.6.24 Maximum tower dimension, setback from the street and tower separation in special height area (shown on Map H8.11.3) and H8.6.25A Building setback from boundaries
- [165] Standard H8.6.24 currently exists in the AUP and contains the key controls for development in the Special Height Area (the core of the City Centre).
- [166] Standard H8.6.25A is a new standard notified in PC78 which applies the bulk and location controls in H8.6.24 for areas in the City Centre outside of the Special Height Area.
- [167] The Panel considers the components of the standards thematically below.
- (a) *Tower-podium form:* The Panel prefers the evidence of Ms Samsudeen for the Council and recommends retaining the 28m 'podium' aspect of the standard, noting the Council's comprehensive s 32 evaluation on this metric and that the height was broadly accepted as providing a human-scale development and encouraging a desirable, podium-tower, built form.
 - (b) *Tower dimension:* The Panel prefers the evidence of Mr. Cook, Mr. Johnston and Mr. Wallace for Precinct Properties and SkyCity and recommends a change to an average 55m maximum plan dimension as it will enable intensification while still appropriately limiting development and retaining building separation. The Panel was also assisted by the corporate evidence of Mr. Randall for Precinct Properties which outlined the commercial trends for larger floor plates.
 - (c) *Setbacks above the podium:* The Panel prefers the Council evidence of Ms. Laird and Ms. Wong, and Ms. Samsudeen to the extent that it recommends retaining a 6m setback for part of a building above 28m as necessary to provide a clear distinction between the podium and tower and ensuring an adequate standard of human-scaled street environment. The Panel prefers the submitter evidence of Mr. Cook, Mr. Johnston and Mr. Wallace to the extent that it recommends not introducing the PC78 'variable setback' based on 6m or 6 per cent of the total building height. We are satisfied that the variable component is not necessary given the 6m setback, particularly in light of the likely chilling effect on development capacity as demonstrated by Mr. Johnston.
 - (d) *Tower separation:* The Panel prefers the Council evidence and recommends a 12m tower separation standard as notified in PC78, noting that this aligns with two 6m setbacks, and there was no persuasive evidence to the contrary.
- [168] The Panel also heard evidence from submitters on how the density development controls can potentially make smaller sites unviable. Mr. Johnston said that the 6m setbacks will broadly result in an economically unviable tower floor plate of 600m² on sites under 1,200m². Mr. Benjamin for submitter John Pattinson provided analysis of even smaller sites. The Panel heard however that the bulk and location controls (premised on the operative 6m setback) do not restrict development on such sites

more than what is currently enabled by the AUP (and so do not raise *Waikanae* concerns).

[169] While Ms. Samsudeen accepts that reducing setbacks may be appropriate in some instances, she said that a case-by-case consideration through a resource consent process is more appropriate than amending the standard. She drew attention to assessment criterion H8.8.2(6)(c) which considers site specific characteristics when assessing infringement of standards as part of that process. Any new buildings already require resource consent as a restricted discretionary activity.

[170] The Panel prefers the Council's evidence which satisfied us that reducing the 6m setbacks for 'smaller sites' (which the Panel considered would be very difficult to adequately define) will no longer accommodate the QM and recommends no additional changes to provide for smaller sites.

H8.6.25 Building frontage alignment and height

[171] This standard contains development controls for frontages in the City Centre Zone to manage effect of buildings on the street environment. PC78 introduced clause (2) which manages building frontage alignment and heights to ensure human-scaled environments in the city centre. Mr. Cook supported its removal to enable additional development capacity consistent with his evidence elsewhere. The Panel continues to prefer Ms. Samsudeen's evidence that the proposed provisions are an appropriate means to ensure a human-scaled environment with reductions appropriately assessed by way of resource consents. In the absence of compelling urban design evidence to the contrary, the Panel adopts the evidence of Ms. Laird and Ms. Wong, and Ms. Saumsudeen on the strength of the latter's urban design evidence which underly the Council's planning analysis, rather than Mr. Cook's evidence which argued for the removal of clause (2) frontage height from a planning perspective predicated on development capacity.

H8.6.32 Outlook space

[172] PC78 proposes to retain the operative outlook space standard which requires more outlook space the higher up in a tower development. The Council evidence is premised on the standard providing for visual and acoustic privacy and encouraging habitable rooms along the street facing façade. The Panel is mindful that its recommendation for the bulk and location controls in the city centre, is to accommodate a QM which relates to managing the dominance of buildings to ensure human-scaled street environments.

[173] The Panel prefers the evidence of Mr. Cook and Mr. Wallace. Mr. Wallace identified that the Council evidence attributed additional matters of daylight, ventilation and sky views to the standard, outside of its stated purpose. His evidence satisfied the Panel that the concerns expressed in the Council evidence could be adequately addressed by other provisions, such as maximum tower dimension which will impact the location of a building's core. Likewise, the sufficiency of a 6m outlook space to manage effects at lower levels suggests that this ought to be acceptable at higher levels. The

Panel was not persuaded by the counterfactual put forward by Ms. Samsudeen which justified the necessity for increasing outlook to ensure building separation distance. Council accepted a 12m building separation distance as part of its amendments to standard H8.6.24(3). Furthermore, Mr. Cook directed the Panel to the fact that a 6m outlook space better aligns with building setbacks under standards H8.6.24 and H8.6.25A as well as outlook requirements elsewhere in the AUP.

- [174] Accordingly, the Panel recommends that Standard H8.6.32 be amended to require a minimum of 6m outlook space from all habitable rooms.

Emergency responder servicing

- [175] Fire and Emergency New Zealand (FENZ) tabled a letter dated 8 December 2023 for the Panel's consideration. The letter's author, Ms Smart, expressed her view that infringements to standards like height, building in relation to boundary and setback, can impact the ability of fire and emergency responders to appropriately service a site in an emergency (i.e. difficulties of access). While acknowledging it was for a separate process, she referenced the Council's closing legal submission for PC 79 (Amendment to the Transport Provisions) whereby both the Council and FENZ agreed that ongoing emergency access is a critical element of a WFUE.
- [176] Ms. Laird and Ms. Wong concurred with Ms. Smart. They recommended changes to H8.8.1(6) and H8.8.2(6) to introduce a new matter of discretion and assessment criteria to that effect and provided a s 32AA evaluation as attachment 2 of their rebuttal.
- [177] As the experts agree, the Panel accordingly recommends changes to H8.8.1(6) and H8.8.2(6) by inserting a new subclause (d) as outlined in Ms. Laird and Ms. Wong's rebuttal.

3.10 Development controls in the City Centre Zone which do not affect height or intensity of urban form

- [178] This issue relates to the following provisions:

- H8.6.1 Retail
- H8.6.8 Measuring building height
- H8.6.9 Roof Tops
- H8.6.26 Verandahs
- H8.6.27 Minimum floor to floor height
- H8.6.28 Wind
- H8.6.29 Glare
- H8.6.33 Minimum dwelling size

3.10.1 Statement of issue

- i. Retention of operative standards which do not affect building heights or density of urban form.

3.10.2 Panel recommendation and reasons

- [179] The Panel accepts the Council's position and recommends the retention of standards H8.6.1 Retail, H8.6.8 Measuring building height, H8.6.26 Verandahs, H8.6.27 Minimum floor to floor height, H8.6.28 Wind, H8.6.29 Glare, and H8.6.33 Minimum dwelling size as per the operative standards, and the retention of standard H8.6.9 Roof Tops with minor amendments as notified, as outlined in Ms. Laird and Ms. Wong's evidence.
- [180] The Council's s 32 evaluation identified these development controls as not impacting on building heights or intensity of urban form.
- [181] No changes were notified to six of the standards. Minor consequential amendments were notified to standard H8.6.9 Roof Tops.
- [182] Minor consequential amendments were notified to standard H8.6.8 Measuring building height. Submissions were received opposing the amendments and the evidence of Ms. Laird and Ms. Wong agreed with submitters that the standard should be retained in the operative form (without the notified amendments).
- [183] With the exception of standard H8.6.8 there were either no submissions or submissions were in support, and there was no evidence from submitters with respect to any of the standards. The Panel accepts the Council evidence of Ms. Laird and Ms. Wong and accordingly recommends the retention of (and with respect to standard H8.6.9 Roof Tops, consequential amendments to) these standards.

3.11 Special amenity yards

- [184] This issue relates to H8.6.30 Special Amenity Yards

3.11.1 Statement of issue

- i. An appropriate qualifying matter
- ii. Retention of special amenity yard in Freyberg Square, Myers Park and corner of Quay Street / Queen Street

3.11.2 Panel recommendation and reasons

An appropriate qualifying matter

- [185] The Panel refers to the Council's s 32 evaluation which considered the provision as accommodating QMs under s 770(f) (open space) and s 770(j) ("other") of 'City centre built form controls'.
- [186] The Council evidence of Ms. Laird and Ms. Wong explains the characteristics of the three sites: a parcel within Myers Park, 1 Courthouse Lane, and the corner of Quay Street and Queen Street. The latter two are privately-owned, zoned Business – City Centre, and comprise parts of Freyberg Square and Te Komititanga respectively. The Myers Park parcel is zoned Open Space - Informal Recreation.

- [187] Planning evidence from Mr. Cook for Precinct Properties stated that Council had not identified an appropriate QM which standard H8.6.30 provides for. The Panel notes that the Council's s 32 evaluation identified qualifying matters under s 77O. The Council evidence of Ms. Laird and Ms. Wong and Ms. Samsudeen was that H8.6.30 is necessary to accommodate open space, and pedestrian and streetscape amenity values as a QM under s 77O(j). Their evidence was that the benefits to pedestrian and/or streetscape amenity outweighs the cost of forgone development capacity, particularly in light of the small areas affected by the standard.

Retention of special amenity yards

- [188] Standard H8.6.30 Special Amenity Yards does not allow buildings in identified areas, in order to avoid significant adverse effects on pedestrian and /or streetscape amenity. The Panel has considered the Council's evidence and analysis as part of its s 32 evaluation as well as the JWS for the City Centre provisions. This notes that one appropriate pathway for the retention of H8.6.30 is via s 77O(f) which requires considering whether the sites qualify as open space, and if not will need to satisfy s 77O(j) as an "other" QM.
- [189] Ms. Laird and Ms. Wong were of the view that special amenity yards on privately-owned land not zoned or designated as open space precludes the use of s 77O(f). The Panel having undertaken an analysis of what constitutes "open space" for standard H8.6.3 and H8.6.4 Sunlight admission to public places and Aotea Square height control plane (refer to section 3.16 of this report), takes a different view. We consider that open space can include consideration of functionality and not only to identification by zoning, noting that the language of s 77O(f) refers to 'open space provided for public use, but only in relation to land that is open space'. Based on its site visits as well as the planning evidence of Ms. Laird and Ms. Wong the Panel concludes that the special amenity yards constitute parts of the open space that is Freyberg Square and Te Komititanga and is used as such with no restrictions on the public.
- [190] Finally, the Panel accepts the parks policy evidence of Mr. Barwell which highlights the importance of protecting the existing open spaces in the City Centre Zone for continual use.
- [191] Based on the above, the Panel recommends the retention of standard H8.6.30. For completeness, we are satisfied that Ms. Laird and Ms. Wong, and Ms. Samsudeen, provided a more thorough evaluation under ss 77R and 77P than did Mr. Cook. Based on this, we would have otherwise recommended the retention of H8.6.30 to accommodate open space, pedestrian and streetscape amenity values as a QM under s 77O(j).

3.12 Building in relation to boundary

- [192] This issue relates to Standard H8.6.22 Building in relation to boundary and Map H8.11.7.

3.12.1 Statement of issue

- i. Removal of Standard H8.6.22 Building in relation to boundary

3.12.2 Panel recommendation and reasons

- [193] PC78 retained Standard H8.6.22 Building in relation to boundary to provide for a s 77O(j) “other” QM relating to retaining the spacious landscaped character and maximising sunlight admission to public open spaces. The standard applies to shared boundaries of identified sites or where the boundary of an identified site adjoins open space zones.
- [194] There was no evidence contrary to that given by the Council witnesses.
- [195] Council’s urban design specialist Ms. Samsudeen considered that similar or better outcomes to standard H8.6.22 Building in relation to boundary can instead be achieved with the alternative standards for outlook space around residential developments (standard H8.6.32), street frontage height (standard H8.6.25), and building setbacks and tower dimensions (standard H8.6.25A). Together those standards provide for a podium and tower form which delivers a human scale at the street edge, and light and air around buildings at higher levels. The sunlight admission protection controls (standard H8.6.3) for the City Centre’s open spaces ensure natural light and amenity of those areas.
- [196] Council’s planning witnesses Ms. Laird and Ms. Wong relied on the evidence of Ms. Samsudeen and supported the deletion of standard H8.6.22 Building in relation to boundary. Their evidence clarifies however that standard H8.6.32 Outlook space as notified in PC78 applies to the area covered by standard H8.6.22 Building in relation to boundary, but there would need to be a spatial expansion of the mapped areas where standards H8.6.25 and H8.6.25A apply to ensure there are no areas where no appropriate controls apply. However no recommendation was made by Ms. Laird and Ms. Wong to increase the spatial extent of standards H8.6.25 and H8.6.25A.
- [197] The Panel accepts the Council’s evidence and recommends the deletion of H8.6.22 Building in relation to boundary, as the QM under s 77O(j) is better accommodated by standards H8.6.3, H8.6.25, H8.6.25A, and H8.6.32, but only where all of those alternative controls spatially apply. The Panel is concerned about potential gaps in the mapped provisions (as identified by Ms. Laird and Ms. Wong) and recommends the Council identify and retain standard H8.6.22 and associated Map H8.11.7 in any areas where standards H8.6.25 and H8.6.25A do not apply. We likewise recommend consequential amendments to the standard to ensure the provisions are not in conflict.

3.13 Streetscape Improvement and landscaping

- [198] This issue relates to Standard H8.6.23 Streetscape improvement and landscaping

3.13.1 Statement of issue

- i. Appropriate qualifying matter and amendments to standard H8.2.23 Streetscape improvement and landscaping

3.13.2 Panel recommendation and reasons

- [199] PC78 proposed to retain the operative standard H8.6.23 to maintain landscape qualities on identified sites as a s 77O(j) QM. PC78 proposed the removal of St Andrew's Presbyterian Church through the deletion of clause (5).
- [200] The Panel did not receive any evidence challenging the Council's position and consequently accepts the planning evidence of Ms. Laird and Ms. Wong. For completeness, we have considered the s 32 evaluation which identified the standard, subject to the deletion of St Andrew's Presbyterian Church, as necessary to accommodate a s 77O(j) QM relating to 'landscape character'. We accept the appropriateness of the QM in the absence of evidence to the contrary.
- [201] However, the Panel is mindful that the Council's option analysis contained in Table 9 of the s 32 report notes that Standard H8.6.23 applies on the same sites as H8.6.22 Building in relation to boundary. The report concludes that H8.6.22 should be removed in the event H8.6.23 is removed as they are complementary and 'to avoid conflict between provisions'. We refer to our findings in 3.12.2 relating to Building in relation to boundary above recommending the removal of Standard H8.6.22 (subject to further assessment by the Council for any areas where it should be retained).
- [202] The evidence of Ms. Laird and Ms. Wong with respect to standard H8.6.23 – which recommended the deletion of standard H8.6.22 – did not address this issue raised in the s 32 report that the two standards are complementary and should be retained or deleted together. The urban design evidence of Ms. Samsudeen did not address standard H8.6.23 and whether it should be deleted or retained given her recommendation to delete standard H8.6.22.
- [203] In the absence of any evidence to the contrary, we accept the evidence of Ms. Laird and Ms. Wong supporting retention of the standard and recommend that standard H8.6.23 is retained.

3.14 Through-site links

- [204] This issue relates to H8.6.34 Through-site links.

3.14.1 Statement of issue

- i. Whether the proposed standard H8.6.34 Through-site links should be more appropriately dealt with as a matter of discretion and assessment criteria for new buildings.

3.14.2 Panel recommendation and reasons

- [205] PC78 notified H8.6.34 Through-site links as a new standard consequential on the deletion of the bonus FAR provisions, so as to retain through-site links as a positive urban design outcome in new developments. The issue was resolved through the course of the hearings with amendments in the rebuttal of Ms. Laird and Ms. Wong concurring with the submitter planning and urban design evidence from Mr. Cook and Mr. Wallace respectively.
- [206] The Panel recommends the amendments to address through-site links as outlined in the rebuttal evidence of Council's planning witnesses Ms. Laird and Ms. Wong.

3.15 Qualifying matter - Relationship of the City Centre to the Waitematā Harbour

- [207] This issue relates to the following provisions.

- H8.2(12)
- H8.3(31A)
- H8.4.1(A42)
- H8.6.5 Harbour edge height control plane
- H8.6.6 exemption to the harbour edge height control plane
- H8.6.24A Maximum east-west tower dimension
- H8.8.1, H8.8.2

3.15.1 Statement of issue

- i. The appropriateness of 'Relationship of the City Centre to the Waitematā Harbour' as qualifying matter
- ii. Appropriateness of Harbour Edge Height Control
- iii. Appropriateness of the Maximum East-West tower dimension

3.15.2 Panel recommendation and reasons

- [208] Standards H8.6.5 and H8.6.6 are existing provisions which manage development on the western end of Quay Street to transition building heights down to the water's edge, maximise views and east-west connections along the waterfront. PC78 identifies this as a new s 77O(j) "other" QM. PC78 proposes to amend H8.6.5 so that infringement requires resource consents as a restricted-discretionary activity rather than a discretionary activity, to delete Standard H8.6.6 and introduce H8.6.24A Maximum east-west tower dimension.

Appropriateness of the qualifying matter

- [209] The Panel notes that submitter evidence did not challenge the appropriateness of the QM despite criticising the Councils' s 32 evaluation report and its lack of clarity around the specific QM pathway. The Panel has reviewed the s 32 evaluation report and considered the 'Relationship of the City Centre to the Waitematā Harbour' as a QM under s 77O(j). We consider this narrower definition necessary to satisfy the

requirements of s 77R. For completeness, the Panel has taken the area put forward by Mr. Brown for the Council as the area where that QM applies.

Appropriateness of the Harbour Edge Height Control

- [210] The Panel received planning, urban design and architectural evidence from both the Council and submitters. Ms. Laird and Ms. Wong's view is that the deletion of H8.6.6 Exception to the harbour edge height control plane is appropriate as it creates complexity by requiring the offsetting of effects. Conversely, the combined changes to H8.6.5 and H8.6.6 is more appropriate by allowing greater design flexibility and enablement of development capacity. For standards H8.6.5 Harbour Edge Height Control and H8.6.24A Maximum east-west tower dimension, the key issue remains the specific metric used i.e. Height from which to project the recession plane and the maximum dimension respectively.
- [211] Precinct Properties seeks to increase the starting point of the recession plane from 40m to 60m, premised on existing buildings consented based on the AUP 40m + 20m element, allowed by standard H8.8.6 Exception to the harbour edge height control plane. Mr. Johnston identified three buildings (PWC Tower, 1 Queen St, and 188 Quay St) which exceeded the 40m recession plane, while being generally consistent with a 60m recession plane.
- [212] Ms. Samsudeen and Mr. Brown for the Council explained the contextual element of the provisions in terms of the transition of height from a higher core downwards to the harbour. PC78 proposes to change the activity status for infringing the harbour edge height control plane to restricted discretionary – which is the same as that for a new building, albeit with additional matters of discretion and assessment criteria tied to the effects of infringing beyond the recession plane. This is an important distinction. On this basis, the Panel accepts the Council's position that the PC78 Harbour Edge provisions provide for design flexibility while accommodating the harbour edge relationship between the City Centre and the Waitematā.
- [213] The Parc Bodies Corporate seek to expand the spatial application of the Harbour Edge Height Control westward along the southern edge of Fanshawe Street. The Panel prefers the Council's evidence from Ms. Laird and Ms. Wong, relying on the evidence of Mr. Brown, which notes that the control and corresponding QM is specifically focused on the city centre - harbour interface (to the north) and not the interface between the city centre and the waterfront precincts (to the west). We therefore recommend no extension to the Harbour Edge Height Control.
- [214] The Panel prefers the evidence for the Council and recommend the retention of H8.6.5 Harbour Edge Height Control (and amendments to H8.4(A42) to make infringement of H8.6.5 a restricted discretionary activity) and its spatial extent and the deletion of H8.6.6 Exception to the Harbour Edge Height Control.

Appropriateness of the Maximum east-west tower dimension

- [215] Ms. Laird and Ms. Wong, relying on the evidence of Ms. Samsudeen and Mr. Brown, put forward the need for standard H8.6.24A Maximum east-west tower dimension to accommodate the city centre's relationship with the Waitematā Harbour. The s 32 report identifies this provision as accommodating the 'visual connections with, and visual permeability' aspects of this relationship. Mr Brown gave landscape and amenity evidence on the need to maintain scarce harbour views and the waterfront character of the city centre. No landscape and amenity evidence was presented to the contrary.
- [216] The Panel accepts the legal submission for Precinct Properties that private views are not a relevant matter under the RMA⁶. Notwithstanding, based on evidence from Ms. Samsudeen and the Panel's site visits, we are satisfied that visual permeability and connection as an expression of the built form is a valid form of 'relationship' between the city centre and the harbour.
- [217] However, the Panel considers that the Council's proposed 30m dimension (supported by the Tūpuna Maunga o Tāmaki Makaurau Authority) is inappropriate to the degree that it placed too much weighting on views from private spaces within existing buildings.
- [218] Mr. Johnston's architectural evidence for Precinct Properties and SkyCity was particularly helpful to the Panel in its consideration of the statutory tests for QMs. The Panel is particularly mindful of:
- a) The cumulative effect on feasible floor plates of both a 30m maximum east-west tower dimension and a 50m maximum tower dimension.
 - b) Only one of 12 Australian benchmark towers would comply with the proposed PC78 provisions and all six international benchmark towers would be non-compliant.
 - c) The effect of the maximum east-west dimension distorting tower developments by forcing wider dimensions on the north-south axis which in turn would affect visual permeability when viewed from an east-west perspective.
 - d) Mr Johnston's opinion that the maximum east-west tower dimension be increased to 45m, which the Auckland commercial benchmarks will be compliant with, and in his view, provides greater flexibility for residential development.
- [219] The Panel prefers an integrated reading of the QM as advanced by the Council experts, that the Harbour Edge Height Control provides the primary accommodation of east-west views and the stepping down towards the Waitematā Harbour while the maximum east-west tower dimension control accommodates the QM as it relates to the north-south connection. With regard to the latter, the Panel prefers the evidence of Mr. Johnston that a 45m maximum east-west tower dimension more appropriately meets the test of 'to the extent necessary'. The Panel notes that this recommendation is made in tandem with those under section 3.9 above. Finally, the

⁶ *Meridian Energy Ltd* [2013] NZEnvC 59

Panel recommends the spatial extent of the control be those in the notified PC78, given Mr. Brown's analysis was the only evidence on this matter.

3.16 Maximum parking rates

[220] This issue relates to provisions under Chapter E27 Transport.

3.16.1 Statement of issue

- i. Whether to reconsider the maximum parking rates in the City Centre and amend if necessary, as part of PC78.

3.16.2 Panel recommendation and reasons

[221] PC78 did not propose any changes to maximum parking rates in the City Centre. A submission from NZTA/Waka Kotahi sought to reconsider the maximum parking rates in the City Centre and amend if necessary.

[222] The Panel accepts the Council evidence of Ms. Laird and Ms. Wong and recommends no changes to maximum parking rates.

[223] We heard from Mr. Clark for the Council on whose transport evidence Ms. Laird and Ms. Wong based their planning evidence.

[224] With respect to scope, Ms. Laird and Ms. Wong considered that:

- a) As City Centre maximum parking rates are calculated based on number of dwellings and/or gross floor area, they are directly related to development capacity (although do not limit development capacity) and could therefore be considered "consequential on" intensification. We agree and do not consider the NZTA submission to be out of scope.
- b) Lowering of parking maxima across the whole City Centre through PC78 might unfairly affect landowners who have not had the chance to submit against the proposal. We do not consider that this raises a *Clearwater* 'second limb' issue, as further submissions were able to be made.

[225] The Council's witnesses said that while there is merit in reviewing the parking maxima there are also potential complexities if this were to be done across the City Centre and significant analysis is required for a more targeted approach which may prove premature. On this basis, their view was that there should be no changes as part of PC78. This evidence was not disputed.

3.17 Qualifying matter – Sunlight admission to public spaces in the City Centre

[226] This issue relates to the following provisions:

- H8.4.1(A40)(A41)
- H8.6.3 Admission of sunlight to public spaces
- H8.6.4 Aotea Square height control plane

- Appendix 11 Business – City Centre Zone sunlight admission into public spaces

3.17.1 Statement of issue

- i. Appropriateness of the qualifying matter.
- ii. The Council's methodology and evidence for including seven additional public open spaces to Appendix 11.

3.17.2 Panel recommendation and reasons

- [227] PC78 retained standards H8.6.3 and H8.6.4 without change, while proposing seven additional public open spaces to be included in Appendix 11 (the sunlight admission standards).
- [228] Standards H8.6.3, H8.6.4 and Appendix 11 are existing provisions which provide for the admission of sunlight into identified public places in the City Centre Zone. PC78 proposes to include seven additional public places (as figure 10-16) into Appendix 11 premised on the need to maintain existing levels of sunlight admission in light of the increasing building heights and density of urban form.
- [229] The Panel undertook site visits to each of the seven additional public places to aid our understanding of the evidence and to inform our conclusions.

Appropriateness of the qualifying matter

- [230] The notified PC78 and Council's s 32 evaluation identified these as accommodating s 77O(f) open space and s 77O(j) any other matter: City centre built form controls. No expert evidence challenged the appropriateness of the QM; the evidence instead focused on the application of the standard to the seven newly identified public places in Appendix 11.
- [231] Notwithstanding this, we consider it necessary to identify the most appropriate QM to determine the correct evaluation pathway - either pursuant to s 77P or s 77R. Section 77O(f) states that a QM may include '*open space provided for public use, but only in relation to land that is open space*'. The Panel notes:
- the section does not say open space zoned, therefore there must be a functionality component to open spaces to acknowledge that not all open spaces are necessarily zoned as such; and
 - a s 77O(f) matter can only apply to the open space land *itself*.
- [232] Based on the above and the fact that the proposed provisions intend to restrict development on land that is not open space, these provisions cannot meet the requirements to be a s 77O(f) matter, which leaves it as a s 77O(j) "other" matter.
- [233] Mr. Barwell for the Council provided persuasive open space policy evidence. He outlined the Council's position as premised on protecting existing open spaces from avoidable adverse effects due to the essentially fixed provision of open spaces in the City Centre Zone. He told us of the positive health and wellbeing effects of open

spaces with particular focus on the correlation between the quality of open spaces and health benefits. Conversely, he said that undue shading could detrimentally affect vegetation growth, reduce desirability for users, reduce visual amenity of the space and its functionality as open space.

[234] While not challenging the appropriateness of the QM, Mr. Wallace provided urban design evidence which was the key counterfactual to the Council's position. He stated that sunlight access is just one factor affecting the functionality / desirability of public open spaces and put forward that permanent levels of sunlight through the year is unreasonable.

[235] Mr. Barwell explained the importance of the quality of open spaces in creating a WFUE within the City Centre zone. The Panel also prefers Mr. Barwell's evidence in the context of Mr. Wallace's criticism of Council's lack of specific demand information. Mr. Barwell's evidence demonstrated a strategic analysis around likely demand and that the increased capacity enabled by PC78 will increase pressure on existing open spaces. We note particularly the nature of public open spaces as a finite resource to meet increasing demand as the City Centre intensifies.

[236] We therefore endorse Mr. Barwell's evidence and recommend a s 77O(j) "other" matter relating to the functionality of city centre public places.

Addition of seven new public places to Appendix 11

[237] The Panel first sets out our findings on the strategic issues before addressing detailed site-specific evidence. While there was no opposition to the appropriateness of a QM relating to sunlight admission to *existing* public places, several submitters through their expert witnesses Mr. Cook, Mr. Wallace, and Mr. Roberts argued that the Council position does not adequately satisfy the requirements of s 77R. A key criticism focuses on the adequacy and robustness of the Council's evaluative process in terms of the extent to which it is necessary for the provisions to constrain development and on the general inadequacy of information provided, particularly in the assessment of costs.

[238] For the Council, Ms. Laird and Ms. Wong outlined the Council's evaluation process. Mr. Nicholson provided architectural and shading models which allowed open space policy analysis from Mr. Barwell, landscape analysis from Mr. Kensington, arboriculture analysis from Mr. Davies, turf agronomy analysis from Mr. Davies, and urban design analysis from Ms. Samsudeen. These experts all directed the Panel's attention to the importance of sunlight admission in the usability of open spaces as well as their amenity and contribution to a WFUE. In particular:

- Ms. Laird and Ms. Wong outlined that the Council has adopted a 'conservative' approach whereby the proposed provisions seek to 'maintain' the current level of sunlight admission as adequate i.e. the proposed extent does not restrict development capacity existing under the operative AUP.
- Ms. Laird and Ms. Wong responded to criticism from Mr. McIndoe by explaining that the temporal measures in figures 10-16 of Appendix 11 were selected to be

consistent with the operative provisions despite a few days difference from summer and winter equinox dates.

- Mr. Kensington highlighted the difference in terms of dappled shade from trees as opposed to the solid shading from buildings in response to Mr. Wallace's assertion that people need shade, as well as the Panel's questioning around the differing characteristics of shading.
- Mr. Cook highlighted the proposed non-complying status for infringing the admission of sunlight into public places standard for the new places but did not challenge the existing provisions.
- Mr. Cook put forward that the Council's modelling overstated the potential shading effects by basing it on massing of buildings and does not represent the nuanced built forms likely to result from the other development provisions.
- Mr. Cook identified that the purpose of the standard, which remained unchanged under PC78, refers to when the spaces are most used, which is relevant in the assessment of provisions which enable the greatest heights and densities while managing the specific characteristic. The purpose states:

...manage the scale of development around identified public open spaces to ensure they receive adequate sunlight when those spaces are most used.

[239] The Panel questioned Ms. Laird on whether the standard should only apply to zoned open spaces. Her response was that it was not unusual for recreational areas in the city centre to be zoned Business – City Centre rather than Open Space, and that it is a matter of the value of space. The Panel accepts this and it aligns with our own observation of the agnosticism of the RMA around whether an open space needs to be zoned as such. In the context of a QM, the RMA only requires that the land “is” open space, not that it is “zoned” open space.

[240] The Panel has considered the criticisms from submitters in opposition to the Council position and prefers the evidence of the Council. Collectively, it provided a cogent argument supported by structured analysis by a range of experts. Conversely, the Panel was not presented with a persuasive alternate shading framework to that put forward by the Council witnesses. We are satisfied that the Council has undertaken a sufficient analysis to meet the requirements of s 77R(b) in justifying the characteristics in view of the importance of the national significance of urban development and objectives of the NPS-UD. We likewise prefer the shading analysis of the Council and will only return to this issue in our site-specific findings below where there are additional relevant matters.

[241] For completeness, we record that amendments to the factors such as time, dates and spatial extent for sunlight admission used in the provisions were included in the Council's own technical submission on PC78 and that these form the basis of the hearings and, consequently, our findings.

[242] We now turn to the merits of site-specific matters and the test of ‘to the extent necessary’.

i. Victoria Park

- [243] Urban design and landscape evidence was received from both the Council and VHHL. The Panel was particularly assisted by the Council's landscape evidence of Mr. Kensington and planning evidence of Ms. Laird and Ms. Wong, and the urban design evidence of Mr. McIndoe for VHHL.
- [244] Mr. McIndoe's view was that Council had put forward a flawed shading analysis and that its position constituted one of *maximising* rather than providing *adequate* sunlight admission. He addressed the temporal assumptions used in the provision and provided an alternative control which he argued is more appropriate to accommodate the QM while providing for the most development capacity. His key observations included that the shading from potential buildings on the north side of Fanshawe Street is largely subsumed by the shade of trees and that most users of the different components of Victoria Park - due to the different sports code and seasons - could be accommodated within a smaller area of sunlight admission.
- [245] Mr. Kensington explained that all parts of Victoria Park are utilised at various times of the day throughout the year and identified the range of activities able to be accommodated. His evidence was that there is no particular area of the park which has a greater landscape or amenity value and therefore as much sunlight as possible should be provided and maintained. Additionally, as noted above, Ms. Laird and Ms. Wong provided an amended timing for measuring the shading effects in their rebuttal, to ensure consistency with the AUP position.
- [246] Ms. Laird and Ms. Wong relied on additional 3D modelling and analysis by Mr. Nicholson which highlighted a potential increase of 7-8m of shading on Victoria Park due to misalignment in Mr. McIndoe's shading assumptions between the modelled geometry and the underlying aerial photo. Ms. Laird and Ms. Wong drew on the evidence of Mr. Glasgow and Mr. Davies which pointed to the north-east corner of Victoria Park for the effects of existing shading on turf. They were of the view that the increased shading based on Mr. McIndoe's alternative provisions will significantly affect turf health, and thus the useability of two of the four winter playing fields.
- [247] Social place-based analysis of Ms. Marti for Wynyard Quarter Residents Association presented the result of observational surveys which showed a diversity in user demographic and activities. She also emphasised Victoria Park as a destination park which serves the wider region. Her and Mr Kensington's evidence on the use of the park aligned with the Panel's observations on our site visits.
- [248] The Panel is satisfied that the Council's witnesses have adequately responded to Mr. McIndoe. We were particularly assisted by the further analysis of Mr. Nicholson as well as the causal link between the impact of grass growth and tree health, as components of the space important to use. The additional evidence of Ms. Marti supported the Council's evidence. We therefore prefer the evidence of the Council and Ms Marti, and accordingly recommend the inclusion of Figure 10 Admission of sunlight to Victoria Park to Appendix 11, inclusive of corrections in Attachment 3 to the rebuttal of Ms. Laird and Ms. Wong.

ii. *Te Taou Reserve*

- [249] Mr. Wallace for NWO challenged the Council position by observing that existing and proposed controls as well as the spatial geography of the open space already ensure a high level of sunlight admission. He considered that this level of sunlight is disproportionate to the low amount of use, based on his observational survey, of the space as “green relief”. Mr. Wallace and Mr. Cook also put forward an alternative proposition that standard H8.6.7 Railway station building and gardens view protection plane will effectively manage the effects of adjacent buildings on the reserve.
- [250] Council’s landscape architect witness Mr. Kensington noted the visual amenity and passive recreation opportunities of the reserve and referred to it as a “hidden gem”. He addressed Mr. Wallace’s criticism of use by observing that the space, particularly its use for passive recreation, will have increased importance as the city intensifies. He countered Mr. Wallace and Mr. Cook’s suggestion to rely on standard H8.6.7 instead, observing that it has a very different purpose.
- [251] The Panel also heard heritage evidence from Ms. Walker on the importance of Te Taou Reserve (the former railway gardens) in maintaining the heritage values of the area. We note that the heritage qualifying matter is addressed in our findings on the Quay Park Precinct. Ms. Laird and Ms. Wong provided a correction to the area of Te Taou Reserve in Appendix 11 of PC78 due to an error during the notification of PC78.
- [252] The Panel prefers the evidence of Mr. Kensington as it better aligns with our observations during our site visits. We also agree that to rely on H8.6.7 is to conflate different effects with the management of sunlight admission to public open spaces. We are satisfied that the Council’s position, with additional reference to Mr. Barwell’s open space policy evidence, has appropriately addressed Mr. Wallace’s criticisms. The Panel recommends the inclusion of Figure 11 Admission of sunlight to Te Taou Reserve to Appendix 11 including the amendments suggested by Ms. Laird and Ms. Wong.

iii. Māhuhu ki-te-Rangi Park

- [253] Mr. Wallace for NWO provided shading analysis and observed that Māhuhu ki-te-Rangi Park is well endowed with sunlight under the existing baseline and enabled under the AUP. He provided an observation survey and found 72 users over a 2 hour period with 16 users during a weekend survey. He provided an amended Figure 12 Sunlight admission to Māhuhu ki-te-Rangi Park.
- [254] Mr. Kensington’s rebuttal countered Mr. Wallace’s alternative spatial extent. He noted that the alternative extent excluded key areas for passive recreation. His description of the level of use of the park from a subsequent site visit better aligned with the Panel’s observations during our site visit. Ms. Laird and Ms. Wong’s rebuttal provided additional explanation, reliant on Mr. Nicholson’s rebuttal 3D modelling, that PC78 is not more restrictive on development capacity than the AUP provisions. They also provided an amended spatial extent to reflect the new shading studies which now take into consideration standard I209.6.2 Building frontage height and setback in the Quay Park Precinct.

[255] The Panel does not consider Mr. Wallace's suggested provisions protecting sunlight admission from 12-1.30pm as adequate. We prefer the Council's evidence and recommend the inclusion of Figure 12 Admission of sunlight to Māhuhu ki-te-Rangi Park to Appendix 11 including the amendments suggested by Ms. Laird and Ms. Wong.

iv. *Grafton Cemetery East*

[256] Mr. Wallace's urban design evidence for Auckland University criticised Mr. Kensington's initial analysis as generic. He also focused on the Council's modelling omitting shading from Grafton Bridge and the 17-storey expansion of the Cordis Hotel. Also, he considered that there are essentially no existing users of the space.

[257] Mr. Kensington responded to the evidence of Mr Wallace. He acknowledged the shady nature of Grafton Cemetery East, while noting that additional shading from buildings is different from the overlapping shade from trees. He observed that the northern part of the open space is used for passive recreation and that the path through the historic cemetery is used for heritage tours.

[258] The Panel undertook its own site visit and while there are merits in the evidence of both these witnesses, Mr Kensington's evidence taken together with that of Mr. Barwell and other witnesses, has led us to prefer the Council's position at the site-specific level.

[259] We therefore recommend the inclusion of Figure 13 Admission of sunlight to Grafton Cemetery East in Appendix 11.

v. *Grafton Cemetery West*

[260] The Panel did not hear evidence contesting the Council's position. We therefore accept Mr. Kensington's evidence that the provisions are necessary to maintain the functionality of Grafton Cemetery West based on its quality landscape and visual amenity values, confirmed after undertaking our own site visit.

[261] The Panel recommends the inclusion of Figure 14 Admission of sunlight to Grafton Cemetery West in Appendix 11.

vi. *Constitution Hill*

[262] Mr. Wallace's urban design evidence for Auckland University criticised Mr. Kensington's initial analysis as generic. In response, Mr. Kensington explained that Constitution Hill provides pleasant spaces for seating and a mix of open spaces with dappled shade, in addition to being a thoroughfare. His view is that the controls are necessary to avoid the 'hard' shading of buildings and to avoid completely compromising the values which make the spaces desirable for people.

[263] The Panel prefers the evidence of Mr. Kensington and the Council. It more accurately reflects our observations during our site visits. We accordingly

recommend the inclusion of Figure 15 Admission of sunlight to Constitution Hill in Appendix 11.

vii. *Auckland Domain*

[264] Mr. Wallace's urban design evidence for Auckland University focused on the lack of user data or demand assessment, and that the provision protects the admission of sunlight on privately owned places such as the ASB Tennis Centre, and on parts of the Domain which are largely used as a thoroughfare.

[265] Ms. Laird and Ms. Wong provided a correction to Figure 16 Admission of sunlight to Auckland Domain to include the Auckland Bowling Club site citing an error during the notification process.

[266] The ASB Tennis Centre is zoned Special Purpose - Major Recreational Facility. The Panel refers to its discussion above and in principle accepts that the zoning of a space does not determine its use or status as open space. On the matter of ownership, the Panel referred to Chapter J – Definitions of the AUP. Table J1.3.2 Community identifies public open spaces as being nested within the definition of public place, namely:

any place that, at any material time, is owned, managed, maintained or controlled by the council or council controlled organisation and is open to or, being used by the public, whether free or on payment of a charge. It includes any ... recreational grounds and sports fields.

[267] The Panel understands that the ASB Tennis Centre land is owned by Auckland Council. The fact that it may be run as a commercial operation does not take it outside the definition.

[268] Mr. Kensington's evidence was that the western portion of the Domain provides for both active and passive recreation, including walking through and sitting within the spaces. This accords with the Panel's observations on its site visit.

[269] The Panel has considered Mr. Wallace's concerns but is satisfied that the Domain, as per proposed Figure 16 in Appendix 11, is a public open space. We prefer the evidence of Mr. Kensington and Ms. Laird and Ms. Wong, and agree that the importance of the Domain and its use require limitations on development to ensure its functionality as a city centre public space. The Panel accordingly recommends the inclusion of Figure 16 Admission of sunlight to Auckland Domain in Appendix 11.

[270] In summary, the Panel accepts the evidence of the Council and recommends the retention of Standards H8.6.3 Admission of sunlight to public spaces and H8.6.4 Aotea Square height control. We further recommend the inclusion of 7 new public open spaces, being figures 10-16, in Appendix 11, as shown in Council's reply submissions dated 27 March 2024.

3.18 Qualifying Matter – Special character buildings and historic heritage

[271] This issue relates to the following provisions:

- Rule 8.4.1 (A35) and (A38)
- Map H8.11.1 Special character buildings
- H8.10.,1 Special Information Requirement

3.18.1 Statement of issue

- i. Appropriateness of qualifying matter for special character buildings
- ii. Removal of special character buildings from Map H8.11.1 Special character buildings
- iii. Introduction of new special information requirement.

3.18.2 Panel recommendation and reasons

[272] PC78 proposes to retain the provisions managing special character buildings in the City Centre Zone which seek to maintain and enhance the values of pre-1940 buildings to accommodate a s 77O(j) “other” matter relating to Character buildings in City Centre zone and Queen St Valley Precinct (see section 3.39 below).

Appropriateness of the qualifying matter

[273] The Council’s s 32 evaluation identifies the city centre special character building (**SCB**) provisions as necessary to accommodate a s 77O(j) “other” matter relating to special character buildings in the City Centre Zone. Submitters sought to either remove all the special character building provisions (VHHL) or the deletion of specific buildings (Sanford) from the provisions. The evidence by Sanford relating to the relief sought is addressed by our findings contained in section 3.42 Precinct – Wynyard below.

[274] The submitter evidence did not challenge the appropriateness of the QM despite criticising the Councils’ s 32 report and accordingly we accept the appropriateness of the s 77O(j) “other” QM as outlined in the s 32 report.

Removal of special character buildings from Map H8.11.1 Special character buildings

[275] Ms. Walker was the only heritage expert in relation to this issue. She stated that the SCB values are still present in the City Centre Zone and are integral to the context and historic character of Auckland. She further expressed her views that the pre-1940 SCB in the Queen Street Valley have maintained their presence and that SCBs more generally are now a finite resource which contribute to a WFUE.

[276] Ms. Walker said she undertook further assessment of SCBs following the notification of PC78 and in response to VHHL’s submission. Her assessment considered:

- Is the building part of a cohesive group?
- Does it contribute to historic context, character or cohesiveness of the area?
- Is it a remnant example of a building type that reflects the history of the area?

- Does it contribute to any adjoining or nearby scheduled place?

[277] She concluded that fourteen of the 77 SCBs (outside the Queen Street Valley) identified on Map H8.11.1 should be removed owing to them either no longer having the special character values which make a strong or significant contribution and one which had no value and may have been included in error in the legacy district plan. These are set out in Attachment 1 of her evidence in chief.

[278] The Panel accepts Ms. Walker's evidence and is satisfied that the statutory tests under s 77R have been met. We refer particularly to her site-by-site analysis as providing a strong basis for the provisions addressing this QM. We therefore recommend the retention of the SCB provisions subject to the amendments in Attachment 1 to Ms. Walker's evidence.

Introduction of new special information requirements for historic heritage and special character.

[279] Ms. Laird and Ms. Wong explained that PC78 introduced the new H8.10 Special information requirements for works relating to buildings identified as historic heritage and special character as consequential to the deletion of bonus FAR provisions.

[280] Submitters criticised the s 32 evaluation's justification for the special information requirements, noting they duplicate other requirements in D17.9 and are therefore 'inefficient and ineffective'. The planning evidence of Mr Lindenberg and Mr McCall for Kāinga Ora stated that the special information requirements are not necessary as Chapter D17 Historic Heritage Overlay does not require a Conservation Plan for Historic Heritage places, unless one has already been prepared. They noted that the AUP Special Character Area Overlay Chapter D18 does not make reference to a character plan either. They further expressed the view that overlays were the more appropriate location for the special information requirements.

[281] Ms. Walker's evidence was that SCB in the City Centre are a distinct planning framework addressed by the Chapter H8 City Centre zone provisions and some precinct provisions e.g. Wynyard Quarter. She clarified that the proposed H8.10 requirements do not duplicate the requirements in D17 historic heritage overlay. As to the requirements being onerous, Ms. Walker highlighted that historic heritage and SCB are at increased risk in the City Centre associated with the increased intensification enabled by PC78, and that H8.10.1(2) qualifies that the plan for SCB will be commensurate with the effects on special character values.

[282] The Panel prefers Ms. Walker's detailed evidence and accepts her responses to the criticisms of the Council's position and the need for the requirements, particularly in light of the removal of the bonus FAR provisions. We recommend the introduction of Special information requirement H8.10.1 - Alterations and additions to buildings identified as historic heritage and special character.

3.19 Qualifying matter – Auckland War Memorial Viewshaft

[283] This issue relates to Chapter D19 Auckland War Memorial Museum Viewshaft Overlay.

3.19.1 Statement of issue

- i. Appropriateness of qualifying matter
- ii. Appropriateness of the provisions

3.19.2 Panel recommendation and reasons

Appropriateness of qualifying matter

[284] No evidence was received challenging the identification of the Auckland War Memorial Museum Viewshaft (**AWMMV**) as an existing qualifying matter under s 77O(a) as a s 6(f) matter of national significance. We therefore accept the Council's s 32 evaluation which emphasised the national significance of the Auckland War Memorial Museum's (**Museum**) historic values and unique visual quality resulting from the operative visual protections.

[285] We note that as this is an existing qualifying matter the alternative process in s 77Q apply.

Appropriateness of the provisions

[286] Mr. Elder's planning evidence outlined the Council's position of retaining the operative D19 AWMMV Overlay, save for minor amendments to D19.1 Background, which clarifies that the overlay takes precedence over provisions of the underlying zone with respect to 'new buildings and subdivision'. The AWMMV triggers the need for a non-complying resource consent when a proposed building or structure or element exceeds the height limits.

[287] Ms. Absolum provided landscape evidence in support of the QM and the D19 AWMMV Overlay provisions. She explained a unique feature of the viewshaft, being that it intends to protect views both to and from the Museum. In response to questions, Ms. Absolum also said that the non-complying activity was justifiable as the extent necessary given the significance and public importance of the views.

[288] There was no evidence challenging the provisions or the QMs and Mr. Elder and Ms. Absolum clarified technical matters raised in submissions. We therefore accept their evidence and recommend the retention of Chapter D19 Auckland War Memorial Viewshaft Overlay provisions as notified in PC78.

[289] As a matter of procedure, we note that this recommendation is only in relation to the provisions as they apply to the City Centre Zone and Precincts.

3.20 Qualifying matter – Maunga Viewshafts

[290] This issue relates to the following provisions to the extent that the issue relates and applies to the City Centre Zone and Precincts.:

- Chapter D14. Volcanic Viewshafts and Height Sensitive Areas Overlay
- Standard D14.6.4. Temporary construction and safety structures
- Schedule 9 Volcanic Viewshafts

3.20.1 Statement of issue

- i. Change of name
- ii. Appropriateness of qualifying matter
- iii. Appropriateness of provisions to address the qualifying matter
- iv. Standard D14.6.4 – construction cranes

3.20.2 Panel recommendation and reasons

[291] The purpose of the Volcanic Viewshafts and Height Sensitive Areas Overlay (proposed to be renamed the Maunga Viewshafts and Height and Building Sensitive Areas overlay by PC78) is to appropriately protect significant views of Auckland's volcanic cones through the use of viewshafts and height sensitive areas. The viewshafts and areas are identified on the planning maps and provisions are contained in Chapter D14.

[292] There are no height sensitive areas in the City Centre so the Panel does not consider those matters in this report.

[293] There are five Volcanic Viewshafts affecting the City Centre – E10, E16, E8, E 20, and T1. E10 extends from the Northern Motorway to Maungawhau / Mount Eden. E16 extends from the southern side of the harbour bridge to Maungawhau / Mount Eden. The latter three affect only small areas at the edges of the City Centre Zone.

[294] Other than the name change, PC78 did not notify any amendments to chapter D14 or the scheduled and mapped viewshafts. The overlay was identified as an existing QM in accordance with s 77O(a) (s6 matters of national importance) and s 77O(h) (matters necessary to implement, or to ensure consistency with, iwi participation legislation).

Change of name

[295] No submissions opposed the change of name from “Volcanic Viewshafts” to “Maunga Viewshafts”. The Panel accepts Mr. Reaburn's planning evidence for the Council supporting the name change.

Appropriateness of qualifying matter

[296] No evidence challenged the identification of the overlay as an existing QM and we accept its identification under ss 77O(a) (s6 matters of national importance) and s77O(h) (iwi participation legislation).

[297] Mr. Reaburn noted that the Council's s 32 report identified the relevant s 6 matters under s 77O(a) as s 6(b) (outstanding natural features), s 6(e) (the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga) and s 6(f) (historic heritage), and the s 77O(h) matter as the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014. The planning and landscape evidence respectively of Mr. Reaburn and Mr. Brown for the Council and Ms. Richmond and Mr. Kensington for the Tūpuna Maunga o Tāmaki Makaurau Authority (Tūpuna Maunga Authority) supported identification of those QMs. The overlay was also accepted as an appropriate QM by all experts in a JWS on 17 April 2023.

Appropriateness of the provisions to address the qualifying matter

[298] Mr. Reaburn and Mr. Brown set out an extensive history of the identification of the Maunga Viewshafts and their protection by planning provisions since 1976.

[299] Many submissions support the overlay as a QM. One submitter (Mr. Aaron Grey) seeks to delete viewshaft E10, but did not present evidence. The Coalition for More Homes provided evidence from Mr. Caldwell supporting viewshafts as an appropriate QM (primary submission) but seeking deletion of viewshaft E10, supporting Mr. Grey's submission. It also called economic evidence from Dr. Martin raising issues about the economic effects of viewshaft E10 and its effects on development capacity.

[300] Dr. Martin relied on a 2018 journal article evaluating the effect of the E10 viewshaft on property values and the theoretical benefits accruing to the viewing audience of southbound vehicles crossing the Auckland Harbour Bridge.

[301] Ms. Richmond and Mr. Reaburn considered that Dr. Martin had adopted a narrow perspective on the costs and benefits of viewshaft E10, for example not addressing the unique relationship iwi and hapū have with the Tūpuna Maunga that extends beyond a visual connection and from a single viewpoint.

[302] Mr. Reaburn addressed the Council's s 32 evaluation of the QM for PC78, and also a detailed s 32 cost benefit analysis of the overlay that was commissioned by the Proposed Auckland Unitary Plan Independent Hearings Panel (**PAUP IHP**) (noting that a major issue raised in submissions on the PAUP was whether viewshafts remained appropriate given the greater intensification introduced by the PAUP). The PAUP IHP concluded that the significant contribution that viewshafts make to the identity of the region and the social and cultural well-being of its people outweigh the opportunity costs of development foregone. We have also considered Dr. Fairgray's economic evidence assessing development capacity and the costs and benefits of PC78 compared with "unlimited" development in the City Centre.

[303] We accept the uncontested planning evidence of Ms. Richmond and Mr. Reaburn and prefer the economic evidence of Dr. Fairgray, and recommend the retention of Maunga Viewshafts in the City Centre Zone - including viewshaft E10 and E16.

- [304] The Panel notes that this recommendation is only in relation to the Maunga Viewshaft provisions and only as they apply to the City Centre.

Standard D14.6.4 – construction cranes

- [305] Scentre NZ Ltd seeks amendments to standard D14.6.4 which requires temporary construction and safety structures to be removed within 30 days. Exceeding the standard is a non-complying activity requiring public notification. The JWS recorded general consensus that a change to the standard may be appropriate and tentative wording, which was then refined through evidence and agreed to a duration of 24 months. The issues remaining relate to scope, activity status and final wording relating to signage on cranes.
- [306] Mr. Reaburn raised scope issues as no changes were proposed to the relevant standard in PC78 as notified, whether the amendments sought are “consequential on” intensification, and *Clearwater* second limb concerns. Ms. Richmond was satisfied that construction cranes in the City Centre are a necessary and generally accepted part of construction and for which there are no practical alternatives. The Panel is satisfied that provisions regulating construction cranes in the City Centre are “consequential on” intensification and further submissions were able to be made.
- [307] Mr. McGarr for Scentre sought restricted discretionary activity status for construction cranes. Ms. Richmond supported the activity status change only in respect of the 24 month duration standard, not for breach of any visual standards. Mr. Reaburn supported retaining non-complying status as rigorous consideration was required for a crane to infringe the viewshaft for a time longer than 24 months. The Panel prefer Mr. Reaburn’s evidence and recommend retaining non-complying activity status post 24 months.
- [308] Amendments to the standard were agreed other than whether signage should be allowed on the crane identifying the crane operator. Mr. McGarr supported this, Ms. Richmond and Mr. Reaburn did not, and Mr. Brown did not support it on the basis of effects on Tūpuna Maunga. The Panel prefer the evidence of Ms. Richmond and for the Council and recommend that the signage amendments do not include any provision for crane operator signage.

3.21 New Qualifying matter – Maunga to Maunga viewshafts

- [309] This issue relates to anew qualifying matters not identified in PC78, or extension of proposed QMs as notified in PC78. It only addresses matters to the extent that it relates and applies to the City Centre Zone and Precincts.

3.21.1 Statement of issue

- i. Appropriateness of qualifying matter
- ii. Appropriateness of the provisions to address the qualifying matter
- iii. New provision
- iv. Evaluation outside PC78

3.21.2 Panel recommendation and reasons

- [310] RPS objective D14.2(1) and policy B4.3.2.(3) provide that regionally significant views to and between Auckland's maunga should be protected. The existing Maunga Viewshafts only protect views to maunga.
- [311] The Tūpuna Maunga Authority submission seeks an analysis of the effects of additional building height on Maunga to Maunga views and to make any consequential amendments to Schedule 9 and the planning maps to protect those.

Appropriateness of qualifying matter

- [312] The QM for Maunga Viewshafts was identified and s 32 evaluated as an existing QM as the scheduled and mapped overlay is operative. A separate QM would be required for protection of Maunga to Maunga views.
- [313] The Panel accepts Mr. Kensington's evidence and considers that Maunga to Maunga views are an appropriate QM under s 77O(a) (ss 6(b), 6(e) and 6(f)) and s 77O(h) (Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014). Our finding is also based on the evidence on the Maunga Viewshafts QMs, and the Panel's own understanding and the evidence heard on other topics about the importance in Te Ao Māori of maunga being able to see each other as an intrinsic part of the tūpuna familial relationship.

Appropriateness to address the qualifying matter

- [314] Mr. Reaburn and Mr. Brown for the Council and Ms. Richmond and Mr. Kensington for the Tūpuna Maunga Authority agreed that extensive further analysis is required (including consultation with mana whenua) to identify and evaluate Maunga to Maunga viewshafts, both in the City Centre and across Auckland. Ms. Richmond acknowledged that the evidence prepared for the Tūpuna Maunga Authority is insufficient alone to satisfy the QM and s 32AA statutory tests. She said the extensive analysis required is beyond the capability of the Tūpuna Maunga Authority (as the submitter) and is the responsibility of the Council.
- [315] The Panel asked Council whether there was a process similar to s 293 (which provides the Environment Court with powers to direct a Council to consult about changes to a plan to address matters identified by the Court) available to an IHP on an IPI. The Council advised that there was not.
- [316] The Panel accepts the evidence that the identification of new Maunga to Maunga viewshafts requires extensive analysis and consultation (in particular with mana whenua).
- [317] The Panel has however accepted that Maunga to Maunga views are an appropriate QM. Mr. Kensington's evidence identified that there are existing views between Takarunga / Mount Victoria and Maungawhau / Mount Eden which are required by the RPS to be protected, they are not currently protected, and there is a danger that they will be lost if greater building height is enabled through PC78. The Panel

confirmed these views, and the proximity of existing City Centre development below those views, through our site visits.

- [318] Mr. Kensington also identified that building height in the City Centre may affect views between Ōwairaka / Te Ahi-kā-a-Rakataura / Mount Albert and Rangitoto, although he did not assess this further in his evidence. He also investigated views between Takarunga and/or Maungauika/ North Head and Ōwairaka, but concluded that the existing intervening built form within the City Centre interferes with such views to the extent that the visual connections between these maunga are no longer apparent.
- [319] Mr. Kensington identified the existing views between Takarunga and Maungawhau across the City Centre in photographs and prepared a plan depicting the visual connection overlaid on a plan of the City Centre Zone. The area overlain by the visual connection is in the east of the City Centre within the port reclamation and Quay Park Precinct, and coincides with the existing AWMMV which the Panel has also recommended as a QM. He anticipates these views sit above the existing AWMMV. With respect to s 77P(3)(a)(i), and in advance of analysing and consulting on the horizontal extent of Maunga to Maunga viewshafts, the area of the City Centre sitting below the AWMMV is the “area” which the Panel considers is subject to a QM.
- [320] Mr. Kensington’s evidence about existing loss of views between maunga across the City Centre reinforced to the Panel the risk of loss of Maunga to Maunga views through further intensification enabled by PC78. With respect to s 77P(3)(a)(ii) we consider that maintenance of views between Takarunga and Maungawhau is incompatible with the level of development provided for by Policy 3(a) in the City Centre. Until the necessary analysis and consultation is undertaken to identify and protect Maunga to Maunga viewshafts, the Panel considers that the views are required to be protected on an interim basis.
- [321] Although the visual connection is anticipated to sit above the AWMMV, Mr. Kensington and Ms. Richmond did not consider that relying on alternative overlay provisions such as the AWMMV alone to protect Maunga to Maunga views is appropriate because those overlays are for a different purpose. The Panel agrees. While infringing the AWMMV is a non-complying activity, there are no assessment criteria or special information requirements in Chapter D19 that would direct assessment to the effects on Maunga to Maunga views. A new plan provision is required to accommodate the QM.
- [322] With respect to s 77P(3)(b) and (c), as discussed above in relation to existing Maunga Viewshafts, Dr. Fairgray’s economic evidence for the Council assessed development capacity and the costs and benefits of PC78 compared with “unlimited” development in the City Centre. The Panel considers that a new plan provision accommodating the visual connection between Takarunga and Maungawhau above the AWMMV would not disable any development capacity not already disabled by the AWMMV. For development below the AWMMV there would be no additional compliance cost. For development above the AWMMV a non-complying resource consent addressing visual and landscape matters is already required, and the Panel

consider that any additional cost to also assess effects on the visual connection between Takarunga and Maungawhau is reasonable given the RPS requires the protection of these views.

- [323] The Panel considers that the introduction of a new plan provision to accommodate the visual connection between Takarunga and Maungawhau above the AWMMV would not offend *Waikanae*. The provision is “consequential on” (modifying the effect of) intensification, and (notwithstanding that all building in the City Centre is a restricted discretionary activity) would only apply where a non-complying resource consent was already required for height exceeding the AWMMV. The provision would therefore not affect the permitted activity status quo.
- [324] The Council raised scope issues with the relief sought by the Tūpuna Maunga Authority as its evidence did not satisfy s 77P, and it was not clear that new viewshafts are “consequential on” intensification, and *Clearwater* second limb concerns. The Panel has addressed our own identification of a new QM, s 77P and “consequential on” matters above. With respect to the *Clearwater* second limb concerns we are satisfied that the Tūpuna Maunga Authority submission clearly raised insufficient protection of Maunga to Maunga views and a request to amend the AUP to accommodate them. Further submissions could therefore have been made.

New provision

- [325] The Panel consider it necessary to accommodate the visual connection between Takarunga and Maungawhau above the AWMMV.
- [326] In terms of s 32AA we have considered options including:
1. Not introducing a plan provision and waiting for a later plan change
 2. Relying on the AWMMV alone to ‘de facto’ protect the Maunga to Maunga views
 3. Recommending that the Council consult on identifying a new Maunga to Maunga viewshaft
 4. Recommending that the Council obtain surveyed levels for a new Maunga to Maunga viewshaft identified by the Panel with an associated new non-complying activity standard in Chapter D14
 5. Introducing a new special information requirement
- [327] We have addressed above our reasons for not preferring the first three options. We do not consider the fourth option to be appropriate given the experts’ agreement that extensive analysis and consultation with mana whenua is necessary before identifying new viewshafts.
- [328] The Panel has concluded that – in advance of the Council undertaking a full evaluation and consultation on Maunga to Maunga viewshafts, as an interim solution - option 5 is the most efficient and effective method. We are satisfied that a provision that only applies where a non-complying resource consent for infringing the AWMMV as already required is the minimum necessary to accommodate the QM.

- [329] Given that we intend the new provision to apply where the AWMMV is infringed it would be clearer to Plan users if the new provision was included in Chapter D19 Auckland War Memorial Museum Viewshaft Overlay rather than Chapter D14 Volcanic Viewshafts and Height Sensitive Areas Overlay.
- [330] Evidence for Port of Auckland Ltd (**POAL**) also drew our attention to differences between the way that the AWMMV and the existing Maunga Viewshafts apply, with POAL cranes exempt from the AWMMV but subject to the Maunga Viewshafts due to differences in definitions. POAL expressed concern at the impact on the regionally significant port operations if POAL cranes were subject to a new Maunga to Maunga viewshaft. This has reinforced our view that it is most appropriate for the new interim provision to sit within Chapter D19 rather than D14.
- [331] We note that Chapter D19 does not currently contain any special information requirements but has a structure for them. We further note that D19.5 provides that any application for resource consent is subject to the normal RMA tests for notification but that when deciding who is an affected person the Council will give specific consideration to those persons listed in Rule C1.13(4) which includes the Tūpuna Maunga Authority.
- [332] The Panel recommends that the Council prepare one or more special information requirements in Chapter D19 stipulating that any application for resource consent to infringe the AWMMV must assess effects on views between Takarunga / Mount Victoria and Maungawhau / Mount Eden, cross-referring to appropriate RPS objectives and policies in Chapter D14 and any other appropriate material in the AUP. We note that the appropriate language may reflect matter of discretion D14.8.1(1) and/or assessment criteria D14.8.2 but we leave it to the Council to draft.

Evaluation outside PC78

- [333] The Panel endorses Mr. Brown's statement that "it is well past time" that protection of Maunga to Maunga viewshafts was investigated by the Council to give effect to the RPS objectives and policies and given the significant cultural and visual values of the Maunga. We therefore encourage the Council to advance this work (anticipated since the decisions on the PAUP) without further delay.

3.22 Qualifying matter – Street sightlines

- [334] This issue relates to the following provisions:

- H8.2(9)
- H8.3.3(36)
- H8.6.31 Street sightlines
- H8.8.1(14)
- H8.8.2(14)

3.22.1 Statement of issue

- i. Appropriateness of the qualifying matter
- ii. Retention of Standard H8.6.31 Street sightlines

3.22.2 Panel recommendation and reasons

Appropriateness of qualifying matter

- [335] Mr Brown gave landscape and amenity evidence for the Council and anticipates the “existing City Centre Zone Sightlines (Standard H8.6.3.1 Street Sightlines and Appendix 9) will remain important for a city population that continues to grow, but they will also become increasingly secondary in terms of how many Aucklanders (and visitors to the city) view the city’s relationship with the harbour on a day-to-day basis.”
- [336] The Panel accepts Mr. Brown’s evidence on the importance (albeit becoming secondary) of the street sightlines to protect views, in the absence of expert evidence challenging his position.
- [337] We also accept that the Council’s planning evidence and s 32 evaluation have satisfied the statutory tests as set out in ss 77P and 77R.

Retention of H8.6.31 Street sightlines.

- [338] The planning evidence from Ms. Laird and Ms. Wong explains that the standard H8.6.31 Street Sightlines, to retain views from key locations in the city centre to significant landmarks and the harbour, is limited to part of one privately-owned site, and their support for its retention is on the basis that the amenity values provided by the standard outweigh the loss of development capacity.
- [339] The Panel acknowledges Council’s s 32 evaluation, including identification of the minor restriction on development capacity with the standard not applying beyond the streets affected, except for the eastern ray of Street Line No. 23 (which affects part of the Maritime Square site being Lot 1A DP 198984
- [340] We consider that retention of the standard is justified as, while not affecting height, it protects views to significant landmarks and the Waitematā Harbour, and has the potential to restrict capacity, due to controls on the location of buildings within a sightline.
- [341] The Panel recommends retention of H8.2(9), H8.3.3(36), H8.6.31 Street sightlines, H8.8.1(14) and H8.8.2(14) as notified.

3.23 Qualifying matter – Railway station building and gardens view protection plane

- [342] The provisions that relate to this issue in PC 78 are:

- i. Table H8.4.1 Activity table (A43) A building that does not comply with Standard H8.6.7 Railway station building and gardens view protection plane
- ii. Standard H8.6.7 Railway station building and gardens view protection plane

3.23.1 Statement of issue

- i. Appropriateness of qualifying matter

3.23.2 Panel recommendation and reasons

Appropriateness of the qualifying matter

- [343] Standard H8.6.7 Railway building and gardens view protection plane is an existing QM identified as a s 77O(a) matter of national importance (historic heritage). Council's s 32 report details the area where the QM applies, how it limits intensification, what effects it is seeking to manage and why it is incompatible with Policy 3 intensification. Consequences arising from removing, retaining and/or amending the standard are analysed in the report (associated impact (cost) and benefits). The s 32 report notes most of the control applies over roads and a park, not over development sites, and that enabling additional height would lead to a loss of heritage values while enabling very little development capacity due to its location.
- [344] No evidence was provided against retention of standard H8.6.7 Railway building and gardens view protection plane. NWO evidence relies on the standard for protection of the heritage values of the station (Nick Roberts, planning and Ms Lutz, heritage specialist).
- [345] The Panel finds standard H8.6.7 Railway building and gardens view protection plane impacts height and density of form. Relying on Council's s 32 report and in the absence of any contrary evidence, the Panel finds the QM is appropriate.
- [346] The panel recommends standard H8.6.7 and Rule (Table H8.4.1 Activity table (A43)) comprise an existing qualifying matter through s 77O(a) a matter of national importance that decision makers are required to recognise and provide for under s 6(f) historic heritage.

3.24 Qualifying matter – Relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga

- [347] This issue relates to Chapter D21 Sites and Places of Significance to Mana Whenua and Schedule 12 Sites and Places of Significance to Mana Whenua Schedule, to the extent that the issue relates and applies to the City Centre Zone and Precincts.

3.24.1 Statement of issue

- i. Appropriateness of qualifying matter

3.24.2 Panel recommendation and reasons

- [348] The Panel accepts Mr. Gouge's planning evidence on behalf of the Council, and as no contrary evidence was presented on this issue. We accordingly recommend the retention of the Sites and Places of Significance to Mana Whenua as per the notified PC78 as necessary to accommodate an existing s 77O(a) matter of national importance QM, to the extent that it applies to the City Centre Zone and Precincts.
- [349] Mr. Gouge referred to the s 32 evaluation which identified Sites and Places of Significance to Mana Whenua overlay (**SSMW**) as accommodating a QM under s 77O(a) as a matter of national importance. The provisions manage development and subdivision on identified sites and allows the Council to retain full discretion to consider the appropriateness of new building and building additions on the scheduled sites inclusive of impervious surfaces and its impact on water quality outcomes. Mr. Gouge noted that there are 22 SSMW within the City Centre that cover a range of environments.
- [350] He clarified that PC78 notified two additional rules under D21.4.1 Activity table but these relate to sites outside of the City Centre Zone and Precincts and will be addressed in subsequent hearings.

3.25 Qualifying matter – Notable Trees

- [351] The provisions that relate to this issue in PC 78 are Chapter D13 and Schedule 10 to the extent that the issue relates and applies to the City Centre Zone and Precincts.

3.25.1 Statement of issue

- i. Appropriateness of qualifying matter

3.25.2 Panel recommendation and reasons

- [352] The Panel considers that the notable trees overlay chapter D13 and Schedule 10 meet the tests for application of a s 77O(j) "other" QM as all notable trees exhibit s 7 amenity values as the 'specific characteristics' and s 6 values where they are notified for other reasons.
- [353] We accept Mr. Patience's planning evidence for the Council which noted that there were 9 properties in the City Centre Zone which contain notable trees (31 trees in total) and that the effects of these on development potential will be minor.

3.26 Qualifying matter – Infrastructure

- [354] This issue relates to the proposed Infrastructure – Combined Wastewater Network Control to the extent that the issue relates and applies to the City Centre Zone and Precincts.

3.26.1 Statement of issue

- i. Deletion of the Infrastructure – Combined Wastewater Network Control qualifying matter from the City Centre Zone

3.26.2 Panel recommendation and reasons

- [355] The Panel recommends the Infrastructure – Combined Wastewater Network Control QM be removed from all sites within the City Centre and that PC78 GIS Maps be updated to remove the Infrastructure Combined wastewater network Qualifying Matter Overlay from sites within the City Centre due to mapping error.
- [356] The Panel defers making a recommendation on the appropriateness of Council's approach to, and application of, infrastructure QMs in PC78.
- [357] The University of Auckland did not provide any evidence to support its request to delete the Infrastructure – Combined Wastewater Network Control within the Learning Precinct from the planning maps. However the Panel relies on the evidence of Ms. Bell for the Council that the 3 sites within the City Centre Zone which show the Combined Wastewater Qualifying Matter (24 Princes Street, 30-38 Princes Street, Section 11 SO 486563 Stanley Street and 1-3 Winchester Street) were mapped in error. Neither Mr Liggett for Kāinga Ora nor Mr Calwell for The Coalition for More Homes opposed removal of the Combined Wastewater QM from sites in the City Centre.
- [358] The Panel notes that further evidence will be heard during hearings for Topics 012A, 012C and 012E, including those which relates to the appropriateness of the qualifying matter.

3.27 Qualifying matter – Strategic transport corridor

- [359] This issue relates to Chapter H22 Strategic Transport Corridor Zone to the extent that the issue relates and applies to the City Centre Zone and Precincts.

3.27.1 Statement of issue

- i. Retention of the Strategic Transport Corridor Zone and the appropriateness the qualifying matter

3.27.2 Panel recommendation and reasons

- [360] The Panel recommends the retention of the Strategic Transport Corridor Zone as necessary to accommodate a s 77O(e) (nationally significant infrastructure) QM to the extent that it relates to the City Centre Zone and Precincts.
- [361] Ms Hart's planning evidence on behalf of the Council referred to the s 32 evaluation which identified the Strategic Transport Corridor Zone as accommodating an existing s 77O(e) QM –a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure. Ms. Hart noted that the NPS-UD

defines 'nationally significant infrastructure' as including state highways and the New Zealand rail network – the latter of which is relevant to a small section of rail corridor in the Quay Park area of the City Centre.

[362] The Council's position was not challenged, and the Panel accepts Ms Hart's evidence and the s 32 evaluation.

[363] We address the substance of the KiwiRail's submission regarding the extension of provisions to manage the rail corridor in section 3.30 Qualifying matter – new qualifying matter below.

3.28 Qualifying matter – National Grid

[364] This issue relates to Chapter D26 National Grid Corridor Overlay to the extent that the issue relates and applies to the City Centre Zone and Precincts.

3.28.1 Statement of issue

- i. The appropriateness to retention of the National Grid Corridor Overlay as a qualifying matter
- ii. Spatial extent of the National Grid Corridor Overlay
- iii. Amendments to Chapter D26 National Grid Corridor Overlay
- iv. Amendments to Chapter A Introduction

3.28.2 Panel recommendation and reasons

[365] Ms. Hart's planning evidence on behalf of the Council was the only evidence heard on the National Grid Corridor Overlay (**NGCO**). Transpower New Zealand Ltd (as a key submitter in relation to this topic) tabled a letter dated 7 August 2024 indicating their agreement with her evidence and conclusions. We therefore accept the conclusions and recommended the changes outlined in Ms. Hart's planning evidence.

The appropriateness to retention of the National Grid Corridor Overlay as a qualifying matter

[366] The Panel heard from Ms. Hart that a small portion of the NGCO applies in the City Centre (an area bordered by Bradnor Lane, Fanshawe Street and Hobson Street) and that it was assessed as an existing s 77O(b) (national policy statement) and s 77O(e) (nationally significant infrastructure) QM through the s 77Q alternative process for existing QMs. Referring to the s 32 evaluation, Ms Hart noted that the Council is required to recognise and provide for the national significance of the National Grid in accordance with the National Policy Statement on Electricity Transmission (**NPSET**). Ms. Hart further explained that alternative density standards have not been specified, given that use and development can still occur, dependent on what part of the overlay applies to a site, due to the differing degree of safety and security needed.

Spatial extent of the National Grid Corridor Overlay

[367] In response to Transpower's submission, Ms. Hart expressed her view that the spatial extent of the NGCO as it relates to the City Centre Zone and Precincts is an existing QM mapped in the AUP. She added that expansion of the NGCO may be beyond the scope of PC78 as it would be less enabling of development and may not be "consequential on" Policy 3 of the NPS-UD as required by s 80E. She noted that the Council is required to include provisions and identify buffer corridors for the National Grid under the NPSET, and the spatial extent of the NGCO as shown in the AUP maps achieves this.

Amendments to Chapter D26 National Grid Corridor Overlay

[368] Ms. Hart supported amending Rule D26.4.1 (A7) and standard D26.6.1.5(1)(a) (which require accessory buildings to be at least 12m from a National Grid support structure) to identify these provisions as QMs. She noted that Rule D26.4.1(A7), and therefore compliance with New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001), is necessary where PC78 enablement allowed for increased heights, and that Rule D26.4.1(A12) which provides for standard D26.6.1.5 is already identified as an existing QM in PC78. The Panel refers to Ms Hart's s 32AA evaluation report (Attachment D to her evidence dated 16 July 2024) and accepts it in the absence of evidence challenging her conclusions.

Amendments to Chapter A Introduction

[369] Ms Hart likewise supported amendments to Chapter A Introduction whereby Chapter K Designations is identified in Table A1.4.8.1 to recognise these designations as QMs under s 77O(b) gives effect to the NPSET and nationally significant infrastructure.

[370] In summary, the Panel recommends, to the extent relevant to the City Centre Zone and Precincts, retention of Chapter D26 NGCO as an appropriate provision to accommodate s 77O(b) (national policy statement) and s 77O(e) (nationally significant infrastructure) QMs.

3.29 Qualifying matter – designations

[371] This issue relates to the Chapter K Designations and Chapter A Introduction to the extent that the issue relates and applies to the City Centre Zone and Precincts.

3.29.1 Statement of issue

- i. Retention of designations as a qualifying matter
- ii. Clarifications to Chapter K Designations
- iii. Review / removal of designations

3.29.2 Panel recommendation and reasons

[372] Ms. Hart's planning evidence for the Council was the only evidence on this issue.

Retention of designations as a qualifying matter

[373] Ms. Hart outlined PC78's approach to designations by identifying them as existing QMs in Chapter K Designations and recording in Chapter A Introduction that some designations are QMs. She explained that no changes were made to the provisions as they are existing provisions rolled over from legacy plans into the AUP and regularly updated to reflect new designations. Ms. Hart noted that designations, by their nature, are spatially identified and take precedence over district plan provisions unless the works are not for the purpose of the designation. The latter point is relevant in that any development capacity provided by Policy 3(a) cannot be realised until a requiring authority seeks a designation's removal.

[374] With regard to the QM statutory tests, Ms. Hart noted that s 77O(g) identifies designations as a QM, and that, being existing provisions, the s 77Q alternative process for existing QMs applies. She also referred to the mediation agreement dated 9 May 2023 whereby attending parties agreed to:

- a) retention of designations as a QM; and
- b) designations do not need to be reviewed to be aligned with the NPS-UD.

[375] We endorse this approach and adopt the Council's s 32 evaluation of designations as an existing QM. For clarification, we note that matters recorded in the mediation statement relating to Topic 009R Qualifying matters A-I – Aircraft Noise is not included as part of this recommendation and will be addressed in later hearings / recommendations.

Clarifications to Chapter K Designations

[376] Ms. Hart noted that parties to the mediation agreement agreed in principle with proposed additions to Chapter K Designations to clarify:

- a) the use of the wording 'some designations'; and
- b) that Ministry of Education designations are exempted under ss 77M(5) and (6)

[377] With regard to a), Ms. Hart did not support the amendments sought by Transpower. Her view was that while clarification was needed, the words 'some designations' remains relevant and she considers it to mean those in relevant residential zones and urban non-residential zones. Put another way, there may be designations in the urban environment which are in a zone that does not require it to be a QM.

[378] In the absence of evidence challenging the Council's position we accept the proposed wording in Ms. Hart's planning evidence.

Review / removal of designations

[379] Ms. Hart's evidence addressed submitters seeking the review of designations or the removal of specific designations from properties. Her view is that designations are an important mechanism for a range of necessary public works and infrastructure and are recognised as such by the RMA given that s 77O(g) specifically lists designations as a QM that temper the intensification requirements of the NPS-UD. The Panel accepts Ms Hart's conclusion on this matter and with reference to *Waikanae*

considers that PC78 is not the appropriate process for reviewing designations as such reviews are not “consequential on” intensification and would modify the status quo.

- [380] In summary, the Panel recommends, to the extent relevant to the City Centre Zone and Precincts, retention of designations as necessary to accommodate an existing s 77O(g) (designations) QM.

3.30 Qualifying matter – new qualifying matter

- [381] This issue relates to inserting new QMs not identified in PC78 or extension of proposed qualifying matters as notified in PC78. The Panel notes that this issue only addresses matters to the extent that it relates and applies to the City Centre Zone and Precincts.

3.30.1 Statement of issue

- i. New qualifying matter for land adjacent to the rail corridor relating to the safe or efficient operation of the rail network
 - a. Appropriateness of qualifying matter
 - b. Scope
 - c. Appropriateness of noise and vibration standards
 - d. Appropriateness of a 5m setback
 - ii. New qualifying matter for land adjacent to the port relating to the operation of Golden Bay Cement within the Port Precinct
- [382] The coastal hazards qualifying matter addressed by the witnesses on behalf of Stratis and VHHL is addressed in section 3.41 below and the new Maunga to Maunga views qualifying matter sought by the Tūpuna Maunga Authority is addressed in section 3.21 above.

3.30.2 Panel recommendation and reasons

New qualifying matter for land adjacent to the rail corridor relating to the safe or efficient operation of the rail network

- [383] KiwiRail Holdings Ltd presented their position that the notified PC78 City Centre Zone provisions do not sufficiently address the noise and vibrations effects arising from the rail corridor, or safety matters arising from buildings developed near the corridor. KiwiRail’s concerns are the potential health and amenity effects, on sensitive uses (including residential) near the rail corridor, as well as reverse sensitivity effects which may constrain the operation of the existing rail network. The amendments KiwiRail sought at the hearing were:
- a) A standard requiring acoustic insulation and ventilation for all new and altered activities sensitive to noise within 100m of the boundary of the Strategic Transport Corridor Zone for the City Centre Zone and Precincts.

- b) A vibration 'alert layer' for all new and altered activities sensitive to noise within 100m of the railway designation boundary. This is an information-only process to signal to property owners with no associated rule or other provision.
- c) A 5m building setback from the Strategic Transport Corridor Zone for the City Centre Zone and Precincts.

[384] The vibration alert layer is an amendment from KiwiRail's initial submission seeking vibration controls for new and altered buildings within 60m of the rail corridor. Mr. Paetz's corporate evidence explained this as a reflection of the practicalities of implementing vibration control, and noted that an alert layer does provide some management, by prompting landowners to consider incorporating vibration attenuation measures rather than by requiring them. KiwiRail's expert witnesses Ms. Heppelthwaite (planning) and Dr. Chiles (noise and vibration) continued to prefer a vibration control as the primary relief, though Ms. Heppelthwaite was open to the alternate proposed vibration alert layer provisions (and included proposed wording in her evidence).

Appropriateness of qualifying matter

[385] Both the Council and KiwiRail accepted that the provisions sought by KiwiRail represent a 'new' QM as they introduce new provisions extending spatially beyond the Strategic Transport Corridor or the KiwiRail designation.

[386] The Panel accepts Ms. Heppelthwaite's identification under s 77O(e) of a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure (as the NPS-UD definition of 'nationally significant infrastructure' includes the New Zealand rail network). All expert witnesses agreed that the issue of the proposed provisions relate to effects associated with the operation of the rail corridor, and identification of this qualifying matter is consistent with the Council's s 32 evaluation for the Strategic Transport Corridor zone (see section 3.27 above).

Scope

[387] The Council raised the issue of scope with respect to whether the provisions are "consequential on" PC78 and *Clearwater* second limb concerns.

[388] We disagree with the Council on this. KiwiRail's relief was clearly summarised in the Summary of Decision Requested and further submissions could have been made.

[389] Tram Lease also submitted that KiwiRail's relief is out of scope through the application of *Waikanae*, noting that:

- a) the provisions reduce existing development opportunities by introducing new restrictions on development and activities that are currently permitted within the 5m setback; and
- b) the link between PC78 and KiwiRail's relief is insufficient to satisfy the threshold of 'consequential on'.

- [390] Tram Lease drew on the example of its holdings in Mount Albert to illustrate how KiwiRail's relief would restrict Tram Lease's ability to develop its land despite PC78 not increasing development capacity by maintaining the 18m – 24m height limit currently operative under the AUP.
- [391] We consider that KiwiRail's relief does not fall outside of s 80E(1)(iii) in the City Centre Zone. While we accept Tram Lease's example as a factual description, the context of the City Centre is significantly different from Mount Albert. This is because the recommended increases to heights in the City Centre Zone would be more enabling than the operative provisions and all building in the City Centre requires restricted discretionary activity consent under the AUP. On the evidence presented we do not consider that an additional 5m setback permitted activity standard (in the context of a requirement for restricted discretionary activity consent) would be disenabling in the *Waikanae* sense because that decision related to changing the permitted activity status quo.
- [392] On the matter of 'consequential on', we refer to the expert planning and noise and vibration witnesses of both the Council and KiwiRail. While they disagreed on the appropriate planning response, they agreed that there must be appropriate controls to manage sensitive development near transport corridors. PC78 is increasing development capacity in the City Centre which can result in more sensitive activities occurring near the rail corridor – in short there is an impact arising from enabling intensification directed by Policy 3(a) of the NPS-UD.
- [393] We therefore conclude that in the context of the City Centre Zone and Precincts the relief sought by KiwiRail falls within the scope of PC78. We do not comment on whether it would fall within s 80E(1)(iii) outside of the City Centre, which is a matter for later hearings.

Appropriateness of noise and vibration standards

- [394] As noted above, all experts accept noise and vibration have adverse health and amenity effects. We summarise the points of disagreement between experts with respect to noise and vibration as:
- a) Mr. Styles' view that freight train movements do not occur in the City Centre, and that provisions sought by KiwiRail are generic and have been inadequately assessed in terms of cost. Noting that KiwiRail now accepts a vibration alert layer option in lieu of the internal design vibration level of 0.3mm/s Vw95; Mr. Styles considered that there is merit to this but disagreed with the distance. We note that Mr. Styles and Dr. Chiles were largely in agreement on the effects.
 - b) Mr. Shields, relying on Mr. Style's evidence, considers that there is insufficient information to justify KiwiRail's proposed noise and vibration provisions from a planning perspective, and noted the noise controls proposed may not align with the policies of the Quay Park Precinct.
 - c) Mr. Shields' view was that KiwiRail's s 32 evaluation, in Ms. Heppelthwaite's evidence, failed to address the City Centre context and did not assess all costs associated with compliance.

- [395] The Panel has considered whether KiwiRail's s 32 evaluation meets the statutory tests under s 77P. As a general matter, the Panel is mindful to be consistent in its consideration of s 32 evaluations, in that there is no obligation to provide a detailed economic analysis on the dollar value of proposed provisions, provided the broader costs have been appropriately considered. We did not receive additional economic evidence from the Council for the City Centre Outstanding Matters hearing (including on KiwiRail's proposed new QM) and therefore consider that Dr. Fairgray's overall conclusion around the City Centre remains applicable to KiwiRail's proposed amendments – that being there are nil opportunity costs given the Council's modelling suggesting PC78 enabled capacity far exceeds demand.
- [396] Ms. Heppelthwaite's s 32 evaluation of rail noise and vibration controls included specialist economic assessment of options to manage rail noise (assessed at a national, not Auckland or City Centre, level).
- [397] Mr. Paetz's corporate evidence addressed freight train movements in the City Centre. He said that city shunts with diesel locomotives use the area several times a day and that this section of the line can be used more heavily for freight when works are being undertaken in other parts of the network. Mr. Paetz said that KiwiRail data showed that there were 254 freight movements through the city centre area from 1 August 2023 – 13 January 2024.
- [398] Dr. Chiles, in response to Mr. Styles' criticism of his evidence as predicated on the effects of freight trains, confirmed the applicability of the data outlined in Appendix A of his evidence, noting Mr. Paetz's information regarding freight movement and further clarifying that multiple passenger train movements equate to that of a freight train in effect – a relevant consideration given the operational increases likely to result from the opening of the City Rail Link.
- [399] The Panel heard that the purpose of the noise controls and the vibration alert layer is to manage reverse sensitivity effects and to mitigate the potential for complaints placing significant constraints on the operation of the established rail network.
- [400] KiwiRail's legal submissions addressed the concern raised by Ms. Hart and Mr. Shields:
- The fact that the PAUP IHP heard similar matters is immaterial to the PC78 process as the issues remain;
 - It is inappropriate for KiwiRail to seek a private plan change when the need for the controls arises from increased intensification because of PC78;
 - KiwiRail designating the adjacent areas is an excessive solution and targeted planning standards are a pragmatic approach to managing adverse effects; and
 - KiwiRail is agnostic as to the location of provisions and notes that the matters heard were only in the context of the City Centre Zone.
- [401] The Panel relies on the evidence of Ms. Heppelthwaite, Dr. Chiles and Mr. Paetz and the s 32 evaluation attached to Ms. Heppelthwaite's evidence. We have considered them and assess KiwiRail's position with regard to the requirements of s 77P as:

- The standard has a clearly defined spatial extent, being land within 100m of the Strategic Transport Corridor Zone, satisfying the area requirements of s 77P(3)(a)(i);
- Increased intensification enabled by PC78 will bring more people into areas adjacent to the rail corridor, with Dr. Chiles of the view that existing standards in the AUP do not manage the characteristics of rail noise and vibration well, satisfying the incompatibility test of s 77P(3)(a)(ii);
- KiwiRail have assessed the cost and broader impacts of the proposed noise and vibration standards, satisfying the requirements of s 77P(3)(b) and (c).

[402] With regard to the specific merits of the proposed noise and vibration provisions in light of s 77P(3)(b) and (c) (the impact on development capacity and the cost of imposing the limits respectively) we note:

- That the noise controls do not impact on development capacity, insofar as they require internal design considerations for acoustic insulation and ventilation, while the vibration alert layer does not have corresponding controls restricting development but instead aims to inform and shape behaviour similar to the operation of the Auckland Airport noise alert area.
- Both Dr. Chiles and Mr. Styles agree that there is a need for acoustic treatment, but Mr. Styles considers that 100m is too great as Dr. Chiles' assumption is premised on freight train movement. In light of Mr. Paetz and Dr. Chiles' evidence discussed above, the Panel prefers the analysis of Dr. Chiles who confirmed that his recommended 100m distance for the noise controls had been appropriately modelled.
- With regard to the spatial extent of the vibration alert layer, the Panel is mindful that KiwiRail's original submission sought a 60m distance. In this regard, we conclude that a spatial extent of 100m for the vibration alert layer will not satisfy the second limb of *Clearwater* as potential submitters would not have been aware of the possibility of rail vibration provisions being applied to 100m.

Appropriateness of 5m setback

[403] Ms. Heppelthwaite identified the health and safety risks associated with building construction and maintenance in proximity to the rail corridor. We summarise the points of disagreement between experts with respect to noise and vibration as:

- Mr. Shields and Ms. Hart considered that alternative options are more appropriate, such as KiwiRail altering its designation, submitting a private plan change request or waiting for a full plan review.
- Mr. Shields' view was that KiwiRail's s 32 evaluation failed to address the City Centre context and did not assess all costs associated with compliance.

[404] KiwiRail's s 32 assessment noted that KiwiRail's proposed setback control may potentially affect approximately 0.6 percent (3,409) of properties in the Auckland region i.e. those identified as being adjacent to the rail corridor and that the setback may not materially affect yields. Ms. Heppelthwaite stated that she had also undertaken a high-level assessment of the sites within the relevant part of the City

Centre Zone and concluded that the development potential is already reasonably limited primarily due to the extent of recent development, and therefore the impact of the 5m setback is very limited in terms of overall development capacity within the Zone.

[405] Ms. Heppelthwaite's s 32 evaluation of rail safety setbacks included specialist health and safety and high level economic assessments (all assessed at a national, not Auckland or City Centre, level).

[406] The Panel heard that the purpose of the proposed 5m building setback, adjacent to the strategic transport corridor, is to ensure the safe and effective operation of the rail corridor by avoiding potential human encroachment onto the rail corridor.

[407] We have already addressed KiwiRail's response to concerns raised by Ms. Hart and Mr. Shields above:

[408] We accept the evidence of Ms. Heppelthwaite and the s 32 evaluations she provided. We have considered them and assessed KiwiRail's position with regards to the requirements of s 77P as:

- The standard has a clearly defined spatial extent, being land within 5m of the Strategic Transport Corridor Zone, satisfying the area requirements of s 77P(3)(a)(i);
- Increased intensification enabled by PC78 will bring more people and corresponding safety issues into areas adjacent to the rail corridor, satisfying the incompatibility test of s 77P(3)(a)(ii);
- KiwiRail have assessed the cost and broader impacts of the limits, satisfying the requirements of s 77P(3)(b) and (c).

[409] With regard to the specific merits of the provision in light of s 77P(3)(b) and (c) (the impact on development capacity and the cost of imposing the limits respectively) we note that new buildings in the City Centre Zone already require resource consent as a restricted discretionary activity, and the Council in its own s 32 evaluation accepted that additional reasons for consents is not inherently disenabling. On this basis, and in light of the increased heights and Dr. Fairgray's strategic economic evidence, the Panel agrees with KiwiRail and considers that the impact of the 5m setback control will be limited and not dis-enabling.

Recommendation

[410] Considering the above, the Panel recommends that the following provisions are necessary, to the extent to accommodate a s 77O(e) QM, to ensure the safe or efficient operation of nationally significant infrastructure being the rail network as outlined in Attachment A of Ms. Heppelthwaite's evidence:

- a 5m building setback from the boundary of a site adjoining the Strategic Transport Corridor Zone;
- a noise control applied to land within 100m of the Strategic Transport Corridor Zone; and

- a rail vibration alert overlay to land within 60m of the railway designation boundary.

[411] The Panel's recommendation is made only in the context of the City Centre Zone and Precincts, and therefore recommends the Council make the necessary amendments to reconcile the recommended text to be located within Chapter H8 Business – City Centre Zone and E25 Noise and Vibration. We note that:

- The Strategic Transport Corridor Zone applies to both state highway and railway corridors, and amendments will be required to confine the effect of the provisions to the rail corridor only.
- We consider that KiwiRail's proposed amendments to assessment criteria E25.8.2(3) "whether the activity or infringement proposed will ~~unduly~~ constrain the operation, maintenance and upgrading of existing activities (excluding construction or demolition activities)" are beyond the scope of an IPI and should not be included.

[412] We again stress that we are not deciding whether it is appropriate to apply these provisions throughout other Zones affected by PC78, as different considerations are likely to apply.

New qualifying matter for land adjacent to the port relating to the operation of Golden Bay Cement within the Port Precinct

[413] Ms. Hewson, planner, tabled a memorandum on behalf of Golden Bay, a division of Fletcher Concrete & Infrastructure Ltd which advised that Golden Bay is no longer pursuing the introduction of a new QM within the Port Precinct. Ms. Hewson accepted the views of Ms. Wong that the change sought by Golden Bay does not support or is consequential on, Policy 3 of the NPS-UD in terms of s 80E(1)(b)(iii) and that a separate Schedule 1 process is the more appropriate method to make the changes it seeks.

[414] Golden Bay continues to pursue the balance of its relief by seeking the amendments to H8.3(25) to identify '*lawfully established industrial activities within the Port Precinct*' and to include '*lawfully established industrial activities*' in the definition for 'Marine and port activities'. Ms. Hewson was also of the view that the Panel should direct the Council to initiate a schedule 1 planning process to give effect to Golden Bay's submission.

[415] Ms. Wong's planning evidence responded to this by noting that Golden Bay's relief remains related to activities, rather than height and density of urban form, and therefore falls outside the scope of PC78 in terms of s 80E(1)(b)(iii). Ms. Wong's view was that the tabled memo did not provide additional information to satisfy the s 32 evaluation and the relevant s 77P or s 77R tests for a new QM.

Recommendation

[416] The Panel agrees with Ms. Wong that Golden Bay has not provided sufficient evidence to support the changes it is seeking. We also agree that it would be

inappropriate to make recommendations in an IPI purporting to direct the Council to initiate a schedule 1 process.

3.31 Precincts – general

[417] This issue relates to precincts as a generic method in the AUP rather than a specific provision or precinct.

3.31.1 Statement of issue

- i. Precincts as a valid planning mechanism

3.31.2 Panel recommendation and reasons

[418] Various planning witnesses including Ms. Laird, Ms. Wong and Mr. Shields for the Council explained the historic development of the AUP and that precincts were one of several mechanisms used to manage specific environmental effects within the City Centre Zone. Submitters challenging the AUP's approach and its use of precincts, generally criticised the process and / or the substantive matter related to a specific precinct, rather than a wholesale repudiation of precincts per se.

[419] A precinct, by its nature, is not of itself a qualifying matter – QMs must be a characteristic considered based on relative evidence and the merits of the substantive matter. Ms. Laird explained in her planning evidence on Topic 020J that PC78 did not identify precincts as QMs, but that due to their context-specific provisions, may include or respond to QMs which are specific to a precinct's context.

[420] We refer also to our findings on the methodologically agnostic nature of the NPS-UD in section 3.5 above. The Panel prefers the evidence for the Council and accepts that precincts are a valid planning mechanism in that precincts are a tool to potentially *accommodate* a QM or spatially manage areas of the City Centre that may be subject to QMs. The merits of each will need to be determined individually.

3.32 Precincts – Britomart

[421] This issue relates to I201.1 Britomart Precinct, particularly the following provisions:

- Rule I208.4.1(A28)(A31)(A32) and (A39)
- I208.6.1.8 Building height

3.32.1 Statement of issue

- i. Appropriateness of the qualifying matters
- ii. Increasing building heights to 72.5m and the relevance of an approved resource consent in considering effects

3.32.2 Panel recommendation and reasons

- [422] PC78 proposed to amend Standard I201.6.6 Site intensity to remove basic FAR and make the Maximum Total Floor Area into the 'maximum permitted FAR' as a result of the removal of the bonus FAR provisions (refer to section 3.8 above).

Appropriateness of the qualifying matters

- [423] No evidence challenged the Council's identification of QMs which apply across the Britomart Precinct. The Panel refers to the s 32 evaluation and while we accept the identification of s 77O(a) (matters of national importance) and s 77O(j) "other" matters as appropriate QMs, we note as per our finding in section 3.16 Qualifying matter – Sunlight admission to public spaces in the City Centre, that s 77O(f) as a QM can only apply to the land that is open space.

Building height

- [424] The evidence presented on the Britomart Precinct essentially focused on increasing the height of the western half of the Central Building site at 25-39 Tyler Street and 26-40 Galway Street (**Central Building Site**) from PC78's unchanged height taken from the AUP to 72m.
- [425] During the hearing, the relevance of Cooper and Company's resource consent for a 10-storey commercial development on the Central Building Site in forming part of the existing environment became a matter of contention. We address this issue first as it colours the assessments undertaken by Mr. Lala for Cooper and Company as well as the Council's expert witnesses.
- [426] Counsel for Cooper and Company submitted that the resource consent forms part of the existing environment for PC78, directing the Panel to *Queenstown Lakes District Council v Hawthorn Estate Limited*⁷. She and Mr. Lala, planning witness, advised the Panel that the resource consent was likely to be implemented but that it will be varied should the increased height of 72m be recommended.
- [427] The Panel agrees with the submission for the Council that the likelihood of a party giving effect to a consent is not germane in determining what is appropriate for plan making. The Council's closing submissions referred to *Shotover Park Ltd v Queenstown Lakes Council*⁸ which found that there is no obligation to consider a resource consent as part of the environment during a plan change process, observing that *Hawthorn* involved a resource consent under s104 and not ss 31 and 32 which apply to plan changes. It also observed that there is nothing in the RMA which constrains forward-looking thinking when deciding the plan for the future, and there is no need to confine "environment" to the "existing environment".

⁷ *Queenstown Lakes District Council v Hawthorn* (2006) 12 ELRNZ 299; [2006] NZRMA 424

⁸ *Shotover Park Ltd v Queenstown Lakes District Council* [2013] NZHC 1712.

- [428] Council's submissions also noted the High Court's decision in *Keir v Auckland Council*⁹ that it was inappropriate to rely on a 2016 subdivision consent as forming part of the existing environment, when a 2021 subdivision consent applied to the same land and was clearly intended to replace the earlier consent. The Court noted that it is a question of fact as to whether a resource consent is likely to be implemented. Council submitted that it would be inappropriate to treat Cooper and Company's resource consent as part of the existing environment, given the similarities with *Keir* and the intention to vary the consent if additional height is secured through the PC78 process.
- [429] Mr. Lala's planning evidence was that the 72m height sought for the Central Building Site is consistent with and visually coherent with nearby buildings such as the 17-storey Movenpick Hotel, the 74m Jarden House and the operative heights of 50m along the Quay Street frontage and 75m along the Tyler Street frontage under the current AUP provisions. Cooper and Company however did not present technical expert evidence (urban design, landscape or heritage).
- [430] Council called urban design evidence from Ms. Blagrove, landscape and amenity evidence from Mr. Brown and historic heritage evidence from Ms. Walker. While Ms. Blagrove and Mr. Brown provided helpful and detailed evidence, the Panel found the evidence of Ms. Walker particularly helpful in light of the Policy 4 and s 77Q framework and Britomart's heritage setting. The Panel is satisfied that historic heritage in the context of Britomart Precinct is an existing QM under s 77Q noting it is a s 77O(a) matter, being a matter of national importance under s 6 and relates to operative Standard I206.6.2 Building Height.
- [431] Ms. Walker's view is that a 72m height for the Central Building Site will detract from the historic values of protected buildings, and importantly the central western portion of the precinct sits adjacent to or diagonally across from some of the most significant historic heritage buildings along Customs Street East and Quay Street, as well as the former Chief Post Office on the western side facing Queen Street. Ms Walker was likewise of the view that the increased height would be in conflict with and distract from the fine-grained character of the scheduled heritage buildings which form the perimeter of Britomart.
- [432] She concluded that design considerations refined through a resource consent was the most appropriate process to accommodate increased height rather than through a blanket height standard of 72m.
- [433] There was no alternative historic heritage evidence to challenge the Council position and the Panel accepts the evidence of Ms. Walker that the notified PC78 heights for the Central Building Site are necessary to the extent to accommodate a s 77O(a) QM. We likewise accept the uncontested urban design evidence of Ms. Blagrove and landscape and amenity evidence of Mr. Brown.

⁹ *Keir v Auckland Council* [2023] NZHC 1658, (2023) 24 ELRNZ 886.

[434] The planning witnesses for both Cooper and Company and the Council agreed that the height and site intensity standards are connected. Given the Panel's conclusions on height, we likewise consider that the precinct's notified site intensity provisions are appropriate.

[435] For the reasons above, the Panel recommends the retention of the notified PC78 provisions for I201 Britomart Precinct.

3.33 Precinct – Central Wharves

[436] This issue relates to the Central Wharves Precinct, particularly the following provisions:

- Rule I202.4.1(A38)
- I202.6.1.7 Building Height
- I202.6.1.8 Site Intensity
- I202.6.1.10 Viewshafts

3.33.1 Statement of issue

- i. Retention of the Central Wharves Precinct provisions and appropriateness of identified qualifying matters.

3.33.2 Panel recommendation and reasons

[437] There was no evidence challenging the provisions for the Central Wharves Precinct as notified in PC78, and no submitters sought relief in relation to that Precinct.

[438] We concur with the Council's position outlined in its s 32 evaluation, namely that the scope of s 80E(1) precludes regional plan matters such as those within the coastal marine area. PC78 was notified with changes only to parts of the Central Wharves Precinct which are outside the coastal marine area.

[439] Accordingly, we accept the Council's s 32 evaluation and recommend that the notified PC78 provisions remain unchanged, as they are necessary to accommodate existing QMs under s 77O(a) relating to section s 6(d) and s 6(f) matters (the maintenance and enhancement of public access to and along the coastal marine areas, lakes, and rivers, and the protection of historic heritage from inappropriate subdivision, use, and development respectively).

3.34 Precinct – Downtown West

[440] This issue relates to I205 Downtown West Precinct, particularly the following provisions:

- Rule I205.4.1(A2)(A7)
- I205.6.2 Pedestrian connections

3.34.1 Statement of issue

- i. Appropriateness of qualifying matters
- ii. Amendments to Standard I205.6.2 Pedestrian connections

3.34.2 Panel recommendation and reasons

[441] Standard I205.6.2 Pedestrian connections requires an at-grade pedestrian connection for all new buildings on either of the blocks between Lower Queen Street and Lower Hobson Street.

Appropriateness of the qualifying matters

[442] There was no evidence which challenged the Council's identification of QMs being accommodated by the Downtown West Precinct. With reference to the s 32 evaluation the Panel accepts the identification of s 77O(j) "other" matters relating to the connection with the Waitematā Harbour, and pedestrian amenity (identified by the Council as 'general streetscape, character, sense of enclosure and human scale) as appropriate QMs.

Amendments to Standard I202.6.2 Pedestrian connections

[443] The evidence focused on the specifics of Standard I206.6.2 Pedestrian connections.

[444] The urban design evidence from Ms. Samsudeen for the Council was that due to the existing site constraints and building layout within the precinct, any new pedestrian connections developed within the precinct are likely to be provided over multiple levels.

[445] The urban design evidence from Mr. Wallace for the submitter Precinct Properties considered references to "direct" and "unobstructed" transitions between levels are subjective matters of design and should be included in assessment criteria rather than a standard.

[446] There was expert opinion that an "at grade" connection could be difficult to provide due to the topography of that area and there was agreement between submitters and Council that reference to "at grade" could be removed.

[447] With respect to whether the connection requirement should be retained as a standard or become an assessment criterion, the Panel accepts the Council's evidence that retaining it as a standard will maintain the strength of the provisions (with departure from the standard resulting in a restricted discretionary activity with very specific matters of discretion and assessment criteria) which the Panel considers to be more certain than if it was an assessment criterion.

[448] The Panel agrees with the Council on replacing "at grade" with the wording "accessible, direct and unobstructed" as providing for the positive outcomes appropriate to replace a requirement for an "at grade" connection. These words are clear and able to be objectively determined.

- [449] The Panel does not agree with Mr. Cook that a new assessment criterion I205.8.2(2)(d) Open spaces or through-site links is an appropriate replacement for a standard, as an applicant could simply choose not to provide any open space or through-site links as part of its proposal. There is also no matter of discretion associated with the proposed assessment criterion.
- [450] The Panel prefers the Council's provisions in Attachment 6 to Ms Laird and Ms Wong's evidence, given the proposed deletion of "at grade" in Standard I205.6.2(1) for outcomes relating to level changes for the accessible pedestrian connection to be explicitly clear within Standard I205.6.2(1).
- [451] The Council raised an issue with the scope of the submission on the "at grade" amendment and whether it is consequential on intensification. We are satisfied that the pedestrian connection provision in the context of the Downtown West Precinct is fundamentally related to the anticipated comprehensive redevelopment of the precinct and relates to the density of urban form and is therefore "consequential on" intensification.
- [452] The Panel recommends the retention of I205 Downtown West Precinct and the amendment of standard I205.6.2 Pedestrian connections as outlined by Ms. Laird and Ms. Wong, as they are appropriate to accommodate s 77O(j) "other" QMs.

3.35 Precinct – Karangāhape Road

- [453] This issue relates to the Karangāhape Road Precinct, particularly the following provisions:
- Rule I206.4 (A2) and (A3)
 - I206.6.1 Frontage height and setback.
 - I206.10.1 Karangāhape Road: Precinct plan 1 – Frontage height and setback.

3.35.1 Statement of issue

- i. Appropriateness of the qualifying matters
- ii. Request to extend the boundary to include the buildings on both sides of Poynton Terrace, Auckland Central.
- iii. Request to remove 538 and 582 Karangāhape Road from the precinct.

3.35.2 Panel recommendation and reasons

Appropriateness of the qualifying matters

- [454] As notified PC78 did not identify Table I206.4(A2) New buildings, and alterations and additions to buildings not otherwise provided for (RD) or I206.10.1 Karangāhape Road: Precinct plan 1 – Frontage height and setback subject as provisions subject to a qualifying matter.
- [455] The s 32 report for Karangāhape Road Precinct identified I206.4(A2) along with frontage height and setback provisions to be subject to QMs. While acknowledging

Mr Caldwell's evidence challenging the height metric of the area, no planning or heritage evidence from submitters challenged the appropriateness of the QMs. In reliance of the s 32 report and heritage evidence from Ms. Walker for the Council, the Panel considers historic heritage, special character and streetscape, character, sense of enclosure, human scale are relevant QMs for I206 Karangāhape Road Precinct.

- [456] The Panel recommends that historic heritage (s 77O(a) (s6 (f))), special character (s 77O(j)) and Streetscape, character, sense of enclosure, human scale (s 77O(j)) be applied as qualifying matters within the Karangāhape Road Precinct.

Poynton Terrace

- [457] The buildings on both sides of Poynton Terrace are within the historic heritage overlay, the flats themselves are heritage listed, and there is already sufficient protection through D17 to protect the area.
- [458] The Panel disagrees with submitters that this area is more connected to Karangāhape Road than to Myers Park and (including from our observations on our site visit) consider that to the contrary Poynton Terrace is more directly connected to Myers Park. We consider that Poynton Terrace does not have the same street cohesiveness as Karangāhape Road, on which the Precinct rules are based. Furthermore we accept the evidence of Ms. Walker that Poynton Terrace is adequately protected as the historic relationship is already recognised through chapter D17, and therefore does not need the protection of the Precinct rules. In response to submitter concerns about any further new apartments at Poynton Terrace, the evidence of Ms. Walker was that the D17 overlay now applies to Poynton Terrace and will provide adequate protection (the previous new apartments raised by submitters during the hearing were built before the D17 overlay applied to the area).
- [459] The Council raised an issue with respect to the scope of the Poynton Terrace submission and whether amendment of the precinct boundary is "consequential on" intensification. Ms. Laird and Ms. Wong's tentative view was that, as the concern related to the effects of intensification on Poynton Terrace, the requested amendment may be "consequential on" intensification. The Panel considers that to be the case such that the submission is within scope, but we have concluded on the merits not to recommend amending the precinct boundary.

582 and 538 Karangāhape Road

- [460] The specialist heritage evidence of Ms. Walker for the Council describes the submission as seeking to amend the boundary of the Karangāhape Road Precinct to remove the properties at 538 and 582 Karangāhape Road that make up the block between Karangāhape Road, Newton Road, Gundry Street and Abbey Street. The Panel notes that this block "protrudes" from the mapped precinct at its western end.

[461] Ms. Walker's evidence was that the block should remain in the precinct for the following reasons:

- a) The block includes two significant historic buildings that face Newton Road. These have an important relationship with Karangāhape Road and form the gateway entrance to the precinct as you approach from Newton Road.
- b) The block forms part of the ridge top location, orientation and aspect of the Karangāhape Road Precinct.
- c) While the building at 538 Karangāhape Road has been demolished and that site is currently vacant, and the service station located opposite (at 565 Karangāhape Road) does not contribute to the precinct's built form or streetscape character, buildings on 582 Karangāhape Road do contribute to the character of Karangāhape Road.

[462] Conversely the James Kirkpatrick Group Ltd (**James Kirkpatrick**) submission was that some of the spatial area proposed to be removed is already demolished, which leaves The Dog's Bollix building (facing Newton Road) as quite detached from the overall character of Karangāhape Road

[463] The planning evidence of Ms. Laird and Ms. Wong for the Council identified that the block subject to the submission, while within the precinct, is not subject to standard I206.6.1 Frontage height and setback. This block (protruding at the western end of the precinct) is the only part of the precinct not subject to that standard.

[464] The Panel, following their site visit, is not satisfied that the "distinctive built form and streetscape character" of the Karangāhape Road Precinct extends to the block in question and we do not consider that the block aligns well with the precinct description especially when considering the requirements of the NPS-UD and Policy 3(a).

[465] Accordingly we recommend that the submitter James Kirkpatrick's relief be granted, allowing for the removal of the block between Karangāhape Road, Newton Road, Gundry Street and Abbey Street from the precinct. The removal of this block will allow the boundary of the precinct to be better aligned, providing for the NPS-UD while maintaining the coherent character of Karangāhape Road and the precinct to the East. In regard to The Dog's Bollix building, the Panel notes that this contributes to heritage within the wider historic heritage area, and considers that this provides appropriate protection, even if removed from the precinct.

[466] The Council raised an issue with respect to the scope of James Kirkpatrick's submission and whether amendment of the precinct boundary is "consequential on" intensification, particularly as the block is not subject to standard I206.6.1 Frontage height and setback. The Panel is satisfied that while that particular standard does not apply to the block, the precinct contains "related provisions, including objectives and policies that support or are consequential on" intensification as the precinct and the streetscape character it protects have been identified by the Council and accepted by the Panel as a QM justifying modification of intensification. The Panel considers in

this instance that the location of the boundary of that QM precinct is directly “consequential on” intensification of land within and surrounding the precinct.

3.36 Precinct – Learning

[467] This issue relates to the Learning Precinct, particularly the following provisions.

- Rule I207.4.1 (A23) and (A24)
- I207.6.3. Building height
- I207.6.4. Frontage Height and Setback
- I207.6.5. Wynyard Street Coverage and Pedestrian Link
- I207.6.6. Sub-precinct B: Old Government House
- Map I207.10.1 Learning: Precinct plan 1 - Building height controls

3.36.1 Statement of issue

- i. Appropriateness of the qualifying matters
- ii. Appropriateness of the provisions.

3.36.2 Panel recommendation and reasons

Appropriateness of the qualifying matter

[468] Historic heritage, streetscape, pedestrian-oriented character and amenity values and open spaces and pedestrian connections contribute to the physical characteristics of the Learning Precinct and are identified in objectives of the precinct.

[469] The s 32 report analyses the application of the following QMs:

- Section 77 (a) Historic Heritage s 6(f) the protection of historic heritage from inappropriate subdivision, use, and development.
- Section 77O (f): open space provided for public use, but only in relation to land that is open space.
- Section 77O(j) Streetscape, pedestrian-oriented character, amenity.

[470] The s 32 report includes analysis of the sites to which the QM relates, effects which need to be managed and characteristics which make the level of development provided by Policy 3 inappropriate. A range of options, costs and benefits and the proposed outcome are detailed in the s 32 report.

[471] The Panel supports application of these QMs to limit height within the Learning Precinct.

[472] We accept that the physical characteristics of the precinct include parks and gardens around the campuses and that the purpose of sub-precinct B is to ensure they remain predominantly in open space for passive recreation. We support the notified s 77O(f) open space QM.

- [473] Application of these qualifying matters and the amendments to standards recommended below accord with the Panel's impressions of the precinct from our site visit.

Appropriateness of the provisions

Height and No Build Areas

- [474] The Panel received planning, urban design and heritage evidence from the Council. No heritage or urban design evidence was provided by submitters seeking unlimited height or by the University of Auckland with respect to these matters.
- [475] The Panel finds that height is required to be modified to recognise, protect and enhance heritage values, respect the built character of the precinct and incorporate high-quality urban design, which are all objectives of the Learning Precinct. Council's urban design and heritage specialist evidence supporting the proposed changes in height to reflect the heritage and urban design values of the Learning Precinct is accepted by the Panel.
- [476] The Panel also considers that as a QM height should continue to be managed via standards I207.6.3 Building Height, I207.6.6 Sub-precinct B: Old Government House and Map I207.10.1 Learning: Precinct Plan 1 – Building height controls.
- [477] The Panel supports the Council's amended heights within the precinct compared to the notified PC78 and recommends Map I207.10.1 Learning: Precinct Plan 1 – Building height controls in Appendix 7 of Ms. Laird and Ms. Wong's evidence. This includes, following the expert assessments by Ms. Walker and Mr. Riley, increases from 15m to 18m on Building 113, a slight increase in extent of building area for Building 114, increased height along the western side of Wellesley St East; 72.5m on the northern side of Symonds Street including the corner of Symonds Street / Alfred Street, 72.5m on the corner of Symonds Street and Grafton Road; and 30m on the Maidment theatre site (corner of Alfred and Princes Streets).
- [478] Ms. Walker gave evidence on heritage values and heritage objectives within the precinct, the exceptional historic importance of the no-build area, and that a height standard should be used to manage these values. Her evidence proposed some small height increases compared to the notified PC78 provisions, and a slight extension within the no-build area, which she supported from a heritage perspective. We accept her evidence on this.
- [479] We also accept the evidence of urban design specialist Mr. Riley that unlimited building height would undermine the precinct's established and valued character, formed in part by its legible groupings of buildings of various heights along its streetscapes. Mr Riley's evidence supports areas of increased height where he considers these will positively contribute to an overall visual coherency, while leaving intact areas of lower height which are integral to the precinct's valued character. We accept his evidence for removal of the no-build area from the western side of Grafton Road and extension of the 72.5m height which, along with the proposed 72.5m on

Grafton Road, will result in a consistent built form. We accept that this support for increased height is dependent on the building frontage controls supported by Mr. Riley.

[480] With respect to the corner of Princes and Alfred Street, the Panel accepts Ms. Walker's evidence supporting an increase in height from 20m to 30m. She considers it important that the height standard of the corner site remains commensurate with the Student Union Building to avoid development of a bulk and height that adversely affects the historic heritage values of that building.

[481] Amending assessment criterion I207.8.2(1)(c) is a consequential change to the increase in height from 50m to 72.5m.

[482] The Panel supports application of QMs as per ss 77O(a), 77O(f) and 77O(j) to standard I207.6.3 Building Height; and the application of a QM as per ss 77O(a), 77O(f) and 77O(j) to standard I207.6.6 Sub-precinct B: Old Government House.

Retention of Rule I207.4(A23) and associated Matters of discretion and assessment criteria.

[483] The evidence from Ms. Walker, on the heritage values of the former Victorian shop at 9 Grafton Road (listed with NZHPT as a category 2 historic place) was that this place is unique to the University. There was no other heritage evidence to challenge her assessment. The Panel supports retention of Rule A23 (restricted discretionary for entry canopy and associated steps in area marked by "#") and associated matters of discretion I207.8.1(2) and assessment criteria I207.8.2(2).

[484] We also support the application of historic heritage, Streetscape, pedestrian-oriented character and amenity values as QMs under ss 77O(a), 77O(j) and 77O(f).

Deletion of Rule I207.4(A24) and associated matter of discretion and assessment criteria.

[485] The Council evidence from Ms. Laird and Ms. Wong sought deletion of rule I207.4.1(A24) (restricted discretionary for fire egress marked with "@") in Table I207.4.1), matter of discretion I207.8.1(3), and assessment criteria I207.8.2(3) as a consequential change to the height increases. The provisions applied to the "no building" area on Grafton Road which is proposed to be changed to 72.5m and will no longer be applicable. No other planning evidence challenged their evidence. The Panel recommends removal of this rule and associated matters of discretion and assessment criteria as consequential amendments arising from the recommended height amendments.

Standard I207.6.5 Wynyard Street Coverage and Pedestrian Link

[486] Council's s 32 report evaluates the application of the QM s 77O(j) Streetscape, pedestrian-oriented character, amenity to standard I207.6.5. Wynyard Street Coverage and Pedestrian Link, and identifies the sites and effects managed. It identifies that increased height may adversely affect the character and streetscape of the precinct which is fundamentally linked to the precinct purpose. PC78 as notified

included standard I207.6.5 Wynyard Street Coverage and Pedestrian Link as subject to a s 77O(j) QM. No evidence challenged this standard.

- [487] The Panel supports application of the Streetscape, pedestrian-oriented character, amenity qualifying matter (s 77O(j)) in reliance of the s 32 report.

Standard I207.6.4 Frontage Height and Setback, I207.8.2 (1)(c) Assessment criteria and I207.10.4 Learning: Precinct plan 4 - Frontage type.

- [488] The Panel received planning, urban design and heritage evidence from the Council. The University of Auckland did not provide evidence.
- [489] We accept the evidence from urban design specialist Mr. Riley that the frontage types are an important method to achieve built form of a visually consistent scale along street frontages, well-proportioned edges to streets; and provide for an appropriate contextual response to the streetscape condition of lower-scale frontages in parts of the precinct. Mr. Riley's evidence was that a 20m setback will protect the valued character of the area including its heritage buildings and the proposed standard will avoid excessive stepping (the 'wedding cake' form) which can result in a weak, poorly defined street edge. He supports the maximum 20m depth which ensures buildings are not visually dominant (including street frontage heritage buildings), and considers that characteristics of the precinct such as extensive and mature tree canopy along most streets will mean clear views to higher parts of buildings may be filtered or blocked.
- [490] Frontage Type C is proposed along the southern side of Princes Street to the corner of Alfred Street, but no frontage type is proposed along the eastern side of the corner where height is proposed to increase from 20m to 30m. This was formerly occupied by the Maidment Theatre (now demolished) as part of the Student Union Building. There is no frontage height control on the opposite side of Alfred Street, which is subject to 40m height limit which is not changed from the AUP.
- [491] Additional sites within the Learning Precinct without a frontage control are existing (40m on northern side of Alfred Street, 25m pink area on eastern side of Princes Street, 30m on northern side of Symonds Street (between Mount Street and St Pauls Street)).
- [492] The Panel recommends acceptance of the proposed amendments to standard I207.6.4 Frontage Height and Setback; I207.8.2 (1)(c) Assessment criteria and Map I207.10.4 Learning: Precinct plan 4 - Frontage types as proposed in Appendix 7 of Ms. Laird and Ms. Wong's Evidence in Chief.

Relationship with standards H8.6.25 and H8.6.25A

- [493] The validity of standards H8.6.25 and H8.6.25A as a QM is discussed in the bulk and location controls in the City Centre form section of this report. The Panel supports application of these standards to all areas where height has been increased to 72.5m and for the associated amendments of Maps H8.11.5A and H8.11.11.

- [494] Standard H8.6.25 Building frontage alignment and height provides minimum frontage heights as shown in Map H8.11.5 Minimum frontage height. This map is in the AUP and is not proposed to be changed. Some sites within the precinct are shown on this map. PC78 as notified proposed adding maximum frontage heights to standard H8.6.25 for sites identified in Map H8.11.5A Maximum frontage height. Map H8.11.5A is a new map proposed by PC78 and maps some sites within the Learning precinct.
- [495] Standard H8.6.25A is a new standard proposed by PC78 which provides setbacks from boundaries, maximum plan dimensions and tower separation distances for all sites identified on Map H8.11.11, which is a new map proposed by PC78.
- [496] Planning evidence from Ms. Laird and Ms. Wong identified the application of City Centre Zone standards H8.6.25 and H8.6.25A to all areas where height has been proposed to increase to 72.5m, and associated amendments of Map H8.11.5A and Map H8.11.11 as a consequential change, with discussion within the built form policies and standards section.
- [497] Mr. Riley's evidence supports the increase in height from 30m to 72.5m on the corner of Symonds Street and Alfred Street and the removal of a frontage control which currently applies to this area.
- [498] Mr. Riley refers to the 1:1 ratio of street width to frontage height, or maximum of 32.5m to frontages directly to the south along Symonds Street which have a maximum height of 72.5m. He considers it desirable that Standard H8.6.25(2) be applied to this frontage to avoid a significant jump in scale to a building frontage directly from the footpath on the street boundary to a height of 72.5m, and to provide consistency with the planned streetscape of frontage heights along this part of Symonds Street.
- [499] The Panel notes that the application of H8.6.25 and H8.6.25A to all areas where height is proposed to increase to 72.5m may result in more than one frontage setback control where frontage on 72.5m sites are also subject to I207.6.4 Frontage Height and Setback (southern side of Princes street, corner of Symonds and Grafton Road, southern side of Princess street (to the east of Grafton Road), eastern side of Grafton Road).
- [500] Consequently, the Panel recommends consequential amendments to H8.11.5A and H8.11.11 only to the extent to ensure there are appropriate controls applied to sites increased to 72.5m in height which are not identified by I207.6.4 Frontage Height and Setback. The Panel accepts the expert opinion of Mr Riley and Ms Walker which supports the building height and frontage outcomes of the precinct and therefore wishes to ensure that the consequential changes necessary to the H8 Business – City Centre Zone does not preclude the outcomes the Panel recommended in the Learning Precinct.

3.37 Precinct – Port

[501] This issue relates to the Ports Precinct, particularly the following provisions:

- Rule I208.4.1(A28), (A31), (A32), and (A39)
- I208.6.1.8 Building Height
- Precinct Plan 1

3.37.1 Statement of issue

- i. Appropriateness of the qualifying matters and the provisions

3.37.2 Panel recommendation and reasons

[502] There was no evidence challenging the provisions for the Central Wharves Precinct as notified in PC78 and no submitters sought relief in relation to this precinct.

[503] We therefore recommend adopting the Council's position outlined in its s 32 evaluation. Relevantly, PC78 was notified with no changes to those parts of the Ports Precinct which lie within the coastal marine area, as the scope of s 80E(1) precludes regional plan matters such as those within the coastal marine area.

[504] Accordingly, we accept the Council's s 32 evaluation and recommend that the notified PC78 Ports Precinct provisions remain unchanged as they are necessary to accommodate existing QMs under s 77O(e) (nationally significant infrastructure) and s 77O(a) relating to section s 6(d) and (h) matters (the maintenance and enhancement of public access to and along the coastal marine areas, lakes, and rivers, and the management of significant risk from natural hazards, respectively).

3.38 Precinct – Quay Park

[505] This issue relates to the Quay Park precinct, particularly the following provisions:

- I209.1. Precinct description
- I209.2. Objectives
- I209.3. Policies
- I209.4. Activity table – Rules I209.4.1(A3), (A7)
- Standard I209.6.1. Building height
- Standard I209.6.2. Building frontage height
- Standard I209.6.3. Site Intensity.
- I209.8.1 Matters of Discretion - I209.8.1(1), (6), (7)
- I209.8.2. Assessment criteria - I209.8.2(1), (6), (7).
- Precinct Plans 1, 2 and 3

3.38.1 Statement of issue

- i. Appropriateness of qualifying matters
- ii. Precinct boundaries
- iii. Building heights

iv. Special amenity yard

Ngāti Whātua Ōrākei Group (**NWO**) opposes inclusion of the Quay Park Precinct and is seeking that this is removed and that the area subject to the precinct is managed by the underlying City Centre Zone and the Auckland War Museum Viewshaft Overlay which apply to this area.

3.38.2 Panel recommendation and reasons

[506] NWO originally opposed inclusion of the Quay Park Precinct and sought its removal, and that the area subject to the precinct is managed by the underlying City Centre Zone and the Auckland War Museum Viewshaft Overlay as it applies to this area.

[507] Evidence from Mr. Roberts, planner for NWO clarified the revised relief sought as:

- Deletion of the western portion of the precinct (noting the change in the boundary of sub-precinct A provided in the amended maps)
- Removal of I209 Quay Park provisions for the railway station building and related heritage provisions (with reliance on city centre zone, Historic heritage overlay D17 and Auckland War Museum Viewshaft Overlay D19).
- Removal of provisions for public open spaces, height and form (with reliance on underlying zone and City Centre Zone height controls and Museum viewshaft overlay along with specific frontage and setback controls, requested to be in Chapter H8).
- Addition of a new special amenity yard to ensure views to the Railway Station from Mahuhu Crescent.
- Deletion of land use policies limiting retail and requiring apartment blocks to be designed to protect occupants from adverse noise effects from the port and transport network.
- Addition of a land use policy to enable drive-through activities in sub-precinct A.
- Addition of a built form policy to ensure development and subdivision provides an integrated public open space and street network.

Appropriateness of qualifying matters

[508] The Panel refers to the s 32 evaluation report which identifies several QMs within the Quay Park Precinct area. Relevantly they include:

- Section 77O(a) (s 6(f)) protection of historic heritage from inappropriate subdivision, use, and development
- Section 77O(f) open space provided for public use, but only to land that is open space
- Section 77O(j) any other matter relating to 'amenity and human scale of streets', 'relationship to and connections with the Waitematā Harbour' and 'Protecting local and regionally significant views, in particular – the AWMMV and Railway Station and Gardens'

[509] The legal submission and the planning evidence of Mr. Roberts on behalf of NWO did not challenge the appropriateness of the QMs themselves, instead challenging Council's approach in terms of implementation and whether sufficient enablement has been afforded to meet the requirements of Policy 3(a). NWO's legal submissions particularly focused on the adequacy of the Council's s 77R assessments for the identified s 77O(j) "other" matters. We have considered the qualifying matters identified by the Council's s 32 report, and record that we:

- Concur with the identification of s 77O(a) QM relating to historic heritage.
- Concur with the identification of a s77O(f) QM, but only to the extent that it is applied to the land that is open space (refer to 3.16 above).
- Recommend a new s 77O(j) "other" QM for Quay Park Open space to moderate development on land that is not open space in terms of standard I209.8.2 Building Frontage Height
- Concur with the identification of a s 77O(j) "other" QM 'amenity and human scale of streets' noting that while the metrics were not agreed, amenity values were recognised by both Mr. Wallace for NWO and Ms. Samsudeen for the Council.
- Concur with the identification of a s 77O(j) "other" QM relationship with the Waitematā Harbour. We note that although the purpose of the height standard is protection of views to significant heritage places and to maintain and enhance sunlight access and amenity to identified open spaces and there are no I209 policies or objectives which refer to the harbour, this QM is required to restrict height within the precinct due to adverse effects from height on the relationship between the Precinct and the harbour, through the dominance of built form over harbour edges and reduction in gaps between built form that enable visual connections to the sea.
- Concur with the identification of a s 77O(j) "other" QM protecting local and regionally significant views, in particular – the AWMMV and Railway Station and Gardens"

[510] The Panel recommends an additional s 77O(j) "other" QM relating to 'Quay Park urban built form and street network' which relates to the establishment of new roads, lanes and pedestrian connections in light of the development anticipated in the area. We consider this necessary given the opposing positions in the evidence on the issue of the extent of the precinct which is discussed below.

Precinct boundaries

[511] The issue of scope was raised by Ms. Laird and Ms. Wong for the Council. Their evidence was that the precinct relates to more than height and density of urban form, and for example includes precinct-specific provisions relating to land use and development activities, transport networks and public open space. They therefore considered that the request is not "consequential on" intensification. They also raised second limb concerns as to whether the public could have reasonably anticipated changes to the Precinct boundaries.

- [512] *Waikanae* confirms that the scope of an IPI is to promptly implement intensification through a truncated process. We have regard to the broad nature of the precinct provisions, addressed by Ms. Laird and Ms. Wong, dealing with comprehensive land use planning beyond simple height and density of urban form. In our view the request to delete the precinct in its entirety, or alternatively to radically amend its boundaries, is beyond the scope of PC78 as an IPI, because it seeks to fundamentally alter the status quo. However, we have also assessed the merits of the request.
- [513] The Panel heard evidence from planning, heritage, urban design and economic specialists for NWO and for the Council.
- [514] On the merits, we do not support removal of the western portion of the precinct. NWO witnesses premised the removal on the 'set' nature of the urban form and structure in the western portion no longer requiring management by the precinct provisions. Both Mr. Roberts and Mr. Colegrave for NWO provided evidence demonstrating additional changes to the urban form in the western portion was possible and /or likely, including a new laneway in place of part of Mahuhu Crescent and new pedestrian links on the City Centre Masterplan.
- [515] In light of the above, the Panel does not accept Mr Robert's views that the maturity of development in the precinct (i.e. the urban form and road pattern is already established) mean there is no longer a need for the precinct specific provisions. We consider that redevelopment in the western portion may alter the urban structure, and that the precinct objectives (requiring development to be of a scale and form to enhance and define street networks, provide variation in building form and to provide for a mix of activities compatible with its location on the eastern edge of the city centre and its proximity to the port and transport network) remain relevant.
- [516] The Panel prefers the urban design evidence from Ms. Samsudeen for the Council as supported by planners, Ms. Laird and Ms. Wong "*that the precinct provides a clear framework for specific activities (including drive-through activities and subdivision), pedestrian movements, transport functions, whilst considering area specific matters such as heritage and open spaces.*" The Council's evidence also referred to the relationship of the precinct with other City Centre waterfront precincts, continuity and consistency with those waterfront precincts, connectivity, legibility of pedestrian movements and transport function, and the enhancement of amenity in public open spaces and to streets. The Panel agrees with this evidence and therefore recommends the retaining the boundaries of the Quay Park Precinct as notified by PC78.

Building Heights

- [517] NWO requested changes to I209 Quay Park provisions to seek removal of 'transitions' as a consequential amendment to reflect the proposal to delete the western portion of the precinct.
- [518] At a precinct-wide level, there was no specific evidence for the removal of transitions to surrounding neighbourhoods from standard I209.2 nor the removal of Built form

policy I209.3(2) to provide for development that responds to the topography and precinct and surrounds and achieves a transition in height.

- [519] Ms. Samsudeen's urban design evidence on transitions focused on the city-wide level and did not include specific reference to Quay Park. Her evidence was that the Quay Park strategy is to maintain connections between the city and the harbour and beyond, reinforcing Waitematā Harbour as an important identity and sense of place, and maximising sharing of sea views /extending grandstand views more widely among the City Centre's existing and future high-rise towers.
- [520] Reference to transitions was made by specialists in relation to transitions of height and setbacks within the precinct. Ms. Samsudeen's rebuttal evidence on setbacks referred to the need to ensure a gradual transition in height of adjacent sites along Te Taou Crescent and to avoid dominance, shading and human scale issues. She also referred to the transitioning to the waterfront and fringe suburbs in relation to the significant redevelopment potential and City Centre Masterplan. Mr. Brown's landscape evidence for the Council referred to 'transitions into taller development west of Beach Road and around Anzac Avenue.' Ms. Laird and Ms. Wong's rebuttal evidence, in reliance on Mr. Brown's rebuttal evidence, considered the 72.5m height limit inappropriate between Beach Road and a line that bisects Te Taou Reserve and Mahuhu-ki-te-Rangi Park, and a 'cliff face' of rising development on the edge of the viewshaft.
- [521] Mr. Wallace's evidence for NWO referred to transitions in relation to height and proposed frontage controls as it relates to the Railway Building.
- [522] The Panel preferred the evidence of Ms. Samsudeen and Mr. Brown, which referred to the need for transitions to the suburbs. For the avoidance of doubt, the Panel accepted a building height of 72.5m as a starting point is appropriate due to the city wide s 77O(j) 'other' matter as discussed in our findings in section 3.7 above.
- [523] The presence of other qualifying matters in Quay Park in turn may justifying a further reduction in height or density of urban form. We now turn our minds to these and recommends Map I209.10.2 Quay Park: Precinct plan 2 - Building height controls with the following height limits:

Two western blocks

- [524] The height can be increased to 72.5m on the basis of planning, urban design, landscape and heritage evidence for both NWO and Council agreeing that the two western most blocks, increased to 72.5m in the notified PC78, are an appropriate height (JWS- Hearing Topic 020E Precincts – I209 Quay Park Precinct dated 12 February 2024).

30m height area shown on Precinct Plan 2 (notified)

- [525] The 30m height area (as shown on precinct plan 2) can increase up to the AWMMV. The Panel recommends Map I209.10.2 Quay Park: Precinct plan 2 - Building height controls be amended to 72.5m and allow the AWMMV controls to manage the QM accordingly. This was agreed in the JWS dated 1 March 2024.

[526] In reliance on the expert evidence and the JWS, the Panel considers that reliance on chapter D19 AWMMV Overlay will manage height. Development will also be assessed through the precinct controls which also contain other QMs such as heritage, sunlight access and amenity).

North and south of Te Taou Reserve – (notified purple 18m height limit)

[527] The 18m height limit on notified Map I209.10.2 Quay Park: Precinct plan 2 - Building height controls (coloured purple) should remain at 18m with the exception of the eastern portion of Lot 25 DP 189961, directly behind the Railway Station which forms a carparking area / accessway for Spark Arena (shown below). We note that PC78 notified a reduced height on this portion of land from 30m in the AUP to 18m in PC78 which the Panel considers is contrary to *Waikanae*. We therefore recommend an out of submission change for this portion of land only to remain at the operative 30m height.



[528] Ms. Lutz for NWO and Ms. Walker for the Council both agree that the Railway Station is a familiar and significant place of heritage value. They did not however agree on the 18m height, setbacks, interpretation of the word 'adjoining' in H8 provision and the need for management within the precinct provision.

[529] Ms. Lutz's evidence included examples of stations where intensive development has occurred in close proximity, the extent of place and City Centre Zone provisions, and discussion of 'adjoining'. She considered the extent of place, buffer, additional controls and requirement for resource consent along with matters of discretion and limited visibility. Along with her questioning of the landmark status these matters informed her view that Chapter H8 of the AUP, in combination with Standard H8.6.7

Railway station building and gardens view protection plane, the EOP and the Museum Viewshaft Overlay are sufficient to protect the heritage values of the Railway Station.

- [530] Ms Walker's expert view was that the former railway station was historically designed to be viewed from all elevations, concluding that some space is required to appreciate the overall view of the building and in understanding the aesthetic values of the place. Her view was that management of the surrounds of a building of this scale, set so far back from the road, is essential to protect and enhance its heritage values and avoid distracting from its outstanding features. An 18m height limit is more appropriate to protect the heritage values associated with the design and significance of the building.
- [531] Mr. Brown's landscape evidence referred to the jarring 'up-lift' of development between Beach Road and a line that bisects the Te Taou and Māhuhu ki te Rangi Reserves, and in particular its significant impact on the Beach Road 'gateway' to the historic railway building. His view was that significant increases in heights have the potential to completely dominate the gateway, enveloping and greatly diminishing the open space in front of the Railway Station and the Category 1 building itself. Mr Brown's opinion was that both would be subsumed by development even close to 72.5m.
- [532] Ms Samsudeen supported lower height around Mahuhu Crescent and Te Taou Reserve to maintain and enhance the quality of the public open space and the pedestrian experience in the Precinct.
- [533] The Panel prefers the evidence of Ms. Walker, Mr. Brown and Ms. Samsudeen which accords with the Panel's observations during our site visit. The Panel therefore recommends retaining the 18m height limit.

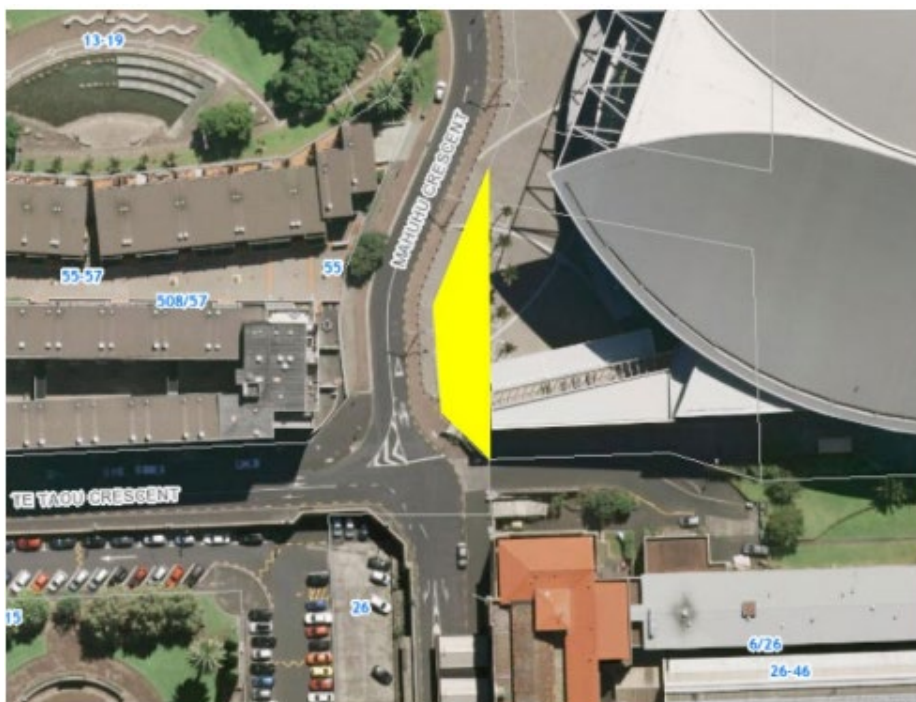
Open spaces

- [534] The Panel recommends the open space height limit be 4m on the basis of agreement from the planning, urban design, landscape, and heritage experts for both parties in the JWS dated 14 February 2024.

Special amenity yard

- [535] The Panel recommends a special amenity yard (Standard H8.6.30 and consequential amendments to matters of discretion and assessment criteria as outlined by Ms. Laird and Ms. Wong) be applied to protect views through to the Railway Station building from Mahuhu Crescent (as shown below) as necessary to accommodate a s 77O(a) (s 6(f)) QM "Quay Park Protection of historic heritage". The Panel adopts the expert views in the JWS dated 1 March 2024 and is satisfied that there is sufficient assessment to meet the requirements of s 77P.

Special amenity yard subject to standard H8.6.30.



Building frontage heights

[536] The Panel recommends the retention of the notified PC78 standard I209.6.2 Building frontage height and setback as necessary to accommodate s 77O(j) any other qualifying matter relating to 'Quay Park Open Space' and 'amenity and human scale of streets'. We prefer the Council's evidence for the management of frontage height and setbacks to Te Taou Gardens and the former Railway Station Building. We refer to the s 32 report for standard I209.6.2. Building frontage height and setback and relies on this and the evidence of Ms. Samsudeen and Ms. Laird and Ms. Wong in the application of the QMs.

[537] The Panel endorses the agreed position of the experts in the JWS dated 1 March 2024 and recommend:

- frontages to Te Ngaoho Reserve and Te Uringutu Reserve be managed through the City Centre Zone assessment criteria (in particular H8.8.2(1)(a)(ii)) for new buildings and external alterations and additions to buildings not otherwise provided for in PC78 as notified, instead of by precinct Standard I209.6.2 Building frontage height and setback.
- the yellow line shown below (8 Mahuhu Crescent) be managed by City Centre Standard H8.6.25 Building frontage alignment and height, rather than by Precinct Standard I209.6.2.
- purple frontages along Mahuhu Crescent and Taporu Street should be amended as below.
- the purple line be managed by Precinct Standard I209.6.2.



Key:

Purple = 18m plus 45° setback

Yellow = standard H8.6.25

Red = Precinct boundary

3.39 Precinct – Queen Street Valley

[538] This issue relates to the Queen Street Valley Precinct, particularly the following provisions:

- Table I210.4.1. Activity table (A3)
- Table I210.4.1. Activity table (A3)
- I210.6.1. Frontage height and setback

3.39.1 Statement of issue

- i. Appropriateness of the qualifying matters

3.39.2 Panel recommendation and reasons

[539] The panel recommends the retention of the notified PC78 Queen Street Valley precinct provisions as necessary to accommodate an existing s 77O(j) “other” QM relating to ‘Character buildings in City Centre zone and Queen St Valley Precinct’.

[540] No evidence was presented in relation to this topic challenging the Council’s position as notified in PC78. Consequently, we accept the Council’s s 32 evaluation on the Queen Street Valley precinct and are satisfied that the provisions meet the statutory tests pursuant to s 77R.

3.40 Precinct – Victoria Park Market

[541] This issue relates to the Victoria Park Market Precinct, particularly the following provisions:

- I212.4 (A2), (A3), (A4)
- I212.6.2 Building height
- I212.6.3 Courtyard
- I212.6.4 Adelaide Street Viewshaft
- I212.6.5 Building setback – Building platform 4

3.40.1 Statement of issue

- i. Appropriateness of the qualifying matters

3.40.2 Panel recommendation and reasons

[542] The Panel recommends the retention of the notified PC78 Victoria Park Market precinct provisions as necessary to accommodate an existing s 77O(a) QM relating to the protection of historic heritage as a matter of national significance. We note that the QM is an existing one and is therefore to be evaluated against the s 77Q alternative process for existing QMs.

[543] No evidence was presented in relation to this topic challenging the Council's position as notified in PC78. Consequently, we accept the Council's s 32 evaluation on the Victoria Park Market Precinct and are satisfied that the provisions meet the statutory tests pursuant to s 77Q.

3.41 Precinct – Viaduct Harbour

[544] This issue relates to the Viaduct Harbour Precinct, particularly the following provisions:

- Rule I211.4.1(A34) and (A36)
- I211.6.4 Building height
- I211.6.5 Site intensity
- I211.6.6 Building coverage
- I211.6.8 Special Yard A
- I211.6.9 Special Yard B
- I211.6.10 Public spaces and accessways
- I211.6.11 Viewshafts

3.41.1 Statement of issue

- i. Appropriateness of qualifying matters
- ii. The appropriate height to accommodate qualifying matters
- iii. 'identified' views
- iv. Effects on tenure
- v. Visual simulations
- vi. Reliance on resource consents process in the Viaduct Harbour Precinct
- vii. Additional qualifying matter – coastal inundation

3.41.2 Panel recommendation and reasons

3.41.2.1 Appropriateness of qualifying matters

[545] These were described in the Joint Witness Statement for the Viaduct Harbour Precinct (**JWS-VHP**) as follows:

1. *Regional Maunga viewshafts (and height in building sensitive areas)*
2. *Coastal inundation*
3. *Flood plains*

4. *Section 77O(a) (s 6(d) - the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers)*
5. *Section 77O(a) (s 6(f) - the protection of historic heritage from inappropriate subdivision, use, and development)*
6. *Section 77O(f) open space provided for public use*
7. *Section 77O(j) any other matter – City centre built form (City Centre Zone section 32, page 19, lists the principles that informed this qualifying matter including the following two that are most relevant to the Viaduct Harbour Precinct)*
 - *Protecting the relationship between the city centre and the Waitematā Harbour*
 - *Protecting amenity and retaining the “human scale” of streets*

[546] Alongside the above ‘generally agreed’ QMs were other matters that could have a further moderating effect on Policy 3(a) outcomes, being those related to transport and traffic effects on Fanshawe Street and the associated Rapid Transit Network, and infrastructure (primarily in terms of wastewater capacity).

[547] The Panel observes that the QMs encompass a range of considerations, with some applying absolute limits to any potential height and density outcomes for the precincts (e.g., Regional Maunga viewshafts, and potentially coastal inundation and flood plains), while others would require a more evaluative approach – e.g., the extent to which additional building height would impact on open space, amenity and the relationship between buildings and the harbour.

[548] The JWS-VHP noted that some witnesses sought confirmation from the Council as to the status of the mapping of QM 2 (coastal inundation) as the coastal inundation information layer included in PC78 is ‘information only’ and not part of PC78. Witnesses for VHHL considered that QM 7 (City centre built form) could be a QM subject to further assessment and information being available to justify their inclusion, and that a further s 32 analysis is required on this matter.

[549] The Panel accepts the appropriateness of the identified existing QMs on the basis of the VHP-JWS, and as we are satisfied that the existing QMs meet the statutory tests and with respect to the City centre built form QM for the reasons stated elsewhere in our report.

3.41.2.2 The appropriate height to accommodate qualifying matters

[550] The height standards for the Viaduct Harbour Precinct are set out in the notified version of PC78 at I211.6.4 and I211.10.3 (Precinct plan 3 – Building height controls). The Precinct is described (at I211.1 of the AUP) as including the harbour, waterfront land (including Hobson Wharf), and adjacent coastal marine area. It is characterised by its enclosed water space, interesting water edge, proximity to the city centre, and low-rise buildings. It is made up of three Sub-precincts A, B and C which in summary relate to pedestrian activity areas (e.g. water’s edge and open spaces, public open space and promenades, and residential areas).

- [551] The evidence for VHHL¹⁰ sought site-specific maximum height standards increase to 52m for 204 Quay Street (**Auckland Harbour Board Building**), including a 14m setback from Quay Street and a 5m setback from Lower Hobson Street to recognise the historic heritage façade, and for 115 Customs Street West (**Bivacco site**), to allow for taller marker buildings on these sites¹¹. Additional height was also sought within Sub-precinct A (from 24-30m to 50m) and within Sub-precincts B and C (from 16.5-18.5m to 24-25m).
- [552] Mr. Roberts' planning evidence for VHHL considered that the provision of additional development opportunities in the Viaduct Harbour Precinct will enhance its role within the City Centre Zone and that enabling additional height as sought by VHHL would not compromise the most attractive aspects of the Precinct when considered together with the proposed suite of development standards and assessment criteria.
- [553] Mr. Roberts preferred the comprehensive overview of the character of the Viaduct Harbour Precinct described in the evidence of Ms. Skidmore (for VHHL). In his view, the design-based planning framework is largely responsible for development achieving these key drivers of built character. He also agreed with Ms. Skidmore that the taller buildings provided through the relief sought by VHHL would create more visual interest consistent with a city centre environment.
- [554] The Council's position, as described in the evidence of Ms. Laird and Ms. Wong, was that the existing height standards for the Viaduct Harbour Precinct remained generally appropriate and would address the recommended QMs, save for some changes to the heights for the sites at 4, 10 and 12 Viaduct Harbour Avenue, 1 Fanshawe Street and 15-17 Sturdee Street (all from 24m to 30m) as discussed below.
- [555] Submitters for Wynyard Quarter Residents Association (**WQRA**) and the planning evidence of Mr. Haines for the Viaduct Harbour Bodies Corporate (**VHBC**) sought retention of the status quo. In particular, Mr. Scott for WQRA (referring to the evidence of Mr. Carter and Mr. Ryan) did not consider that additional height for the sites at 4-16 Viaduct Harbour Avenue (Property 151) would be realisable, citing the newness of the building, the large number of single tenants (low turnover) and engineering reasons.
- [556] Council's planning witnesses, Ms. Laird and Ms. Wong, considered the heights proposed by Mr. Roberts as inappropriate:
1. Reliant on Ms. Lee Sang (Urban Design, Council) who considered appropriate height at any water's edge is typically related to context and continued to support the notified height of 16.5m;
 2. Reliant on Ms. Walker (Heritage, Council), who remained of the view that alternative greater heights surrounding the Tepid Baths and Auckland Harbour

¹⁰ VHHL advised it was no longer pursuing a height standard of 72m across both the Viaduct Harbour and Wynyard Precincts, although it did not formally withdraw that relief.

¹¹ As amended by VHHL memorandum of counsel, 8 December 2023

Board buildings would affect their heritage values (as discussed further below); and

3. Through the cumulative local transportation effects of additional height sought by submitters discussed in the evidence of Mr. Clark is also relevant to the appropriate permitted heights within the Viaduct Harbour Precinct.

[557] Ms. Lee Sang also noted that the Precinct utilised a design and development approach of perimeter blocks, defined public space and human scale through a set of design guidelines and does not envision marker buildings. She considered that introducing a height standard of 52m at the Bivacco site would be inconsistent with the intention of lower building heights near the water's edge to ensure a stepping down of building heights from the City Centre core.

[558] The Council's evidence proposed that the notified permitted heights in PC78 be retained, with the exception – consistent with the heights Council's witnesses had agreed in the VHP-JWS - of three sites at 4, 10 and 12 Viaduct Harbour Avenue, 1 Fanshawe Street and 15-17 Sturdee Street (all from 24m to 30m), with consequential adjustment to FAR.

Auckland Harbour Board Building

[559] With regard to the Auckland Harbour Board Building, Mr. Wild on behalf of VHHL noted that the operative 24m height standard is higher than the existing building, and the same AUP historic heritage provisions would apply to the consideration of any building on this site. He also considered that the assessment of effects on historic heritage is not purely a function of height and his view was that an assessment cannot be adequately undertaken in the absence of an analysis of a particular design scheme.

[560] Ms. Walker's heritage evidence for the Council agreed with the proposed setbacks as in her opinion these will retain the original fabric of the northern and eastern street fronts, but she did not consider that the proposed height standard of 52m to be appropriate. She noted the importance of the building as a landmark and gateway to the Viaduct Harbour Precinct and the level of bulk will detract from these values and can visually impact on the physical attributes and other aesthetic values of the place. She remained of the view that any development involving an increase of height would need to be carefully assessed. This view was shared by Ms. Lee Sang.

Tepid Baths

[561] With regard to the Tepid Baths, Mr. Wild noted that the operative 24m height standard is significantly higher than the existing building, and the same AUP historic heritage provisions would apply to the assessment of any building on this site. He therefore considered that any new development on neighbouring sites would need to be respectful of the historic heritage in line with the restricted discretionary activity assessment required of any new building in the Viaduct Harbour Precinct in accordance with H8.8.1(1)(b).

[562] Ms. Walker's evidence noted that if development occurred in accordance with the current height standard it would be of a scale of the building to the north of the Baths (at 85-89 Customs Street West) which is more appropriate in terms of scale.

[563] She further explained that the small scale of the Tepid Baths requires a more bespoke approach to its immediate context to avoid visual dominance of its heritage values. She had agreed in the VHP-JWS to an increase in height to 30m at 15-17 Sturdee Street, an adjacent site that currently contains a multi-level carpark. She considered that an increase of 6m there would have little impact on the values of the Tepid Baths.

Precinct description and policy

[564] The Panel also heard from Mr. Roberts, Mr. Haines and Ms. Laird and Ms. Wong about the appropriate precinct description and policy. Mr. Roberts sought that references to "low-rise character buildings" be deleted from the Viaduct Harbour Precinct description (I211.1) and "low-medium rise" from VHP Policy I211.3(4), for the following reasons:

1. To more accurately reflect the character of the Precinct. He noted that while there are two sites that have historic heritage notations, it is not accurate to refer to areas of low-rise character buildings.
2. To acknowledge and accurately reflect the changes that have occurred within the Precinct since the provisions were initially introduced, noting that development over the past 15-20 years has changed the height profile of the area markedly.

[565] Mr. Haines for VHBC sought the retention of the deleted words in the notified Policy I211.3(4)(b) as in his view it is the existing development that already provides the 'distinctive low-medium rise character', while the 'sense of intimacy' is an additional, separate quality. He also considered that Policy I211.3(4)(c) should be reinstated in an amended form in order to recognise the Precinct's 'juxtaposition' with higher rise neighbouring precincts, and to emphasise the Viaduct Harbour's role as a complementary low-medium rise waterfront environment. The amended wording proposed by Mr. Haines was as follows:

(c) emphasise the juxtaposition between low to medium rise buildings within the precinct and taller buildings enabled in the adjacent Downtown West, Central Wharves and Wynyard Precincts.

[566] Ms. Laird and Ms. Wong disagreed with Mr. Roberts and Mr. Haines, as the terms used in the provisions are considered in their view to more accurately describe the Viaduct Harbour Precinct's existing low-rise and medium-rise buildings and will preserve its distinct character. Their recommended version of Policy I211.3(4)(b) reinstated the wording that was previously deleted.

Recommendations:

- [567] The Panel prefers the evidence of Ms. Lee Sang, Mr. Kensington and Ms. Walker (other than for Bouzaid Way and the Auckland Harbour Board Building outlined below).
- [568] The Panel agrees that the maximum height standards for the properties at 4, 10 and 12 Viaduct Harbour Avenue, 1 Fanshawe Street and 15-17 Sturdee Street should be amended to 30m (from 24m) with consequential adjustment to FAR.
- [569] For two locations around Bouzaid Way where Eke Panuku and Stratis supported 31m and Ms. Lee Sang supported retaining 24m, The Panel prefers the evidence of Eke Panuku and Stratis, given that the adjacent viewshaft location already protects this link to the coastal marine area and provides a connection to the harbour, but recommends 30m (from 24m) consistent with Ms. Lee Sang's recommendations for the adjacent land (with consequential adjustment to FAR).
- [570] With respect to the **Auckland Harbour Board Building**, the Panel prefers the evidence of Ms. de Lambert and Mr. Wild as the approach they have set out is appropriately aligned with the waterfront axis and forms part of the Viaduct Harbour Precinct that is closest to the core of the city centre. We are satisfied that the proposed set-back standards and the existing design-related criteria within Chapter H8 will be sufficient to ensure that the design outcome of any new building or redevelopment will be appropriately integrated to, and not unduly compete with, the existing Auckland Harbour Board Building. We therefore recommend amending the height standard for this site to 52m, in combination with a 15m setback from Quay Street and a 5m setback from Lower Hobson Street. We recommend a consequential amendment to I211.6.4 to incorporate the set-backs, likewise the Council will need to determine an appropriate consequential adjustment to FAR to enable additional development capacity which reflects the increased height.
- [571] With respect to the **Tepid Baths** the Panel prefers the evidence of Ms. Walker to maintain the operative 24m height for the Tepid Baths building, but supporting a 30m height standard for the adjacent multi-level carpark at 15-17 Sturdee Street (also supported by Ms Lee Sang). We agree that there is a different context in this location because the triangular multi-level carpark site is more related to the heights at Sturdee Street and Fanshawe Street and is not as directly connected to Viaduct Harbour Precinct as the balance of the block.
- [572] With respect to the **Bivacco Site** at 115 Customs Street West, the Panel prefers the evidence for the Council. A 52m 'marker' building would undermine other marker buildings and the waterfront axis of the City Centre Masterplan. We prefer the evidence of Ms. Lee Sang in this regard that a marker building in this location lacks any obvious connection with existing marker building sites within Wynyard Precinct (or with the additional height that we have recommended for the Auckland Harbour Board Building).
- [573] With respect to the former Auckland Municipal Markets building at 104 and 106 Customs Street West, the Panel prefers the evidence of Ms. Walker that an increase in height has the potential to adversely affect the Tepid Baths.

[574] With respect to the precinct description and policy, in light of our recommendations above, the Panel considers that 'low rise' better describes the current character of the Viaduct Harbour Precinct for the purposes of the precinct description at I211.1; while 'low to medium rise' in terms of Policy I211.3(4) captures the range of heights found to be acceptable in the Precinct and those that we have determined to be appropriate in the preceding discussion. We acknowledge that the 52m recommended for the Auckland Harbour Board Building may be at the outer bounds of 'medium rise' but equally would not be construed as 'high rise' and the building is on the edge of the Precinct. It also performs the additional role as a marker building on the waterfront axis. We prefer Ms. Laird and Ms. Wong's assessment and conclude that the notified wording accurately conveys the character of the Viaduct Harbour Precinct and intended level of development to be enabled through the Panel's recommendations.

3.41.2.3 Identified views

[575] Mr. Falconer and Mr. Haines on behalf of VHBC supported the deletion of the text "identified" in notified Objective I211.2(2), on the basis that the objective should continue to apply to all significant views and they were concerned at the potential omission of viewshafts over Hobson Wharf Extension.

[576] In reliance on Peter Kensington's rebuttal evidence, Ms. Laird and Ms. Wong supported the removal of "identified" from the objective and considered that this approach continues to ensure the conservation and enhancement of key views of Waitematā Harbour and the surrounding areas within the Viaduct Harbour Precinct contributing towards a WFUE.

Recommendation

[577] The Panel agrees that the word 'identified' unduly confines the potential views that may be considered in terms of Objective I211.2(2) and considers that the reference to "significant" views is appropriate. We recommend the deletion of "identified".

3.41.2.4 Effect on tenure

[578] The Panel heard the concerns of the owners of apartments in the Precinct as to the likely increase in ground rents on the land underlying their apartments due to higher land values resulting from increased height limits. They pointed out that there is no realistic likelihood of additional development capacity being 'realised' in terms of Policy 3(a) within the lifetime of any change brought about by PC78, either through complete redevelopment or additional floors. Counsel for VHHL submitted that this is not a RMA matter, and the situation is no different to any 'upzoning' of property anywhere else.

[579] While the impact on property values of any plan change is not normally a matter to be considered, it has the potential in this case to undermine the WFUE test if it was to result in a significant loss in the value of improvements, and apartment owners no longer being able to afford the ground rents or to maintain their apartments.

[580] The Panel agrees that redevelopment of the recently master planned and completed apartments to realise additional enabled height is unlikely, and considers that the identified issue could constitute an “effect” due to the consequential amenity effects if apartments were run-down or abandoned due to excessive ground rent increases, as this has the potential to undermine the Precinct as a WFUE.

[581] While acknowledging these concerns, we have reached our conclusions as to the appropriate heights based on the evidence as to building scale effects (i.e., character, landscape, planning and urban design and the relevant QMs). We have generally agreed with the appropriateness of existing heights for those apartment complexes already developed, while recommending increased allowances for specific (typically non-residential) sites where additional height is appropriate.

3.41.2.5 Visual Simulations

[582] An issue was raised as to the usefulness of the visual simulations and modelling, undertaken in the first instance by the Council and supplemented by submitter evidence. The Panel appreciates the shortcomings inherent in all visualisations but has adopted a balanced view of their use (together with our site visits) to inform our findings.

3.41.2.6 Reliance on resource consents process in the Viaduct Harbour Precinct

[583] An issue was raised as to the extent to which developers should rely on resource consents to seek further height, rather than by increased height standards under PC78.

[584] Evidence, including from the Council, considered that the resource consent process is a more appropriate way to address the acceptability of height increases beyond the limits proposed. Setting a height standard can often be seen as establishing a height 'baseline', or minimum, with resource consent applications assessing only the adverse effects arising from any departure from those standards (such as in terms of views, shading or general visibility etc).

[585] Height exceedances in the Viaduct Harbour Precinct are treated as restricted discretionary, and so we are conscious that greater potential exists for resource consent applications of this nature (or that the consent process is less of an impediment to such proposals).

[586] Nevertheless, the Panel notes that such infringements remain subject to the same considerations inherent in our findings on establishing the height limits for the Viaduct Harbour Precinct via I211.8.1(12) - i.e.: (a) building scale, dominance and visual effects; (b) effects on current or planned future form and character; and (c) pedestrian amenity and function, and that Policy I211.3(4) is specifically engaged, via I211.8.2(12). Together, the Panel considers that these establish a broad framework on which any infringements would be assessed, notwithstanding the technical 'restriction' to a decision-maker's discretion.

[587] The Panel is satisfied that the height standards it has recommended provide for a logical height framework for the Viaduct Harbour Precinct that reflect its existing and planned character and relevant QMs. In the context of an IPI, rather than focus on whether a resource consent is preferable to an amendment to the height standard, we have approached our recommendations through the direction of Policy 3(a) and the application of QMs as directed by the relevant statutory tests.

3.41.2.7 Additional qualifying matter – coastal inundation

[588] PC78 as notified identified the management of significant risks from natural hazards as an existing QM relating to AUP provisions. Stratis sought the inclusion of an additional QM in the Viaduct Harbour Precinct "the threat of future coastal inundation" to justify retaining the current precinct provisions, or down-zoning.

[589] The issues in contention associated with the additional QM sought by Stratis was the extent to which this is a relevant consideration having regard to the NPS-UD policy prescriptions (including that of the NZCPS) described in section 3.2 above, and the extent to which they should influence or determine the height standards for the Viaduct Harbour Precinct.

[590] We note that the JWS-VHP identified that the corresponding layer in PC78 was for information only and would need to be included as a specific map if to be relied on as a QM.

[591] While there was discussion as to whether the Panel should set aside the issue of coastal inundation, being a matter for future hearings, we heard submitter evidence on this matter specific to the Viaduct Harbour and Wynyard Precincts.

[592] The Council signalled that it would provide its evidence on this issue at later hearings and so we therefore did not receive full evidence on the issue. That said, we note that the existence of a Council-identified coastal inundation QM did not form the basis of any absolute position with respect to the Council's recommendations as to building heights, having regard to their support for some height increases in some locations. Ms. Laird and Ms. Wong considered that the heights and density provided for in the Viaduct Harbour Precinct are only made less enabling to the extent necessary to accommodate the precinct's QMs which include 'sea level rise'.

[593] The Panel notes that the NZCPS and the NPS-UD must both be given effect to. With respect to s 77O(b), the QMs that may modify the requirements of Policy 3 include giving effect to the NZCPS. It is therefore evident that the NZCPS can constrain the NPS-UD 'to the extent necessary'.

[594] While submissions on this matter only related to the Viaduct Harbour Precinct, and no corresponding submission point was made with respect to the Wynyard Precinct, the evidence of Dr. Bell for Stratis and Mr. Reinen-Hamill for VHHL covered both precincts. Given the similarity of issues for both areas and their similar ground levels and that they are both on reclaimed land, we have considered the evidence in the

context of both precincts, noting that our power to make recommendations is not limited by submissions.

- [595] With respect to s 77P(3)(a)(i) the “area” subject to the QM was identified in the submission as within the 1% + 1.5m AEP for the Viaduct Harbour Precinct (and by extension of the evidence also for the Wynyard Precinct). As VHHL pointed out however, the same sea level rise is mapped over extensive areas of the lower City Centre and potentially much wider across Auckland. It is unclear to the Panel, in advance of hearing evidence from the Council, where a sea level rise QM would appropriately be applied beyond the Viaduct Harbour (and Wynyard) Precinct.
- [596] With respect to s 77P(3)(a)(ii), Dr. Bell’s evidence was that intensification was incompatible with sea level rise, but the evidence for VHHL was that solutions could and would be found to protect development from sea level rise.
- [597] With respect to s 77P(3)(b) and (c), Dr. Fairgray’s economic evidence concluded that there were nil opportunity costs associated with accommodating the Council’s identified QMs given the Council’s modelling suggesting PC78 enabled capacity far exceeding demand. Mr Colegrave’s economic evidence for VHHL concluded that planning provisions for the low-lying parts of the City Centre Zone should seek to enable development opportunities and capacity that will encourage the implementation of engineering and management methods to respond to and manage sea level rise, funded through that additional capacity.

Recommendation:

- [598] The Panel is satisfied that the evidence for Stratis meets some components of s 77P(3) and therefore we have concerns about the effects of potential flooding and coastal inundation within the Viaduct Harbour Precinct. However, we are somewhat hamstrung by procedural complications arising from pauses in the PC78 process and cannot pre-empt any outcomes arising from the Council’s later evidence and/or a separate plan change addressing natural hazards.
- [599] The Minister has directed that the Council must make its decision on the City Centre Zone by 31 May 2025 which necessitates that the Panel make its recommendations based on the evidence we currently have. We consider that we cannot recommend modifications to Policy 3 intensification in the Viaduct Harbour Precinct (and the Wynyard Precinct) on the basis of a new ‘sea level rise’ QM in the absence of full evidence on the spatial application of such a QM more broadly across the City Centre and the remainder of Auckland. We therefore do not need to make an out of scope recommendation with respect to the Wynyard Precinct.
- [600] Overall, our findings on the substantive matters arising from the submissions relating to building heights have been made with respect to the impact of other QMs, although those recommendations do result in limited intensification in the Viaduct Harbour Precinct.

3.42 Precinct – Wynyard

[601] This issue relates to the Wynyard Precinct, particularly the following provisions:

- I214.4(A48)(A51)(A53)(A58)(A59)(A60) and (A61)
- I214.6.6 Building height
- I214.6.7 Maximum site intensity
- I214.6.8 Building frontage alignment and height
- I214.6.12 Lanes and view shafts

3.42.1 Statement of issue

- i. Appropriateness of qualifying matters
- ii. The appropriate height to accommodate qualifying matters
- iii. Special character
- iv. Floor area ratio and site intensity
- v. Reliance on resource consents process as the appropriate alternative
- vi. Changes to activity status and a new sub-precinct H
- vii. Wynyard Point 'park flip', Open Space zoning and 'stopped roads'
- viii. Masterplanning
- ix. Transport

3.42.2 Panel recommendation and reasons

3.42.1 Appropriateness of qualifying matters

[602] These were described in the Joint Witness Statement for the Wynyard Precinct (**JWS-WP**) as follows:

1. *Regional Maunga viewshafts (and height in building sensitive areas)*
2. *Coastal inundation*
3. *Flood plains*
4. *the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers) s 77O (s 6(d) – [sic]*
5. *any other matter - city centre character buildings*
6. *open space provided for public use s 77O(f)*
7. *any other matter – City centre built form (City Centre Zone section 32, page 19, lists the principles that informed this qualifying matter) s 77O(j)¹²*

[603] The JWS-WP included similar comments as those in the JWS-VHP regarding the coastal inundation layer, while witnesses for VHHL and others considered that QMs 5 (character buildings) and 7 (City centre built form) required further assessment.

[604] The Panel makes the same observations as we did for the Viaduct Harbour qualifying matters (see 3.41.2 above). We will not repeat them in full other than to summarise:

¹² The Panel understands that this would relate to the two additional bullet points noted as part of point 7 in the JWS-VHP

- Other matters such as transport on Fanshawe St and infrastructure constraints may further moderate Policy 3(a) outcomes.
- Some QMs apply absolute height limits (e.g., Regional Maunga viewshafts), and potentially coastal inundation and flood plains, while others such as impacts on open space and relationship with the harbour, involve an evaluative approach
- The Panel heard evidence on coastal inundation specific to the Viaduct Harbour Precinct and considers it to be relevant to its deliberations for the Wynyard Precinct as well. We note that it was a generally agreed QM.
- The existence of a coastal inundation QM did not form the basis of any absolute position with respect to our recommendations as to building heights, having regard to our support for certain increases within the Precinct.

[605] The Panel accepts the appropriateness of the identified existing QMs on the basis of the JWS-WP. We are satisfied that the existing QMs meet the statutory tests, and with respect to the city centre built form QM, we refer to our recommendations elsewhere in our report.

3.42.2 The appropriate height to accommodate qualifying matters

[606] The height standards for the Wynyard Precinct are set out in the notified version of PC78 at 1214.6.6, 1214.10.4 (Precinct plan 4 – Basic height) and 1214.10.5 (Precinct plan 5 – Maximum height).

[607] The Precinct is described (at 1214.1 of the AUP) as representing the north-western end of the city centre. The land is bounded on three sides by the sea and by Fanshawe Street on its southern boundary. It is the largest brownfields area within the city centre. The precinct also includes an area of the coastal marine area to the north and west. The purpose of the Precinct is to provide for the comprehensive and integrated redevelopment of this large brownfields area while enabling the continued operation of marine industry and hazardous industry.

[608] The existing built form of the Precinct is described as including a collection of special character buildings, marine and industrial structures, and features that provide a background context to the area's stages of development. Collectively, these elements are described as creating an overall industrial aesthetic of structures and buildings, with robust materials and simple details.

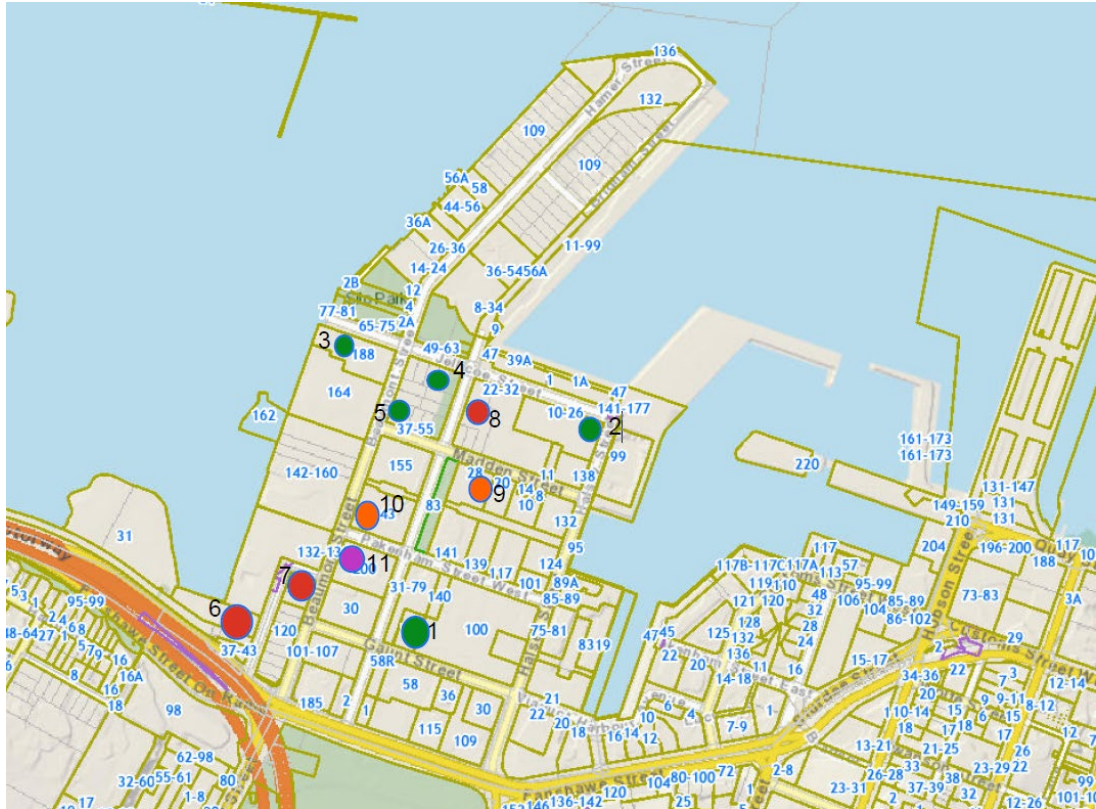
[609] The Wynyard Precinct provisions establish a range of heights, established with reference to the Wynyard Quarter Urban Design Framework (**UDF**), although in a number of instances these have been exceeded by individual development projects through resource consents.

[610] The submissions and evidence from the various parties with interests in the Precinct sought relief covering a range of matters summarised as follows:

- Height standards generally;
- Fanshawe Street frontage and shading of Victoria Park;

- Increased height for existing marker building site at 55 Gaunt Street (including part of 100 Halsey Street) (**VHHL marker building site**);
- New marker building at 23 Westhaven Drive (**Swashbucklers site**);
- New marker building at 2 Westhaven Drive and part of 120 Beaumont Street (**Sailor's Corner**);
- Removal of special character overlay from the building at Sailor's Corner;
- Increased height for existing marker building site and adjacent sites at 188 Beaumont Street and part of 164 Beaumont Street (**Orams' site**);
- New marker building at the block bounded by Jellicoe, Daldy, Madden and Halsey Streets (**Sanford's site**);
- New Sub-precinct "F" to convert from marine to mixed-use;
- Increased height and re-orientation for one of a pair of existing marker building sites at the corner of Beaumont and Madden Streets (**western Eke Panuku marker building site**).
- Increased height and "park flip" at Wynyard Point headland (Wynyard Point);
- Deletion of FAR and site intensity controls;
- The extent to which the consideration of building heights should be left to the resource consent process;
- Amendments to activity status;
- Rezoning of stopped roads to Open Space and Business zones; and
- Transport considerations and whether parking restrictions (maximum standards) should be retained.

[611] As the various parties and witnesses referred to sites in the precinct by a variety of street addresses and UDF development site numbering, the Panel has numbered relevant sites on the map below:



[612] Sites 1 – 5 (green) are existing marker building sites identified in the operative Wynyard Precinct provisions and UDF:

1. VHHL marker building site
2. Corner of Jellicoe and Halsey Streets (referred to as site 23 in the UDF, referred to in evidence as the ASB marker building)
3. Orams site (including the existing marker building site referred to as site 18 in the UDF)
4. and 5. Eke Panuku existing marker building sites (providing for a pair of marker buildings, sometimes collectively referred to in the evidence as “the triangles”; referred to as sites 19 and 20 in the UDF)

[613] Sites 6 – 8 (red) are new marker building sites proposed by submitters:

6. Swashbucklers site
7. Sailor’s Corner
8. Sanford’s site

[614] Sites 9 and 10 (orange) and 11 (purple) have additional heights proposed by submitters:

9. 28 Madden Street (**East 1**)
10. 143 Beaumont St (mistakenly referred to as 143 Pakenham Street in some evidence) (**West 2**)

11. 200 Pakenham Street West¹³

[615] Not numbered on the map but also relevant to our report is Wynyard Point to the north of the precinct.

[616] A useful map outlining existing built heights and consented heights overlaid on an aerial photograph was provided by Ms. Bull for VHHL, which was of particular assistance to the Panel on our site visits.

(a) Height standards overall

[617] The height standards as proposed in PC78 for the Wynard Precinct are set out at I211.10.4 (Basic height) and I211.10.5 (Maximum height) and shown on Precinct plan 4 - Basic height and Precinct plan 5 - Maximum height (**height map**).

- In general, the basic height standard is 15m in Sub-precincts B, D E, F and G, and 31m in (most of) Sub-precinct A in the southern part of the precinct which has frontage to Fanshawe Street. Basic height for the Swashbucklers site is 5m, for the western end of the Orams site is 10m, and for two sites at either end of Precinct A fronting Gaunt Street is 25m.
- The maximum heights range from 27-31m (18m to the west of Beaumont Street). Maximum height for the Swashbucklers site is 5m, and for the western end of the Orams site is 10m. Five 'marker buildings' of up to 52m are provided for:
 - The existing ASB Building shown as site 2 on our plan above (the only marker building that has been built to date);
 - The pair of marker buildings shown as sites 4 and 5 on our plan above (with 5 being the western Eke Panuku marker building);
 - Within the Oram's site; and
 - The VHHL marker building site.

[618] VHHL was the only submitter to present evidence who had sought increased heights across Wynyard Precinct as a whole.¹⁴

[619] VHHL's submission sought 72.5m height across the entire precinct (and 110m height for the VHHL marker building site) or alternatively nuanced site-specific height standards in those parts of the Wynyard Precinct south of Pakenham Street. (VHHL also sought deletion of the FAR controls from the precinct and replacement with alternative standards, addressed later in our report).

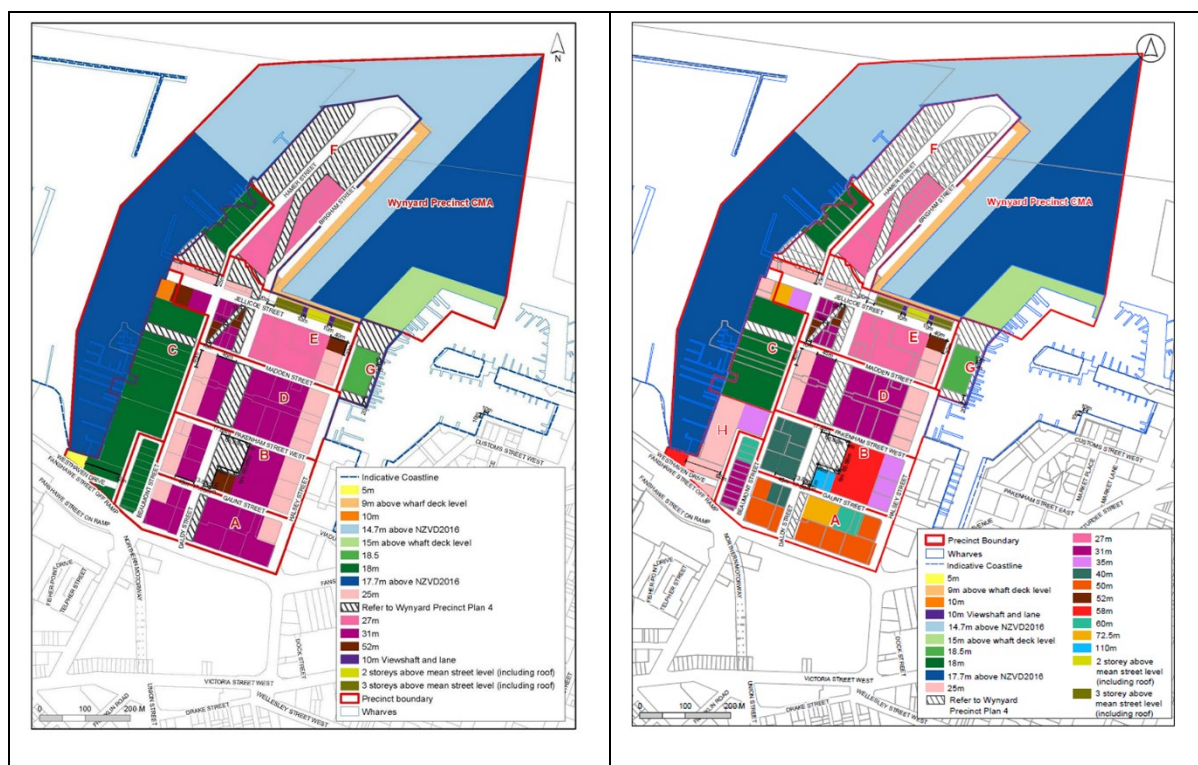
[620] VHHL's relief was refined (although the 72.5m height submission point was not withdrawn) at the hearing to the heights set out in Mr. Roberts' planning evidence.

[621] The operative height map (left) and proposed height map supported by Mr. Roberts (right) are included below as a general comparative overview. (It is not intended that

¹³ Winton's further submission supported the submission from Eke Panuku and requested 46m at 200 Pakenham Street West but Winton did not pursue this in evidence.

¹⁴ Mansons sought an increase in maximum height to 52m across the precinct. Willis Bond sought a precinct-wide increase of no more than 15m, but evidence focused on FAR.

the heights are legible at this scale - specific heights are discussed later in our report).



[622] Mr. Roberts, relying on Mr. McIndoe (urban design) and Ms. de Lambert (Landscape) for VHHL, supported alternative heights throughout the Precinct. He described the overall approach to the proposed height map as representing a more nuanced approach than VHHL's original request for 72.5m across the whole Precinct, for the reasons that VHHL's height proposal:

- retains the overall reduction in height from the city centre core towards the harbour edge;
- retains lower heights within the southern part of the Precinct for the coastal edges and greater height in the centre of the Precinct;
- provides for a general increase in heights enabled throughout the southern part of the Precinct while retaining a careful gradation in height between and within blocks;
- recognises and respects the AUP viewshafts that cross the Precinct;
- retains the use of marker buildings but increases their height so as to ensure that they provide a genuine marker function in the context of the height of structures that have been approved and constructed in the Precinct since the operative provisions were developed, and the increases proposed generally across the Precinct within VHHL's submission; and
- provides for a new marker building site at the western end of the Precinct, adjacent to Westhaven Drive, to function as a gateway to the City Centre.

- [623] Ms. de Lambert considered that the VHHL height proposal will reinforce the Precinct's desired urban form of carefully considered height variation.
- [624] The evidence for other submitters seeking height increases on specific sites is addressed later in our report.
- [625] The heights sought by VHHL across the precinct were supported in the JWS-WP by Orams, in some locations by Willis Bond / Mansons, and in some locations by Eke Panuku.
- [626] Ms. Laird and Ms. Wong for the Council, relying on Mr. Soder (urban Design) and Mr. Kensington (landscape), did not support the heights proposed by Mr. Roberts (except for limited increases to specific sites addressed below).
- [627] Mr. Soder disagreed with Mr. McIndoe that the height and density in the Precinct needs to "catch up" with height and density in the city centre. Mr. Soder considered that this approach ignores place-specific conditions and would downgrade the Precinct's urban form and amenity value. Mr Soder expressed significant concerns with the change of character, impact on laneways, streets and squares, and visual dominance that would result from VHHL's height proposal.
- [628] Mr. Kensington considered that (with limited exceptions) the operative building height should be left primarily unchanged so that the landscape and visual amenity values are maintained.
- [629] Mr. Lala (planning witness for Winton) did not support any change, saying that the area reflects a historic master-planned and integrated approach and that any change should be undertaken via a separate comprehensive process. Mr. Lala highlighted that VHHL's requests for height increases had not included any change to the relevant objectives and policies against which such increases would be assessed, and the flow-on effect of this is that any subsequent changes to height standards should be minimal. He noted that Winton had been through the resource consent process to infringe height for 200 Pakenham Street and at 15 Westhaven Drive.

Recommendation:

- [630] The Panel notes that none of the evidence for submitters sought an unlimited height standard in reliance on a more enabling interpretation of Policy 3(a) and there was an acknowledged self-limiting factor in their respective approaches. That is, even where QMs were not specifically referred to in their evidence, all witnesses implicitly accepted that extensive modifications to Policy 3(a) were necessary in the Precinct.
- [631] We note that the *Waikanae* decision was issued after the first City Centre hearing and as a consequence none of the JWS-WP, evidence or legal submissions for the Wynyard Precinct addressed *Waikanae* (although they did address s 80E).
- [632] With respect to height standards overall in the Precinct, the Panel prefers the evidence for the Council and Winton.

- [633] We consider that the extensive height increases sought by VHHL - in the context of the existing master-planned approach for the emerging Precinct as developed through the UDF - are not “consequential on” PC78. The relief does not address Policy 3(a) intensification but instead seeks a comprehensive review of the operative Precinct which is not envisaged by the expedited IPI process. We reach the same view with respect to the collective effect of the several site-specific height increases sought by submitters and addressed below.
- [634] We agree with Mr. Lala that the fundamental reimagining of the existing masterplan for the Precinct to address the height standards overall (or the specific height increases sought by submitters in combination) does not satisfy *Waikanae* and would need to be subject to its own specific plan change process under the Schedule 1 processes.
- [635] If the Panel is incorrect in its approach to *Waikanae*, we record that on the merits we would not recommend the overall height standards sought by VHHL.
- [636] We agree with Mr. Lala and Mr. Kensington that the proposed heights do not implement the (unchanged) Precinct objectives and policies. We agree with Mr. Kensington that the proposed heights will not achieve a transition between the city centre core and the water’s edge and will be visually dominant. Comparing the operative and proposed height maps we consider that VHHL’s proposed height map is overly fragmented and site-specific in the context of the Precinct.
- [637] Finally, we are not satisfied that the proposed heights would accommodate the identified QMs including for the reasons addressed below.
- [638] We have nevertheless considered the relief sought by submitters (including VHHL) with respect to specific sites in the context of the Precinct in the following sections of our Report and with reference to the JWS-WP.

(b) Fanshawe Street frontage and shading of Victoria Park

- [639] VHHL’s evidence supported increasing heights along Fanshawe Street from 31m to 50m. This increase was supported in the JWS-WP by Orams and Willis Bond / Mansons.
- [640] The proposed height increase along the Fanshawe Street frontage was addressed by the witnesses in terms of both urban design and landscape outcomes, as well as potential shading effects on Victoria Park.
- [641] As described in the evidence of Mr. Roberts, the change in proposed height in this area reflected an approach to provide for a general increase in heights throughout the southern part of the Precinct while retaining a careful gradation in height between and within blocks.
- [642] Mr. McIndoe recommended the increase to 50m to respond to the width of Fanshawe Street, the openness of the street and Victoria Park, and the potential for 62m-high development across Halsey Street to the east of Victoria Park. He noted that heights

along the northern face of Fanshawe Street were also limited by shading study findings, to achieve a balance between avoiding undue mid-winter shading while providing as much development potential as possible and enabling an appropriate urban form outcome along the street. He highlighted that only one of the sites along this edge might rise to 50m in the foreseeable future. This is because of the recent and good quality development that has occurred along this area (to the current 31m maximum).

[643] Mr. Soder considered that the scale of the proposed height limits along Fanshawe Street would be inappropriate to effectively transition from the City Centre to the Wynyard Precinct, while noting that the Fanshawe Street block has been developed over the last ten years and that these buildings would be unlikely to be replaced in the near future. Mr. Soder noted that shading effects were only one of his concerns with VHHL's height proposal in this area (with his overall response on the VHHL height proposal recorded above).

[644] With regards to the issue of the extent of shading on Victoria Park, we refer to our findings in section 3.17 above.

Recommendation

[645] If the Panel is incorrect in its approach to *Waikanae*, then on the merits of additional height along Fanshawe Street the Panel prefers the evidence for the Council. We would maintain the operative 31m height along the Fanshawe Street frontage.

3.41.4 Marker buildings and site specific height increases

[646] The evidence on behalf of a number of submitters supported a variety of heights for particular sites in the Wynyard Precinct. The issues associated with the height standards in the Precinct relate to:

- Increased height for existing marker building sites; and
- New marker building sites.

[647] We address the site-specific height increases sought thematically by submitters.

Height increases sought by VHHL

[648] VHHL sought increased building heights for an existing marker building site and for two new marker building sites. These are summarised as height increases:

- From 52m to 110m for the existing VHHL marker building site
- From 18m to 60m for a new marker building site at Sailor's Corner
- From 5m to 58m for a new marker building site at the Swashbucklers site

[649] Mr. McIndoe supported increased height for the VHHL marker building site and the two new marker buildings at Sailors Corner and the Swashbucklers site. In his view the increased heights would provide variation to the skyline, mark key points in the Wynyard area, and be consistent with the principle of 'a varied and legible skyline' as agreed in expert witness conferencing. His position was that they needed to be

conspicuously taller than nearby buildings to function as effective markers and thereby contribute to the intended skyline variation and legibility.

- [650] With respect to the apparent proximity of the existing and proposed marker building sites Mr. McIndoe considered that they all have different functions, and that the marker buildings would contribute to the interest and complexity of what is currently a relatively flat skyline.
- [651] The Council witnesses were generally opposed to VHHL's proposed height increases and opposed the additional marker buildings because they will not be located along one of the three axes identified in the UDF, so as to strengthen these axes or add legibility.

VHHL marker building site

- [652] VHHL sought an increase from 52m to 110m for the VHHL marker building site.
- [653] The JWS-WP records that Orams supported 110m, Eke Panuku supported 58m and the Council supported 60m.
- [654] Mr. McIndoe provided architectural testing for the VHHL marker building site and expressed his view that a taller marker building in this location would establish a strong centre for the Precinct at a location not impacted by Regional Maunga viewshafts, while shading considerations for Victoria Park limited the height to 110m.
- [655] Ms. de Lambert considered that additional height is desirable for this existing marker building site given the number of consents granted for additional height for development in its vicinity and in the context of the additional height sought for other sites as part of the VHHL relief.
- [656] The Council supported a limited increase from 52m to 60m.

Swashbucklers site

- [657] VHHL sought an increase from 5m to 58m to enable a new marker building at the Swashbucklers site.
- [658] The JWS-WP records that Orams supported 58m, the Council supported 18m and Eke Panuku supported 25m.
- [659] Mr. McIndoe provided architectural modelling for the Swashbucklers site. In response to questions about whether a lesser scaled building could create the gateway status sought by VHHL he said that he saw the site as marking the entry to the city as one moves off the Harbour Bridge and enters the city.
- [660] Ms. de Lambert considered that a 'gateway' scaled building at the Swashbucklers site has a clear logic as the westernmost site in the City Centre located adjacent to the only vehicular route into the city centre from the north.

[661] Mr. Soder considered that a marker building is not needed at the Swashbucklers site for a person to realise they are in the city centre and that too many marker buildings dilute their purpose as 'markers'.

[662] The Council supported a limited increase from 5m to 18m.

Sailor's Corner

[663] VHHL sought an increase from 18m to 60m to enable a new marker building at Sailor's Corner.

[664] The JWS-WP records that Orams supported 60m and Eke Panuku supported 25m.

[665] Mr. McIndoe described the proposed marker building as varying the skyline, marking the point of street entry to Westhaven Drive, and providing an opportunity to contribute to the intensity and diversity of use in the south-western part of the precinct where marine-related activities are anticipated to continue to occupy most of the ground plane.

[666] Ms. de Lambert considered that a new marker building at Sailor's Corner will support the original intent of marker buildings within the Wynyard Quarter, in supporting the legibility of the waterfront precinct as part of the City Centre.

[667] With respect to special character (separately discussed below) as relevant to height, Mr. Wild for VHHL supported the height proposed. Ms. Walker for the Council supported retaining the 18m height standard.

[668] Mr. Burgess for Winton was opposed to further height increases for Sailor's Corner. He noted that Winton had proceeded through a resource consent process to achieve approval for their proposed development on the adjacent site at 132 Beaumont Street and considered that this was a more appropriate way for VHHL to progress its objectives for Sailor's Corner.

[669] Mr. Soder noted that Sailor's Corner is not located on any of the Precinct's axes and considered that 58m is not in keeping with the concept of heights stepping down towards the waters' edge.

[670] The Council did not support any additional height at Sailor's Corner.

Recommendations on VHHL relief

[671] If the Panel is incorrect in its approach to *Waikanae*, on the merits of site-specific relief sought by VHHL:

- For the VHHL marker building site we prefer the evidence for the Council. We would recommend a height of 60m to maintain the marker function for this site in the context of increases that have been enabled on other sites beyond the original UDF.
- For Sailor's Corner we prefer the evidence for the Council and conclude that it is not appropriate in the context of the precinct to provide for a further marker

building at this location. Sailor's Corner is not located along one of the three axes for the Wynyard Precinct and so would not strengthen these axes nor provide legibility to the Precinct's overall urban structure. Further, we do not consider that it is appropriate to provide for a 'gateway' site or marker for the entrance to Westhaven Drive when that function has already been achieved elsewhere in the precinct (to the south). We would not recommend any increase in height.

- For the Swashbucklers site we prefer the evidence for the Council. We do not consider that an additional marker building is appropriate at this location to define the entry to the city centre. We do not consider that the alternative of 25m supported by Mr. McKay for Eke Panuku would maintain an appropriate transition to the water's edge. We would recommend 18m on the basis that the 18m height standard is largely consistent along the harbour edge through Sub-precinct C and reinforces the approach of building heights stepping down to the harbour edge.

Height increases sought by Orams

[672] Orams sought to increase height standards for the Orams' site from 10m/52m/31m (52m being an existing marker building site) to 25m/72.5m/35m and incorporating a 10m setback from the harbour edge.

[673] Orams' position was that PC78 fails to properly recognise the unique location, vibrancy, and existing and planned development of the Precinct. Orams sought specific heights to maintain a 'sleeving' of the existing marker building site by two adjacent lower heights, and proposed a 10m harbour edge setback, so that increases to height will achieve an appropriate level of variation and interest in built form within the precinct. During the hearing Orams confirmed that the 10m setback was contingent on the proposed heights.

[674] The JWS-WP records that:

- for the western portion, experts for VHHL, Eke Panuku and Winton agreed to 25m, and experts for the Council agreed to 18m
- for the central (marker building) portion, experts for VHHL and Winton agreed to 72.5m, and experts for the Council agreed to 62m
- for the eastern portion, experts for VHHL and Winton agreed to 35m

[675] Orams' experts Mr. Roberts, Mr. Wallace and Ms. de Lambert considered that:

- the Precinct is a key brownfield urban regeneration at the edge of the city centre
- the landscape character of the Precinct is evolving
- the large number of consented and existing buildings that exceed building height standards demonstrate the appropriateness of design-led increased height within the Precinct
- undeveloped brownfield land has fewer constraints for development potential
- enabling increased height will provide certainty consistent with the NPS-UD while resulting in an appropriate level of effects.

[676] Mr. Wallace considered that:

- The 25m height proposed to the west is consistent with the adjacent siloes and development sites, and coupled with a 10m setback enables coastal open space and an overall GFA position similar to that enabled by the 18m supported by Council.
- The 72.5m height for the central marker building portion will not have problematic additional shading effects, will better maintain landmark qualities of the site, and reflects that this portion of the site is not beneath any viewshafts.
- The 35m height proposed to the east is consistent with the height of other consented projects across the precinct, will not have problematic additional shading effects, and an increase of building height by 4m from a starting point of 31m would be largely imperceptible.

[677] Ms. de Lambert considered that the proposed heights will not detract from the future urban form or amenity of the Precinct and will reinforce and enhance its landscape character and amenity.

[678] For the Council, Mr. Soder supported a height increase for the marker building site from 52m to 62m to match the height on Eke Panuku's western marker building site (as amended by the Eke Panuku submission). He did not support a height increase for the eastern site from 31m to 35m, which would be greater than the height of the adjacent site to the east. Mr Soder considered the 10m building setback at the western water edge a positive proposal.

[679] Mr. Kensington did not consider that the proposed heights would maintain landscape and visual amenity values and achieve the relevant Precinct objectives and policies.

[680] Mr. Brown for Eke Panuku considered that accommodating both the Orams and Sanford relief would create a sequence of tall buildings cutting east-west across the Precinct inconsistent with the identified QMs.

[681] Notwithstanding its open space merits, Ms. Laird and Ms. Wong queried the scope for and appropriateness of the proposed 10m coastal setback in Sub-Precinct C which provides for active marine industry purposes.

Recommendations on Orams relief

[682] If the Panel is incorrect in its approach to *Waikanae*, on the merits of the site-specific relief sought by Orams the Panel prefers the evidence of Mr. Soder and Mr. Kensington. We would recommend an increase to 18m for the western portion which is largely consistent along the harbours edge through Sub-precinct C and reinforces the approach of building heights stepping down to the harbours edge, and 62m for the central marker building to uphold its primacy in the hierarchy of visual legibility. We would not recommend an increase for the eastern portion to maintain Precinct height consistency with the adjacent site to the east.

Height increases sought by Sanford

[683] Sanford's submission sought a height increase to 50m for their site. In evidence the proposal was refined to a concept masterplan for the site and associated revised

provisions. as The concept masterplan proposed a new marker building site comprising a lozenge-shaped 52m tall tower elevated above the ground to the south of the gabled brick smokehouse paired with a 45m tall tower above the Sanford building. Sanford's proposal for additional height would also involve specific provisions and changes to yard setbacks, attached to the evidence of Mr. Arbuthnot, to accommodate the conceptual building design described in the evidence of Mr. Francis-Jones.

- [684] Sanford's position was that provision for an additional marker building on the Sanford site will not undermine the broader concept given the small footprint of the proposed building, its location on or close to the three axes prescribed in the UDF, the additional design assessment that will be required by the provisions, and the ASB building not delivering a marker function to the extent intended. Mr Hudson considered the proposed buildings would still be subservient to the taller buildings in the City Centre.
- [685] The JWS-WP does not record expert views on the Sanford submission or proposal.
- [686] Mr. Soder considered the relief sought by Sanford to be a set of bespoke rules written for a specific design and open space proposal better suited to a resource consent process. He noted that the UDF and Precinct provisions step heights down towards North Wharf (from 31m to 27m to 15m), whereas the Sanford proposal would see the heights stepping up. Mr. Soder considered that the proposed pair of towers could result in an undesirable cluster of tall buildings across from the Eke Panuku marker building sites. He considered that the five marker buildings in the UDF are reference points within the Precinct and their role is to contrast in height from the urban fabric surrounding them, rather than relating to the City Centre.
- [687] Ms. Laird and Ms. Wong considered that there was no certainty that the design now being proposed in Sanford's evidence would eventuate, and raised a potential scope issue regarding the requested provisions including lanes and setbacks as this may result in built form provisions which are more restrictive than the operative provisions.
- [688] Ms. Walker considered that the operative height standard for the site should be retained as without the tailored approach provided by the concept masterplan the height and bulk enabled could have a negative impact on the special character buildings on the site
- [689] Mr. Kensington considered that buildings at the heights proposed have the potential to erode the effectiveness of existing marker buildings in the Precinct.
- [690] Mr. Brown for Eke Panuku did not agree that concentrating the greater bulk of building development next to the Park Axis is appropriate and considered that this would restrict, rather than enhance, engagement between the Precinct and its waterfront. Mr. Brown considered that accommodating both the Orams and Sanford relief would create a sequence of tall buildings cutting east-west across the Precinct inconsistent with the identified QMs.

Recommendations on Sanford's relief

[691] If the Panel is incorrect in its approach to *Waikanae*, on the merits of the site-specific relief sought by Sanford the Panel prefers the evidence for the Council and Eke Panuku. The detailed visual proposal prepared by Mr. Francis-Jones represents one possible design response to the site, and the necessary amendments to the Precinct to provide for that specific design do not take a sufficiently wide view of the Precinct context. We would not recommend amendments to the operative provisions for Sanford's site.

Height increases sought by Eke Panuku

[692] Eke Panuku sought to increase height standards:

- For the western Eke Panuku marker building site, from 31m-52m to 62m and to re-orient the marker building to reflect a specific concept
- For Wynyard Point, from 27m to 39m to reflect a specific concept
- For East 1 from 31m to 41m and for West 2 from 25m to 31m

Western Eke Panuku marker building site – height & re-orientation

[693] Eke Panuku sought increased height from 52m to 62m and a re-orientation of the southwestern “triangle” on the western Eke Panuku marker building site, to build across the laneway. The re-orientation is aligned to the Regional viewshafts.

[694] The JWS-WP records that experts for VHHL and Orams supported 72.5m and experts for Winton, Willis Bond / Mansons and the Council supported 62m.



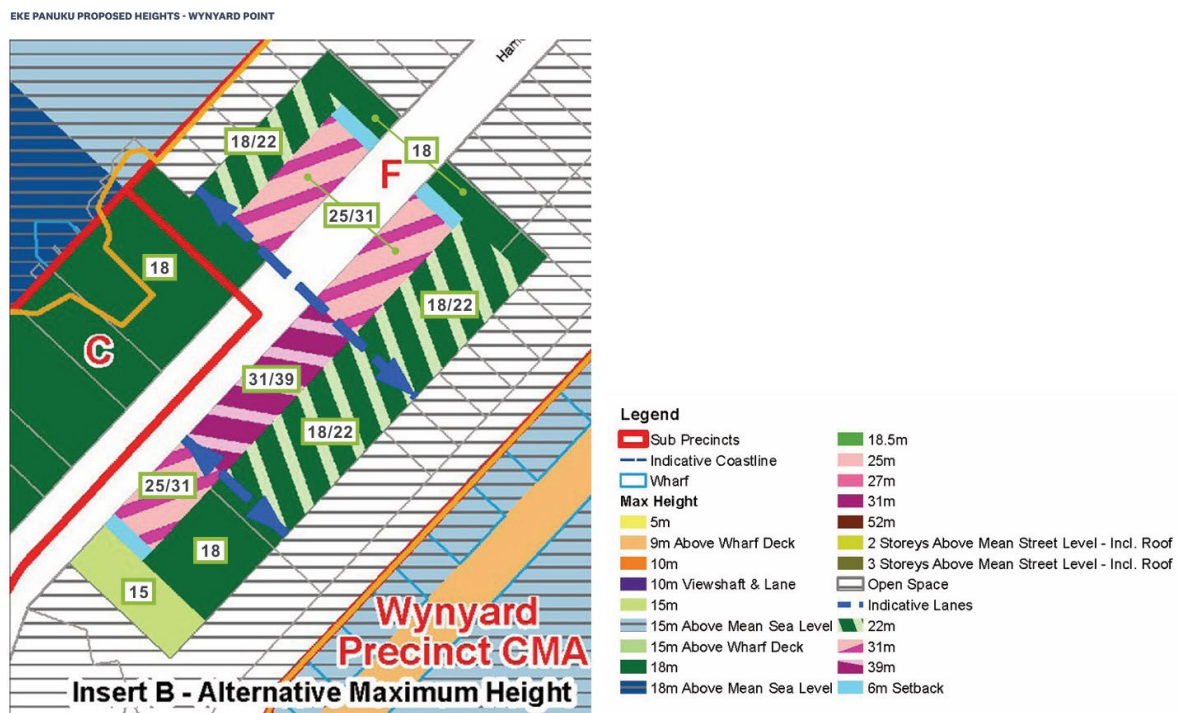
[695] Mr. Brown explained that the re-aligned marker building site would become the visual terminus for the Wharf Axis, close to the point of intersection with the Park Axis and the Waterfront Axis. The proposed 62m height limit would only apply to the southwestern corner of the site, with height limits of 31m and 52m adjoining (closer to Westhaven) stepping up to the 62m visual peak. Mr. Brown also supported a covered laneway to and through a building on this site as the concluding section of the Wharf Axis.

[696] Mr. Soder supported a height increase to 62m on the southwestern corner but considered that replacing the requirement for an open-air lane with an internal (built over) lane should be tested through a resource consent process.

Wynyard Point

[697] The operative basic and maximum heights applying to Wynyard Point are 18m/18m for Sub-Precinct C and 15m/27m for part of Sub-Precinct F.

[698] Eke Panuku sought a comprehensive height plan with a range of heights to a maximum height of 39m, linked to a proposal by Eke Panuku to “flip” the park on Wynyard Point (discussed below).



[699] The JWS-WP records that the Council experts reserved their position on 39m and all other experts agreed with the Wynyard Point height proposal.

[700] Mr. Brown and Mr. McKay for Eke Panuku considered that the height proposal had been thoroughly tested and will not result in visual dominance and shading effects on open space and public places.

- [701] Mr. Kensington supported the height proposal from a landscape effects perspective but acknowledged Mr. Soder's concerns regarding urban design effects.
- [702] Mr. Soder supported a 31m maximum height but considered that 39m should be tested by resource consent. He considered that the height proposal was too nuanced and particular for an AUP precinct plan map and should be advanced by resource consent.
- [703] Ms. Laird and Ms. Wong did not support the 39m height (nor the related development standards) due to Mr. Soder's urban design concerns.

East 1 and West 2

- [704] Eke Panuku sought a height increase from 31m to 41m on the eastern side of East 1 and an increase from 25m to 31m for East 2, supported by Mr. Brown and Mr. McKay.
- [705] The JWS-WP records that experts for VHHL, Willis Bond / Mansons and Orams supported the proposed heights.
- [706] Mr. Soder noted that the height proposal for East 1 was intended to "mirror" the existing East 2 built form profile but considered that the 41m proposed height did not reflect that stepped down profile. Mr. Soder considered that both East 1 and West 2 specific height proposals should be advanced by resource consent.

Recommendations on Eke Panuku's relief

- [707] With respect to Wynyard Point we reiterate our finding with respect to general height that the comprehensive reimagining of the Precinct masterplan sought is not "consequential on" intensification but seeks to fundamentally alter the status quo Precinct provisions which is not the role of an IPI. The Wynyard Point height proposal is inextricably linked with the "park flip" proposal (discussed below), and the height proposal cannot be integrated into the operative Precinct height map unless the "park flip" is also implemented.
- [708] If the Panel is incorrect in its approach to *Waikanae*, on the merits we prefer the evidence of Mr. Soder for the Council. We would not recommend any increase at Wynyard Point unless the "park flip" was also implemented (discussed below) and would then limit height to 31m (not 39m).
- [709] With respect to the Eke Panuku marker building site we prefer the evidence of Eke Panuku and the Council and recommend an increase of maximum height to 62m, discussed further below with respect to the targeted heights supported by the Council.
- [710] With respect to East 1 and West 2 we prefer the evidence for the Council and do not recommend any increase.

Overall recommendations on site-specific height

- [711] Certain targeted height increases were supported by the Council's experts.
- [712] Increases from 10m to 18m at the west of Oram's site and from 5m to 18m at the Swashbucklers site were supported because it will make these sites consistent with the rest of Sub-precinct C.
- [713] Increases to three existing marker building sites (VHHL, Orams and Eke Panuku) were supported to retain marker building function in light of consented development.
- [714] Mr. Scott (for the **WQRA**) did not support the height increases for the five sites that were supported in the Council's evidence,
- [715] We have considered whether the targeted height increases supported by the Council are "consequential on" PC78. We consider that four of the five are because the increased heights can be accommodated within the existing Precinct structure rather than seeking to fundamentally alter the operative Precinct.
- [716] Ms. Laird and Ms. Wong confirmed that the effects of the targeted height increases would continue to be managed by the notified Precinct provisions (and consequential amendments to site intensity and development standards discussed below) and respond to the relevant QMs.
- [717] We recommend the following changes to Precinct plan 5 (Maximum height):
1. VHHL marker building site: 52m increased to 60m
 2. Swashbucklers site: 5m increased to 18m
 3. Orams' site: 10m/52m/31m increased to 18m/62m/31m (that is, no change to the 31m portion)
 4. Western Eke Panuku marker building sites: 31m-52m increased to 62m (south western corner)
- [718] The height increase supported by the Council but not recommended by us is an increase at Wynyard Point from 27m to 31m. As discussed above we do not consider that the height proposal for Wynyard Point is consistent with *Waikanae*, nor can it be implemented in the operative Precinct height map independently of the "park flip".

3.42.3 Special character

- [719] Ms. Walker's evidence records that the Sanford submission sought to remove the two special character notations on the Sanford site but at the hearing Sanford elected to retain these.
- [720] VHHL sought to remove the special character notation from the former British Imperial Oil Company Building at Sailor's Corner.
- [721] Mr. Wild for VHHL was comfortable with its removal contending that it is a hybrid building developed over time and is isolated from other buildings, lessening its contribution to the area's special character. He considered it important not to conflate character with heritage, noting the building is not a listed heritage building. Mr. Wild concluded that its unique location with roads on three sides provides a particular

opportunity to identify the entrance to Westhaven and associated movements in this area.

[722] Ms. Walker for the Council disagreed with Mr. Wild noting that the architectural character of the building has a distinctive style that reflects the industrial history of the Precinct, the building still forms part of a group within the Precinct, and the building has maintained its legible form indicating its original use.

[723] Ms. Walker supported the retention of the special character notation.

Recommendations

[724] The Panel prefers the evidence of Ms. Walker as to the role of the building at Sailor's Corner. It is one of the last traces of marine heritage in the Sub-precinct, and we find that it provides special character value in this location as recognised by its existing special character notation.

[725] We recommend retention of the existing special character.

[726] In light of the existing special character overlay applicable to this site and the JWS-WP acceptance of identified QMs we do not consider it necessary to specifically identify the building as a QM, although we record that we would have done so if necessary, as we consider that intensification via Policy 3(a) is required to be modified to accommodate its values.

3.42.4 Floor area ratio and site intensity

[727] Submissions and evidence sought a variety of relief for site intensity and FAR provisions in the Precinct. These included:

- VHHL and Orams sought deletion of the FAR control and site intensity FAR provisions in the Wynyard Precinct and replacement with the city centre tower and podium built form controls.
- Willis Bond sought deletion of I214.6.7 – the Maximum Site Intensity Control within the Wynyard Precinct.

[728] Mr Soder expressed significant concerns with the change of character, impact on laneways, streets and squares, and visual dominance associated with the bulk of built form supported by VHHL. Mr. Soder and Mr. McIndoe disagreed about the extent to which VHHL's proposed provisions provided for "human scale".

[729] Mr. Kensington considered that the FAR standards should be left primarily unchanged to achieve the relevant Precinct objectives and policies.

[730] Ms. Laird and Ms. Wong considered that the FAR and site intensity provisions are necessary to successfully achieve the desired urban design outcomes and manage scale and intensity of development in the Precinct. They considered that replacement standards supported by Mr. Roberts to manage proposed increased heights were also inappropriate.

- [731] Mr. Scott (for WQRA) stated that the erosion of the originally planned built form through previous resource consent approvals would be likely to be compounded by changes to the standards. He noted that the objectives and policies had not been amended, and that the changes sought to the controls would create a disconnect between the outcomes enabled by the rules and the higher order provisions. Mr Scott considered that the retention of the existing provisions is justified under Policy 3(a) and through the QMs for the Precinct.
- [732] Sanford sought a new suite of provisions to implement the Sanford's site height proposal. The Panel have recommended against those height increases.
- [733] Eke Panuku sought increased FAR for East 1 and West 2 associated with the site-specific height increases proposed. The Panel have recommended against those height increases.
- [734] Eke Panuku sought an increase in FAR on the western Eke Panuku marker building site associated with the site-specific height increases proposed. Ms. Laird and Ms. Wong, support an increase in FAR consequential on their support of increased height at this site.
- [735] Eke Panuku also sought amendments to the provisions relating to building over the lane on the western Eke Panuku marker building site. Mr. Soder and Ms. Laird and Ms. Wong did not support those amendments.
- [736] The Council otherwise supports consequential increases to FAR to implement the height increases that it supports, set out in the provisions recommended by Ms. Laird and Ms. Wong. We have recommended these height increases, other than for Wynyard Point.
- [737] The Panel prefers the evidence for the Council.
- [738] We agree that the City Centre tower and podium built form is not envisaged by the Wynyard Precinct. We consider that such a fundamental reimagining of the existing masterplan for the Precinct does not satisfy *Waikanae* and would need to be subject to its own specific plan change process under Schedule 1. If the Panel is incorrect in its approach to *Waikanae*, we record that we would not have recommended these amendments on the merits.
- [739] We recommend the retention of the precinct FAR and site intensity standards and consequential increases to FAR supported by Ms. Laird and Ms. Wong (other than for Wynyard Point).
- [740] We do not recommend the amendments supported by Eke Panuku for building over the lane at the western Eke Panuku marker building site.

3.42.5 Reliance on resource consents process as the appropriate alternative

- [741] Some evidence, including from the Council, considered that the resource consent process was a more appropriate way in which to address the acceptability of height increases sought for several sites within the Wynyard Precinct.
- [742] The Panel is aware that in the Wynyard Precinct height increases have been achieved through the resource consent process which has had the effect of 're-setting' to some extent the UDF, and in part leading to requests for higher height limits for existing marker building sites to enable them to retain their marker function. Setting a height standard can establish a height 'baseline' which developers will rely on in resource consent applications in defining the adverse effects arising from any difference to those standards (whether in terms of views, shading or general visibility etc).
- [743] Mr. Roberts considered that consented increases against the existing standards are necessary to provide for development to be economically viable but emphasised that it was not an easy process. Ms. de Lambert highlighted that infringements are a discretionary activity (per rule 1214.4.2(A61)) and require careful consideration through the consent and associated urban design (Urban Design Panel or Technical Advisory Group) analysis.
- [744] Conversely, Mr. Soder considered that additional height can be achieved through resource consent applications, and a review of consented and realised buildings shows that several have used an 'unders and overs' approach to height. Buildings have been designed with parts below and parts above the height limit, keeping the average height close to the maximum height limit.
- [745] The Panel is satisfied that the height standards we have recommended (that is, the limited increases supported by the Council) provide for a logical height framework for the Wynyard Precinct that reflects its existing and planned character and relevant QMs. In the context of an IPI, rather than focus on whether a resource consent is preferable to an amendment to the height standard, we have approached our recommendations through the direction of Policy 3(a) and the application of QMs as directed by the relevant statutory tests.

3.42.6 Changes to activity status and a new sub-precinct H

- [746] A number of submitters sought changes to the status of various activities in the Wynyard Precinct.
- [747] Sanford sought to make offices, dwellings and visitor accommodation permitted activities (once the Sanford ammonia plant is disestablished).
- [748] VHHL sought that the southern part of Sub-precinct C become a new Sub-precinct H. This included amendments to policies, the activity table, standards and assessment criteria to support this new sub-precinct, and which would add a new column in Activity table I214.4.1 for the sub-precinct and change the activity status for a number

of activities in that location (i.e., dwellings or visitor accommodation or workers' accommodation would become a permitted activity).

- [749] Eke Panuku sought to remove restrictions on, and change the activities status of, various activities sensitive to hazardous risks in Sub-precinct F, to make changes to the Precinct provisions relating to the duration of events in the Wynyard Precinct, and to modify the Precinct's noise provisions. Ms. Ampanthong acknowledged that the current precinct provisions allow residential activities as a permitted activity once the hazardous industries are no longer in operation. However, she considered that updating the Activity Table would make it clearer that hazardous risks restrictions are no longer relevant and would provide applicants with additional certainty that resource consents are not required for future development within these areas.
- [750] The Council considered that none of the proposed amendments fall within the scope of amendments able to be made to PC78 under s 80E(1)(b)(iii) because they do not support, and are not consequential on, Policy 3(a).
- [751] Conversely, VHHL considered that its proposed amendments to enable greater height will only generate more development if the relevant activity table enables activities that are likely to be established above ground level.
- [752] With respect to the merits of VHHL's relief, the evidence of Ms. Laird and Ms. Wong was that Sub-precinct C provides for marine industry, and that enabling activities such as dwellings, visitor accommodation, offices, retail and commercial services as permitted activities would undermine the intended purpose of this sub-precinct. In particular, they were concerned that VHHL's proposed Sub-precinct H could result in the marine industry activities being pushed out in favour of residential or commercial activities, which would be contrary to a primary outcome for the Wynyard Precinct.
- [753] Eke Panuku also did not support VHHL's proposal for a new sub-precinct to enable commercial and residential activities in an area currently reserved for marine industry activities. Eke Panuku considered that this would reduce the (already limited) land available for marine industry and observed that the requested change would create reverse sensitivity issues.

Recommendation:

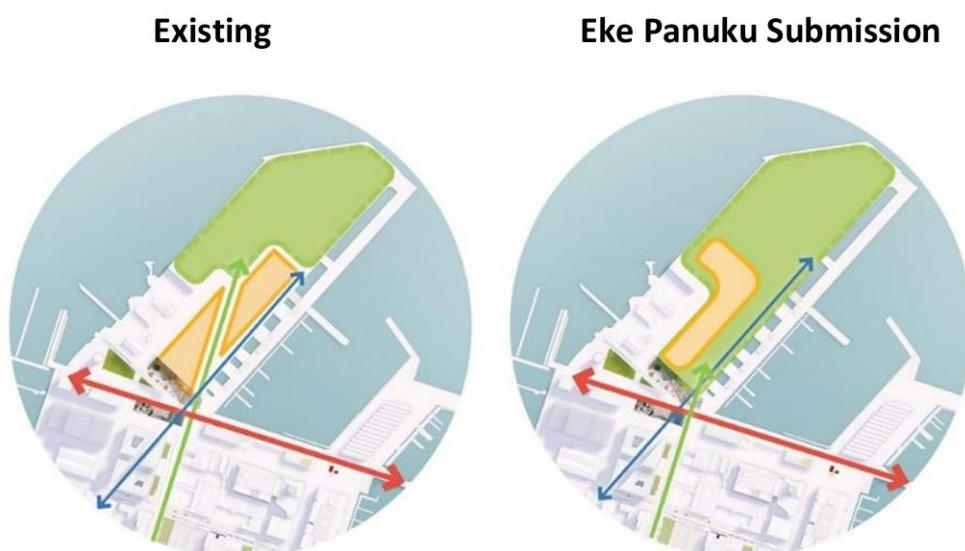
- [754] The Panel considers that proposals seeking changes to activity statuses within Wynyard Precinct are not "consequential on" intensification and are not within scope of an IPI.
- [755] The proposed amendments would represent a substantive change to zoning provisions and be counter to the emphasis of enabling maritime industrial activities to continue to use their land as they currently can. In the Panel's view, increased provision for residential activities will impact the ability for maritime activities to maintain a presence within the precinct, and at the same time, intensification elsewhere also leaves few opportunities for maritime activities to establish in or move

to other locations. The provisions sought to be amended do not relate to height and density and rather relate to the underlying purposes of the Precinct.

- [756] If the Panel is incorrect in its approach to *Waikanae*, we record that we would not recommend the various amendments on their merits for the same reasons of fundamental change to the underlying purposes of the Precinct.

3.42.7 Wynyard Point ‘park flip’, Open Space zoning and ‘stopped roads’

- [757] Eke Panuku sought to re-align the existing diagonal 10m-wide lane that connects the top end of Jellicoe Street to Hamer Street on Wynyard Point. Eke Panuku evidence referred to this as the “park flip”:



- [758] Mr. McKay considered that the current diagonal access is not adequate in meeting the operational demands for both passive recreation and for larger events on the waterfront park, and that this impacts on pedestrian connectivity linking the green open space. The proposed realignment would increase the size of the waterfront park along with a 38m-wide park access on the eastern edge.
- [759] Ms. Ampanthong highlighted that the combination of all open spaces in Sub-precinct F including the waterfront park, Silo Park, Jellicoe playground and Plaza would have an overall area of approximately 6.3ha, larger than that the existing 4.4ha. Further, the realignment would provide better opportunities to create a functional size quality open space that meets the recreational needs of people and communities.
- [760] Eke Panuku also sought that stopped portions of Jellicoe Street, in the blocks between Beaumont Street and Brigham Street (49-63 Jellicoe Street), and between Brigham Street and Halsey Street (1-17 and 39-47 Jellicoe Street), be re-zoned as Open Space and Business - City Centre respectively.
- [761] Eke Panuku further requested that the Panel recommend that the Council initiate a process under ss 181 and 182 to alter designation boundaries to align with the zoning requested by Eke Panuku or remove designations that have either been secured by zoning change or have already been delivered.
- [762] The JWS-WP recorded that all experts supported the re-zoning and re-alignment of open space on Wynyard Point ("park flip").
- [763] Mr. Soder considered that the proposed re-alignment is supportable from an urban design perspective (and introduces a change in direction in the green axis of Wynyard Precinct, but does so in a suitable location).
- [764] Ms. Laird and Ms. Wong considered that the proposed re-alignment would support the Te Ara Tukutuku (Wynyard Point headland park) project.
- [765] Ms. Laird and Ms. Wong supported the realignment of open spaces and the rezoning of stopped roads sought by Eke Panuku on the merits, if the Panel considered that the requests are within the scope of PC78.
- [766] The Council considered that the rezoning of stopped roads could be recommended by the Panel in reliance on its powers under cl 99(2) of Schedule 1 of the RMA, if it considered there is merit. The Council confirmed that the stopped roads are Council-owned, and there are no landowners or occupiers who are likely to be affected by the stopped road re-zoning requests who are not already participants in the City Centre hearings.
- [767] The Council did not accept that PC78 provides the appropriate process within which recommendations should be sought from the Panel about any processes that the Council may choose to initiate in respect of designations and their boundaries.

Recommendation:

- [768] The Panel considers that the extensive realignment of open space and rezoning of stopped roads are not “consequential on” intensification and fall outside the IPI.
- [769] If the Panel is incorrect in its approach to *Waikanae*, we record that we would recommend the Wynyard Point “park flip” amendments on their merits in accordance with the evidence and the JWS-WP.
- [770] The Panel agrees with the Council that recommendations relating to designations and road stoppings do not fall within the IPI. We do not recommend either through PC78.

3.42.8 Masterplanning

- [771] Winton considered that a comprehensive review of the precinct provisions would be needed as a separate process from the narrow requirements of the NPS-UD and that the IPI process is not the appropriate tool by which to make the significant changes sought by some submitters.
- [772] The Council’s witnesses agreed with Mr. Lala that there would need to be a comprehensive plan change for Wynyard Precinct to determine the wide-ranging and substantial changes that submitters have proposed for the Precinct. Mr. Lala noted that no changes to the objectives and policies for the precinct were notified so in that respect there are limited opportunities for amendments and additional height.
- [773] The Panel agrees with the evidence of Mr. Lala as to the importance and relevance of master-planning for the Wynyard Precinct. This is particularly so given that there is still significant development to occur to give effect to the UDF. As we have outlined above with respect to height, we do not accept that the fundamental changes sought to the Precinct by the combination of the submissions are “consequential on” intensification so as to come within the IPI.
- [774] We agree that a private plan change process is potentially a more appropriate way in which to give effect to the relief sought by the developer submitters for the reasons set out in the evidence of Mr. Lala.

3.42.9 Transport

- [775] The issue in respect of transport was whether additional intensity within the Wynyard Precinct associated with increased height would be appropriate having regard to the transport limitations for the precinct.
- [776] The Precinct is essentially an ‘island’, whereby Beaumont, Daldy and Halsey Streets all connect to Fanshawe Street (primarily via Beaumont and Halsey Streets), which is also required to function as a rapid transit network (**RTN**) (noting that a local road connection to the Viaduct Harbour Precinct is also provided to the east via Gaunt Street and Viaduct Harbour Avenue).
- [777] Part of the issue to be determined was whether traffic effects on the RTN would appropriately form the basis of a further QM.

[778] The Panel heard from transportation witnesses Mr. Clark (for the Council), Mr. Langwell (for Eke Panuku), Mr. Parlane (for VHHL & Sanford), Mr. Hills (for VHHL) and Mr. McKenzie (for WQRA).

[779] VHHL advised that they were no longer pursuing the deletion of the GFA limits for offices within the precinct, nor the removal of maximum carparking standards. The submission relief was not formally withdrawn, but VHHL did not present evidence in support of it.

[780] The relevant objectives and policies are:

Objectives I214.2

(11) The safety and capacity of the transport network is maintained and, where appropriate, enhanced.

Policies I214.3

(34) Constrain and manage private vehicle travel in and out of Wynyard Precinct, particularly during peak travel periods.

(38) Protect the safe and efficient operation of Fanshawe Street as a key arterial route connecting the central city area with wider Auckland and an important element of Auckland's frequent and rapid transit network.

[781] Office development in excess of the maxima in I214.6.2(1) require assessment variously as restricted discretionary or non-complying activities.

[782] Mr. Clark and Mr. McKenzie referenced the policies of the Wynyard Precinct in protecting Fanshawe Street's role for rapid transit, and that increased traffic demand associated with more intensity would impact on this role. They also said that traffic has been observed to back-up during the evening peak within the Precinct itself.

[783] Mr. Clark was concerned about any locations where extra traffic (associated with extra development enabled by PC78) may impede the reliability of public transport on the RTN.

[784] Conversely, Mr. Hills and Mr. Parlane considered that the Precinct was within a walkable catchment to the rapid transit (bus) services on Fanshawe Street and so was an ideal location for intensification, noting also that no other city centre locations limit intensification due to traffic concerns.

[785] Mr. Clark accepted the premise that intensification within the city centre offers transportation advantages at this macro level. However, he considered that they need to be weighed against the disadvantages, being effects on the RTN. He agreed with Mr. McKenzie's evidence that there has not been sufficient assessment of the traffic effects associated with the additional height sought by submitters.

[786] Mr. McKenzie considered that there needs to be a precinct-wide assessment of cumulative effects as these are unique brownfield development sites. The precinct has been master-planned and that masterplan is still being implemented, and implementation of the UDF has only been underway for approximately 15 years. Accordingly, existing levels of traffic within the Precinct, and onto Fanshawe Street, do not yet represent the extent of traffic generated by the existing caps.

[787] We heard that the relief sought by Eke Panuku would result in approximately 10,800m² additional floor space, and Sanford and Willis Bond would provide for an additional 240 apartments and 14,000m² of office space. VHHL did not quantify the increases it sought.

Recommendation:

[788] The Panel prefers the evidence of Mr. Clark and Mr. McKenzie. We agree that traffic considerations are a further matter to take into account in determining appropriate height increases for the Wynyard Precinct. While not a QM, our finding aligns with the relevant objectives and policies for the Precinct, and the existing caps for commercial and residential activities (removal of which was no longer pursued by VHHL). Traffic considerations are a further 'layer' as to why we do not recommend widespread increases in height for the precinct, but not the sole determinant.

[789] We record that had VHHL pursued its submission relief we would have considered the amendments sought were not "consequential on" intensification, as they relate to the operative precinct provisions rather than responding to intensification.

3.43 Chapter A Introduction

[790] This issue relates to Chapter A Introduction.

3.43.1 Statement of issue

- i. Appropriateness of the Council proposed changes to Chapter A Introduction

3.43.2 Panel recommendation and reasons

[791] Chapter A Introduction provides explanatory information about the AUP. PC78 proposes amendments which explain the intensification requirements as well as the role and identification of QMs.

[792] Ms. Greaves' evidence on Chapter A Introduction had a narrow scope responding only to submissions relevant to the City Centre and noted that the balance of the changes to Chapter A will be addressed in a later hearing. The Panel accepts her minor amendments (excluding changes reflecting our recommendations on provisions accommodating the new nationally significant infrastructure QM sought by KiwiRail) which we also addressed as part of our discussion in sections 3.28 and 3.29 above.

[793] We recommend consequential changes to Chapter A to reflect our recommendations on the appropriateness of the various QMs covered by this report, as they relate to the City Centre Zone and Precincts.

4. Summary of the Panel's recommended changes to the Auckland Unitary Plan

The following is a summary of the recommended changes to the AUP contained in this Report.

1. Plan mechanisms to give effect to qualifying matters

The Panel accepts that PC78 is not intended to address potential inconsistencies with the AUP, and that the accommodation of qualifying matters is methodologically agnostic as to how they are addressed within the AUP.

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2. City Centre Zone – general objectives and policies

The Panel recommends amendments to the general business objectives and policies to:

- i. Provide for qualifying matters
- ii. Provide for Policy 3 inclusive of all centres hierarchy as the general business objective and policies apply to all business zones
- iii. With regards to Policy 12A, remove reference to the '21m' metric and replaced with reference to 'mapped' walkable catchments

3. Height in the City Centre Zone

The Panel recommends:

- i. Unlimited height in the Special Height Area
- ii. A small expansion of the Special Height Area from that of the notified PC78 by including the block bordered by Rutland, Queen, and Wellesley Streets and Mayoral Drive
- iii. A height of 72.5m across the General Height area
- iv. Retention of lower operative AUP site-specific heights around Karangāhape Road, Victoria Park, 2 and 2A Symonds St, and 99 and 131 Quay St.

4. Site intensity and Floor Area Ratio (FAR)

The Panel recommends the removal of FAR and bonus FAR provisions

5. Bulk and location controls in the City Centre Zone form

The Panel recommends:

- i. the retention of H8.6.24 Maximum tower dimension, setback from the street and tower separation in the special height area. Changes include:
 - a. a maximum plan dimension of an average of 55m above 28m
 - b. 6m setbacks from all boundaries for parts of buildings above 28m
 - c. Where there is more than one tower on a site, a 12m separation for parts of buildings above 28m
- ii. the retention of H8.6.25 Building frontage alignment and height. Changes include
 - a. requiring maximum frontage heights in identified areas

- iii. a new standard H8.6.25A Building setback from boundaries which apply outside of the special height area which include:
 - a. a maximum plan dimension of an average of 55m above 32.5m
 - b. 6m setbacks from all boundaries for parts of buildings above 32.5m
 - c. Where there is more than one tower on a site, a 12m separation for parts of buildings above 32.5m
- iv. The retention of H8.6.32 Outlook space but changed to require 6m regardless of height of the floor above ground level
- v. A new matter of discretion and assessment criteria to provide for emergency responder servicing

6. Development controls in the City Centre Zone which do not affect height or intensity of urban form

The Panel recommends the retention of:

- i. H8.6.1 Retail,
- ii. H8.6.8 Measuring building height,
- iii. H8.6.26 Verandahs,
- iv. H8.6.27 Minimum floor to floor height,
- v. H8.6.28 Wind, H8.6.29 Glare, and
- vi. H8.6.33 Minimum dwelling size as per the operative standards, and
- vii. H8.6.9 Roof Tops with minor amendments

7. Special Amenity Yards

The Panel recommends the retention of standard H8.6.30

8. Building in relation to boundary

The Panel recommends the deletion of H8.6.22 Building in relation to boundary but only where all of H8.6.3, H8.6.25, H8.6.25A, and H8.6.32 apply.

9. Streetscape Improvement and landscaping

The Panel recommends the retention of standard H8.6.23

10. Through-site links

The Panel recommends new matters of discretion and assessment criteria to provide for through site links.

11. Qualifying matter - Relationship of the City Centre to the Waitematā Harbour

The Panel recommends:

- i. the retention of standard H8.6.5 Harbour edge height control. Changes include making infringement a restricted discretionary activity rather than a discretionary activity
- ii. Deletion of H8.6.6 Exception to the harbour edge height control
- iii. A new standard H8.6.24A Maximum east-west tower dimension of 45m for areas as notified in PC78

12. Qualifying matter – Sunlight admission to public spaces in the City Centre

The Panel recommends:

- i. The retention of H8.6.3 Admission of sunlight to public spaces. Changes include the inclusion of seven additional public spaces, which are:
 - a. Victoria Park
 - b. Te Taou Reserve
 - c. Māhuhu ki-te-Rangi Park
 - d. Grafton Cemetery East
 - e. Grafton Cemetery West
 - f. Constitution Hill
 - g. Auckland Domain
- ii. The retention of H8.6.4 Aotea Square height control plane

13. Qualifying Matter – Special character buildings and historic heritage

The Panel recommends:

- i. the introduction of Special information requirement H8.10.1 - Alterations and additions to buildings identified as historic heritage and special character.
- ii. The removal of some Special Character Building from Map H8.11.1 as identified by Council experts

14. Qualifying matter – Auckland War Memorial Viewshaft

The Panel recommends the retention of Chapter D19 Auckland War Memorial Viewshaft Overlay provisions as they apply to the City Centre Zone.

15. Qualifying matter – Maunga Viewshafts

The Panel recommends:

- i. the name change from “Volcanic Viewshafts” to “Maunga Viewshafts”.
- ii. The retention of all Maunga viewshafts in as they apply to the City Centre Zone including E10 and E16
- iii. Changes to D14.6.4 to allow for construction cranes to infringe Maunga viewshafts for up to 24 months

16. New Qualifying matter – Maunga to Maunga viewshafts

The Panel recommends that the Council prepare one or more special information requirements in Chapter D19 stipulating that any application for resource consent to infringe the Auckland War Memorial Viewshaft must assess effects on views between Takarunga / Mount Victoria and Maungawhau / Mount Eden.

17. Qualifying matter – Street sightlines

The Panel recommends the retention of H8.6.31 Street sightlines

18. Qualifying matter – Railway station building and gardens view protection plane

The Panel recommends the retention of standard H8.6.7 Railway building and gardens view protection plane

19. Qualifying matter – Relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga

The Panel recommends the retention of the 22 Sites and Places of Significance to Mana Whenua within the City Centre Zone.

20. Qualifying matter – Notable Trees

The Panel recommends the retention of the scheduling of 31 notable trees within the City Centre Zone.

21. Qualifying matter – Infrastructure

The Panel recommends the removal of the Infrastructure – Combined Wastewater Network Control from the City Centre due to a mapping error.

22. Qualifying matter – Strategic transport corridor

The Panel recommends the retention of the Strategic Transport Corridor Zone as it applies to the City Centre Zone.

23. Qualifying matter – National Grid

The Panel recommends the retention of D26 National Grid Corridor Overlay as it applies to the City Centre Zone.

24. Qualifying matter – designations

The Panel recommends the retention of designations as they apply to the City Centre Zone and minor technical amendments to assist in plan interpretation.

25. Qualifying matter – new qualifying matter

The Panel recommends a new qualifying matter for the safe or efficient operation of nationally significant infrastructure being, the railway corridor as it applies to the city centre. Changes include:

- i. a 5m building setback from the boundary of a site adjoining the Strategic Transport Corridor Zone with a railway corridor;
- ii. a noise control applied to land within 100m of the Strategic Transport Corridor Zone with a railway corridor; and
- iii. a rail vibration alert overlay to land within 60m of the railway designation boundary.

26. Precincts – general

The Panel accepts that precincts are a valid planning mechanism which may be appropriate to address a qualifying matter.

27. Precincts – Britomart

the Panel recommends the retention of the notified PC78 provisions for the Britomart Precinct.

28. Precinct – Central Wharves

The Panel recommends the retention of the notified PC78 provisions for the Central Wharves Precinct

29. Precinct – Downtown West

The Panel recommends the retention of I205 Downtown West Precinct and the changes to standard I205.6.2 Pedestrian connections to no longer require it be 'at-grade'.

30. Precinct – Karangāhape Road

The Panel recommends the retention of the notified PC78 provisions for the Karangāhape Road except the block bounded by Karangāhape Road, Newton Road, Gundry Street and Abbey Street is removed from the Precinct.

31. Precinct – Learning

The Panel recommends the retention of the Learning Precinct with changes including:

- i. Increases to 72.5m in height mainly along Symonds, Mount, St Pauls St and Wellesley St East
- ii. Amending standard I207.6.4 Frontage Height and Setback to limit the recession plane for a horizontal distance of 20m
- iii. Any consequential work to integrate changes in the Precinct with the underlying City Centre Zone provision

32. Precinct – Quay Park

The Panel recommends the retention of the Quay Park Precinct with:

- i. the boundaries as notified in PC78
- ii. Increases in height of some areas notified in PC78 as 30m to 72.5m but still subject to the Auckland War Memorial Viewshaft
- iii. An out of submission change to ensure a small portion of land is returned to the operative 30m
- iv. a new special amenity yard (implemented via standard H8.6.30)
- v. reduction of building frontage height controls to areas along Mahuhu Cres and Taporā St

33. Precinct – Queen Street Valley

The Panel recommends the retention of the notified PC78 provisions for the Queen Street Valley Precinct.

34. Precinct – Victoria Park Market

The Panel recommends the retention of the notified PC78 provisions for the Victoria Park Market Precinct.

35. Precinct – Viaduct Harbour

The Panel recommends the retention of the notified PC78 provisions for the Precinct except for:

- i. A 52m height for the Auckland Harbour Board Building site subject to 15m setback to the northern façade and a 5m setback to the eastern façade of the historic heritage building and consequential changes to increase FAR to accommodate the increased height.
- ii. A 30m height and increased FAR for properties generally along Fanshawe St and the carpark building at Sturdee St.

36. Precinct – Wynyard

The Panel recommends the retention of the notified PC78 provisions for the Precinct except for:

- i. VHHL marker building site: 52m increased to 60m and consequential increase in FAR
- ii. Swashbucklers site: 5m increased to 18m
- iii. Orams' site: 10m/52m/31m increased to 18m/62m/31m
- iv. Western Eke Panuku marker building sites: 31m-52m increased to 62m (south western corner) and consequential increase in FAR

37. Chapter A Introduction

The Panel recommends minor amendments to Chapter A Introduction and consequential changes to reflect the findings on QMs included in this Report.

5. Scope

[794] The recommendations contained in this Report were made pursuant to s 99(2)(a) of the RMA other than the following made outside the scope of submissions:

1. Changes to height for the portion of Lot 25 DP 189961, directly behind the Railway Station which forms a carparking area / accessway for Spark Arena, from the notified PC78 height of 18m to the AUP height of 30m .

6. Panel recommendation on submissions

[795] Appendix 1 of the Report contain a list of submissions and further submissions considered in this recommendation report to the extent that those submissions relate to the City Centre Zone, Precincts and relevant qualifying matters.

[796] Those submissions seeking the provisions relating to the City Centre Zone, Precincts and relevant qualifying matters be retained are accepted or rejected in part to the extent of changes recommended above.

[797] Those submissions opposing the plan provisions and seeking amendments are accepted in part to the extent that the plan has been modified.

[798] Those submissions seeking additions or changes to QMs are accepted or rejected in part to the extent of changes recommended above.

7. Recommended changes

7.1 Changes to the text

Appendix 2 of the Report includes the Panel recommended set of plan provisions where practical. Deletions to the operative provisions are shown in strike through and new text is identified by underlining.

7.2 Changes to the planning maps

This Report does not recommend any changes in the extent of the City Centre Zone.

Appendix 3 shows the spatial application of QMs recommended to be retained in the City Centre Zone and Precincts. Where possible all changes have been carried across, in cases where there is uncertainty the recommendations in the Report take precedence.

Changes to spatial application of controls in precincts are reflected where practical in the recommended set of provisions.

8. Reference documents/documents relied on

The Panel have relied on submissions and further submissions (identified in Appendix 1), the evidence presented identified in Appendix 4 and documents below in making its recommendations.

Joint Witness Statements on the following topics:

- 009G QMS A- I, Maunga Viewshafts and Building Sensitive Areas, dated 17 April 2023
- 009Q QMs A-I, Designations, dated 9 May 2023
- 016A City Centre Zone provisions, dated 24 and 25 May 2023
- 020E Precincts – I209 Quay Park Precinct, dated 12 February 2024
- 020E Precincts – I209 Quay Park Precinct, dated 1 March 2024
- Bonus provisions relating to Historic Heritage and Special Character, dated 30 April 2024
- 020G Viaduct Harbour Precinct, dated 3 July 2023
- 020G Viaduct Harbour Precinct and I214 Wynyard Quarter Precinct – Transport, dated 2 August 2023
- 020I Wynyard Precinct, dated 4 July

Mediation Statements on the following topics:

- 020A I201 Britomart Precinct, dated 6 June 2023
- 020G I211 Viaduct Harbour Precinct, dated 7 June 2023
- 020I I213 Wynyard Precinct, dated 8 June 2023

The documents can be located on the IHP website (www.IntensificationHearingsaki.co.nz) on the hearings page under the relevant hearing topic number and name.

You can use the links provided below to locate the documents, or you can go to the website and search for the document by name or date loaded.



Matthew Casey, KC
On behalf of the Independent
