

# Decision following the hearing of a Plan Modification under the Resource Management Act 1991



## Proposal

Plan Change 3: Protection of Views from Stockade Hill, Howick.

This plan modification is **GRANTED** subject to additional modifications. The reasons are set out below.

<b>Plan change number:</b>	3
<b>Site address:</b>	Stockade Hill, Howick
<b>Hearing commenced:</b>	Tuesday 24 April and Friday 27 April, 9.30am
<b>Hearing Commissioners:</b>	Robert Scott Heike Lutz Angela Dalton
<b>Appearances:</b>	<p><u>For the Submitters:</u> David Collings and Adele White - Howick Local Board Sally J Champion John Champion Ian MacPherson Saree Wheeler Michael Andrew Johns Gayleen Mackereth and Sally Peake - Howick Ratepayers &amp; Residents Association Robert Finley Janet Dickson Leon Chapman Dr Claire Kirman and Matthew Armin Lindenberg - Housing New Zealand</p> <p><u>For Council:</u> Vrinda Moghe, Principal Planner, Reporting Officer Melean Absolum, Landscape Architect Tanya Sorrell, Team Leader, Built &amp; Cultural Heritage Policy  Tanisha Hazelwood, Hearings Advisor</p>
<b>Hearing adjourned</b>	Friday 27 April
<b>Commissioners' site visit</b>	All commissioners visited Stockade Hill and the surrounds prior, during and following the hearing of evidence.
<b>Hearing Closed:</b>	16 July 2018

## INTRODUCTION

1. This decision is made on behalf of the Auckland Council (“the Council”) by Independent Hearing Commissioners Robert Scott (Chair), Heike Lutz and Angela Dalton appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (“the RMA”).
2. The Commissioners have been given delegated authority by the Council to make a decision on Plan Change 3 (“PC 3”) to the Auckland Council Unitary Plan Operative in Part (“the Unitary Plan”) after considering all the submissions, the section 32 evaluation, the reports prepared by the officers for the hearing and evidence presented during and after the hearing of submissions.
3. PC 3 is a Council-initiated plan change that has been prepared following the standard RMA Schedule 1 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as enabled under the RMA).
4. The plan change was publicly notified on 10 August 2017 following a feedback process involving Iwi, as required by Clause 4A of Schedule 1. Notification involved a public notice as well as letters to directly affected landowners and occupiers alerting them to the plan change. The latter step was aimed at ensuring that landowners and occupiers of properties affected by potentially significant changes were made aware of the changes.
5. The submission period closed on 7 September 2017. A summary of submissions was notified for further submissions on 12 October 2017. A total of 199 submissions (including 2 late submissions) and 53 further submissions were made on the plan change.
6. There were four proposed amendments in PC3 that were withdrawn or amended through a clause 8D of Schedule 1 of the RMA following the hearing of evidence at the hearing and questioning. The proposed changes withdrawn by the Council were to:
  7. Regional Policy Chapter B.4.3 - Viewshafts – Policy4.3.2(3); and
  8. Regional Policy Chapter B.4.3 - Viewshafts – Policy4.3.2(5)(a).

The proposed changes further amended by the Council at the close of hearing were to:

- a. Chapter D16 - Local Public Views Overlay – Overlay Description; and
- b. Chapter D16 - Local Public Views Overlay – D16.61 Height – Purpose.

## SUMMARY OF PLAN CHANGE

9. The proposed plan change is described in detail in the hearing report. A summary of key components of the plan change is set out below.
10. The purpose of PC 3 is to protect views of the Hauraki Gulf and its islands from Stockade Hill, Howick. The plan change also seeks to recognise the significant visual connection between Stockade Hill and the Hauraki Gulf and the associated historic heritage value of the views to this coastal environment, therefore preserving an important piece of history for Howick.
11. PC 3 is intended to fulfil the Council's statutory obligation to give effect to the RPS by identifying and including a new significant local public view. The plan change adds a new local public viewshaft ("LPV") from the top of Stockade Hill and deletes an existing local public viewshaft (created under the Legacy Plan), currently located at the base of Stockade Hill (origin point located within the road reserve). A number of amendments were proposed to the RPS intended to clarify the scope of LPV's and enable the specific LPV at Stockade Hill.
12. The proposed provisions are to be incorporated into the following sections of the Unitary Plan:
  - Chapter B- Regional Policy Statement - B4 – Te tiaki taonga tuku iho - Natural Heritage
  - Chapter D - Overlays - D16 - Local Public Views Overlay
  - Chapter L - Schedules - Schedule 11- Local Public Views
13. The key components and reasons for PC 3 are:
  - a. It deletes the existing viewshaft from the base of Stockade Hill overlooking Crawford Reserve and facing in a generally eastern direction.
  - b. It introduces a new viewshaft within the Local Public Views Overlay from the top of Stockade Hill that covers 137 degree views (on the seaward side) from its origin point.
  - c. It introduces a Blanket Height Restriction Area (BHRA) to part of the Mixed Housing Urban (MHU) zone along the seaward side of Stockade Hill using a combination of 8m and 9m height controls to specific properties.

- d. It introduces amendments to RPS policies:
    - i. to provide for the protection of public views of the coastal environment; and
    - ii. to recognise the importance of scheduled historic heritage places as a criterion when evaluating the regional or local significance of a view from a public place.
14. It introduces amendments to D16 Local Public Views Overlay in the Unitary Plan to introduce new standards relating to the BHRA. The key standards contained within D16 of the notified plan change are:
- a. Permitted Activity Status for development that complies with the height of buildings as specified by the BHRA.
  - b. Height within the BHRA of 8m or 9m as mapped on specific sites.
  - c. Under 86(3) of the RMA, PC 3 was given immediate legal effect upon notification.
  - d. At the commencement of the hearing the Council, in response to submissions, offered a number of amendments involving the following:
  - e. A reduction of the “eye-level representative view height” for the viewshaft from 1.7m to 1.5m;
  - f. Revised contours for the application of the BHRA; and
  - g. Removal of the 9m height restriction from the BHRA.
15. Following the hearing of evidence and in response to questions in writing from the Commissioners, Council amended the plan change to remove the changes to the RPS provisions in section B4.3.2 and to make minor changes to the LPV Overlay in section D16.

## **HEARING PROCESS**

16. As the majority of submitters to PC 3 wishing to give evidence were not experts and did not identify expert representation, the Commissioners did not require the pre-circulation of expert evidence. The only submitter to make legal submissions and call expert planning evidence was Housing New Zealand (“HNZ”) and the Commissioners considered that submitters would benefit from this evidence being presented directly at the hearing. As it turned out there were many submitters and other interested persons who attended the hearing to hear this evidence.
17. A number of amendments to the plan change were identified through the process of the hearing by submitters. In response to expert evidence provided by submitters,

and in response to questions from the Commissioners, Council was given the opportunity to identify further changes, which they did so by way of closing statement.

18. Prior to the hearing, all the Commissioners visited Stockade Hill and the local surroundings. In response to evidence the Commissioners individually revisited Stockade Hill on several occasions during and after the course of the hearing.
19. After hearing from submitters, the Commissioners requested further advice from Council staff on a number of matters raised in submissions and evidence. This further information was received on 30 May 2018. On 7 June 2018, the Commissioners released a further Direction advising that the hearing would be reconvened in order to question Council officers directly with regard to outstanding matters. A list of matters that the Commissioners were interested in questioning officers was included in the Direction. The hearing was reconvened on 16 July 2018. The Commissioners adjourned the hearing following the answers given by Council officers and following deliberations determined that it had sufficient information to make a determination and closed the hearing later that day.
20. All three days of the hearing were attended by a high number of interested and passionate local residents. While the Chair needed to intervene on a number of occasions to keep order (including to eject one person pursuant to section 50 of the Local Government Official Information and Meeting Act 1987 who interjected persistently) the Commissioners were pleased to engage with an enthusiastic and passionate community genuinely interested in planning matters that affected them and willing to get involved with that process.

## **PROCEDURAL MATTERS AND LATE SUBMISSIONS**

### **Late Submissions**

21. Two late submissions were received by the Council. Pursuant to section 37 of the RMA, the time for receiving submissions was extended to accept late submissions from the following:

Submitter No	Submitter	Date Received
199	Kathleen Francis Harrison	8 September 2017
178	Howick Ratepayers and Residents Association (amendment to original submission)	8 September 2017

The time limit for the receipt of the above submissions is waived for the following reasons:

- a. Consideration of the submissions has not resulted in any unreasonable delay.

- b. The submissions assist in the consideration of the robustness of the plan change and in the case of the Howick Ratepayers and Residents Association, it represents the views of many people within the community.

## **NOTIFICATION PROCESS**

22. HNZ state in their evidence that PC 3 proposes changes to the RPS viewshaft provisions (Chapter B4.3.2) as well as specific changes to create the Stockade Hill LPV. However, the public notice only referred to the LPV provisions and not the changes to the RPS viewshaft provisions. HNZ submitted that the public notice was not fair or accurate because persons likely to be affected by the changes to the RPS provisions were not given sufficient information to encourage them to look at the change in greater detail nor were the relevant provisions of the proposed plan change correctly identified. HNZ further submitted that the public notice was framed in a way that indicates that amendments are only proposed to district plan provisions and lacks any identification of changes at RPS level.
23. We have reviewed the public notice and agree that it does not specifically refer to the changes proposed to the RPS provisions. In response to questions from the Commissioners on this Council officers state that it was not their intention to be misleading in the public notice and that the change to the RPS provisions were intended to better enable the LPV overlay provisions to recognise the importance of views to the coastal environment and the importance of scheduled historic places provisions.

## **Finding**

24. We find that the public notice should have referred to the proposed changes at RPS levels as well as the LPV at district planning level so that parties affected by the Viewshaft provisions in Chapter B4.3.2 and how they are formulated at a region-wide level could be better informed and potentially participate by lodging a submission or further submission. We find that this is certainly a matter relevant to best practice. Whether there was any prejudice to parties is difficult to determine. In response to our questioning on this matter the Council in its written reply assert that the public notice was strictly in accordance with the Schedule 1 requirements of the RMA and refer to case law<sup>1</sup> as further support. However, the Council has accepted that in the future it would be identifying specific chapters in its public notices going forward. We agree with this approach going forward.
25. As a procedural matter, we find that the best practice of identifying all chapters of the Unitary Plan in the public notice should have been followed and that the subsequent withdrawal of the RPS provisions means that no prejudice of any party has eventuated.

---

<sup>1</sup> Protect Pauanui Inc v Thames Coromandel District Council [2013] NZHC 1944

## RELEVANT STATUTORY PROVISIONS CONSIDERED

26. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. These requirements are set out in Attachment 3 and the section 32 assessment that forms part of the hearing report and we do not need to repeat these again in detail, as the plan change is very much focused on detailed methods to provide for a LPV.
27. Clause 10 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions. The decision must include a further evaluation of any proposed changes to the plan change arising from submission; with that evaluation to be undertaken in accordance with section 32AA. With regard to Section 32AA, we note that the evidence presented by submitters and Council effectively represents this assessment, and that that material should be read in conjunction with this decision, where we have determined that a change to PC 3 should be made.
28. There are a number of provisions of the Unitary Plan that are relevant to PC 3 and these are listed as:

### Chapter B – Regional Policy Statement

- B4 Te tiaki taonga tuku iho - Natural heritage
- B4.3. Viewshafts
- The proposed LPV viewshaft falls under this regional policy framework.

### Chapter D – Overlays

- D16 Local Public Views Overlay
- This overlay provides for the creation of local public viewpoints

### Chapter D – Overlays

- D17 Historic Heritage
- This relates to the heritage status and values of Stockade Hill

### Chapter H – Zones

- H6 – Mixed Housing Urban Zone
- The properties that are subject to the height restrictions proposed by the overlay are located within this zone.

### Chapter L – Schedules

- Schedule 14.1 – Schedule of Historic Heritage

- Stockade Hill is included within this schedule.
29. To a lesser extent the following sections of the Unitary Plan are relevant as they relate to land in proximity to Stockade Hill and/or have specific restrictions regarding height:
30. Business Mixed Use zone and Town Centre zone (change to Height Variation Control in Plan Change 4);
- Comprising 4 Picton Street (opposite Stockade Hill) and land to the south east of Stockade Hill
31. Open Space – Community zone
- Comprising Crawford Reserve (opposite Stockade Hill) - 10R Picton Street.

### **PLANNING CONTEXT HISTORY**

32. Stockade Hill forms the highest point within Howick village and currently enjoys commanding views in all directions including mostly unobstructed views over existing development to the Hauraki Gulf. From Stockade Hill, the general topography in the area slopes away on all sides. Land to the north and east of Stockade Hill slopes towards the Hauraki Gulf providing uninterrupted views of Rangitoto, Motukorea (Browns Island), Motutapu, Motuihe, Waiheke and Motukaraka, as well as Musick Point and Beachlands. To the south there are views to Manukau, Wiri, East Tamaki and Flat Bush. Stockade Hill is located to the north west of the Howick town centre and is a landmark of considerable cultural and heritage significance to the Howick community.
33. The planning history of providing a public viewpoint at the Stockade Hill and the recent zoning of land surrounding it under the Unitary Plan process is relevant. We were advised by Ms Absolum (Council's Landscape expert) that planning and assessment of potential public viewshafts associated with Stockade Hill began in 1995 including two viewshafts identified by Boffa Miskell and an eventual viewshaft adopted by the Council and included in the Legacy Plan located at the base of Stockade Hill at its eastern end and extending across Crawford Reserve in an east nor east direction. Ms Absolum advised that this viewshaft, while being fairly limited in its scope, applied to a wider residentially zoned environment that restricted development to no more than 8m in height.
34. When the Unitary Plan was first notified the majority of land to the north of Stockade Hill was zoned Single House which had a maximum height of 8m. The residential land to the south was zoned MHU which had a maximum height of 10m with a roof element allowance up to 11m in height. The Independent Hearing Panel ("IHP") recommended version of the Unitary Plan applied the MHU zoning to those sites with direct frontage to Bleakhouse Road from Castleton Drive east to Picton Street through to and including Mellons Bay Road, Walter MacDonald Street and the



western side of Parkhill Road. The Auckland Council adopted these recommendations and it now forms part of the partly operative Unitary Plan provisions (affecting approximately 65 residential properties). The Howick Ratepayers and Residents Association (HRRRA) lodged an appeal to the High Court (CIV-2016-404-2321) challenging the scope the IHP relied upon to rezone the residential sites north of Stockade Hill from Single House zone to MHU. HRRRA also lodged an appeal to the Environment Court (ENV-2016-AKL-000221) challenging the merits and appropriateness of the MHU zone for the area. The relief sought by the HRRRA's appeal was to rezone these properties from MHU back to Single House zone. The issue raised by HRRRA referenced the potential loss of views from Stockade Hill due to development opportunities enabled in the MHU zone.

35. The resulting High Court decision<sup>2</sup> found that the general submissions (to the Proposed Auckland Unitary Plan) provided the IHP with scope to recommend rezoning the 65 residential properties along Mellons Bay Road, Picton Street and Parkhill Road from Single House zone to MHU zone. Given the decision of the High Court in relation to scope, there was no jurisdiction for HRRRA to progress the appeal to the Environment Court. The appeals were later withdrawn and the current zoning under the Unitary Plan is beyond challenge.
36. Ms Moghe advised us that in response to concerns identified by the local community including the Howick Local Board and the HRRRA the Council commenced a study to understand the impact of the Unitary Plan zoning decision on views to the Hauraki Gulf from Stockade Hill and these were presented to the Council's Planning Committee in March 2017. We were advised that five options were considered comprising the following:
- Option 1 – Do nothing;
  - Option 2 – Rezoning of land to a residential zone with an appropriate building height;
  - Option 3 – Introducing a Height Variation Control over the residential properties;
  - Option 4 – Non-regulatory methods;
  - Option 5 – Introducing a new Viewshaft(s) from Stockade Hill.
  - The Council Planning Committee chose Option 5 which formed the basis of the notified plan change.

---

<sup>2</sup> [2017] NZHC 138

## PLANNING CONTEXT

37. The current zoning for properties in the plan change areas is as follows:
- a. Properties along Mellons Bay Road, Cheriton Road, Walter Macdonald Street and Parkhill Road have been zoned as MHU in the Unitary Plan.
  - b. Properties along Picton Street have been zoned Town Centre and Mixed Use.
38. The historic heritage values of Stockade Hill are recognised in the Unitary Plan by way of Schedule 14.1: Schedule of Historic Heritage. Stockade Hill has been scheduled as ID 1268, a Category B place for its historical, knowledge, aesthetic and contextual values. Stockade Hill has also been identified as an archaeological feature and a place of Maori interest or significance.
39. The Unitary Plan includes a Local Public Viewshaft (largely adopted from the Legacy Plan), from the base of Stockade Hill over Crawford Reserve (Open Space-Community zone) and is recorded in Schedule 11 and on Map11.1 to that schedule. Ms Moghe states that the purpose of this viewshaft is to protect views of the Hauraki Gulf over Crawford Reserve from development.
40. The hearing report included a simple table outlining the height and front yard standards for the zones referred to and we set this out below.

No	Zone	Height in meters	Front Yard in metres
1	Mixed Housing Urban zone	12m*	2.5m
2	Single House	9m	3m
3	Mixed Use zone	18m*	None
4	Open Space Community zone	8m	The average setback of buildings on adjacent front sites

\* except where properties are affected by the Local Public View Overlay. Schedule 11 Map-11.1 indicates the building heights applicable within the Local Public viewshaft. Building heights applicable within the viewshaft vary from 2m-7m.

## SUMMARY OF EVIDENCE HEARD

41. The Council planning officer's report was circulated prior to the hearing and taken as read. No expert evidence was pre-circulated. The submitters responded to the issues and concerns identified in the Council planning officer's recommendation reports, PC 3 itself and the submissions made.

## **Auckland Transport**

42. A letter was tabled from Auckland Transport which was in support of PC 3 provided it did not impede the necessary transport infrastructure. The letter stated it supported the recommendations in the hearing report that PC 3 approved.

## **Howick Local Board**

43. Ms Adele White is a member of the Howick Local Board and she summarised the history of Stockade Hill and its importance to the local community. She described how Stockade Hill was first established as a stockade in 1862 for the defence of Auckland from attack from Maori tribes during the New Zealand Land Wars. She considers Stockade Hill to be the best preserved structure of its type remaining in the Auckland region and still serves as a reminder of the conflicts that occurred during the Colonial period. She described how the stockade was transformed into a local reserve and has maintained a link with its military past as the gathering point for ANZAC commemorations since 1961.
44. She described Stockade Hill as “Howick’s special place”, “a taonga to our people” and it is “Howick’s Auckland Domain and Howick’s One Tree Hill”. She stated that the Local Board supported the viewshaft as far as it related to the protection of coastal view and that the coastal view has an important heritage component as that was where the original settlers landed and many of the first dwellings were erected to face the Hauraki Gulf.
45. However, she expressed concern that the viewshaft did not protect views in a 360° direction and that this was a significant component of the reserve for residents and visitors. She added that many residents had contacted the Local Board concerned that multi-level development enabled by the Unitary Plan would compromise the views, its connection with the Howick Village and its dignity as “a place of reflective memorial”. She recognised the need for housing intensification but opposed it in an area that jeopardises the “treasured and iconic views” from Stockade Hill.
46. She stated that the Local Board took issue with the residential zoning provisions in the Unitary Plan and their impact on views Stockade Hill should these sites be developed to their full potential.

## **David Collings**

47. Mr David Collings is the Chair of the Howick Local Board and spoke to the protection of the amenity of Stockade Hill and those using this reserve. He also spoke about the Unitary Plan zoning decisions and in particular the inclusion of MHU zoning around the perimeter of Stockade Hill. He expressed concern relating to the provision of terraced housing development and the permitted heights to three levels for 11-12m in height that are enabled under the Mixed Housing Urban zone.

48. Mr Collings stated that the best outcome would be a reversal of the Unitary Plan zoning decision and a return to the zoning strategy under the Proposed Unitary Plan as this would limit density and heights to existing levels. He advocated a further plan change to achieve this.
49. He stated that the existing viewshaft should be retained even if the proposed new viewshaft is adopted and supported the proposed protection of views to the coast.

### **Sally Champion**

50. Ms Champion is a local resident and she spoke to the historic, cultural and spiritual values of Stockade Hill. She stated that the higher densities enabled in the Unitary Plan would adversely affect these values and suggested that higher density should be located in Panmure and be better supported in that location. She equated higher density living with affordable housing and a reduction in the quality of open spaces should this be enabled in proximity of Stockade Hill.

### **John Champion**

51. Mr Champion referred to existing development on residential sites adjoining Stockade Hill and the generous setbacks that most of these dwellings currently have. He stated that the MHU zone yard standard allowed dwelling up to 2.5m from the front boundary and that this closer proximity would allow dwellings to be higher and closer to Stockade Hill.
52. He referred to a petition that had collected over 7,000 signatures supporting 360° views around Stockade Hill. He also referred to the zoning decisions recommended by the IHP and adopted by the Council for the residential land adjoining Stockade Hill and his expectation that this would lead to affordable housing, which he opposed. He also supported higher densities in Panmure and not at Howick.

### **Ian James MacPherson**

53. Mr MacPherson is a local resident and his concerns related to the potential loss of views from Ridge Road to the Hauraki Gulf. He stated that the existing LPV protected views to the Gulf for pedestrians and motorists as they travelled east along Ridge Road in the Howick township. He spoke about the creation of Crawford Reserve and that it was created to preserve views from Stockade Hill.

### **Saree and Bruce Wheeler**

54. Ms Wheeler gave evidence for her and her husband. She stated that she supported the proposed plan change but was opposed to the increase in residential intensity enabled by the MHU zone adjoining and around Stockade Hill.
55. She spoke to the history of the Crawford Reserve and the existing LPV that extends from Stockade Hill across it. She stated that she supported PC 3 as notified but

sought the extension of it to include 12 and 14 Picton Street eastwards to Walter MacDonald Street.

### **Michael Andrew Johns**

56. Mr Johns owns the property at 24 Mellons Bay Road which is located in the MHU zone and opposite Stockade Hill to the north. He expressed concern over the imposition of the BHRA to his property and the ability to develop a desirable dwelling if height was limited to 8m. He expressed gratitude that Council officers had specifically addressed his submission in the Hearing Report but still has concerns about where the revised 8m BHRA would apply to his site.

### **Howick Residents and Ratepayers Association**

57. Ms Gayleen Mackereth gave a comprehensive visual and written presentation on behalf of the Howick Ratepayers & Residents Association (HRRRA). She summarised the historic and heritage significance of Stockade Hill and its significance as a community reserve. She stated that HRRRA supported 360° views around the entire perimeter of Stockade Hill and this was necessary to recognise these values. While HRRRA support the coastal views protection component of PC 3, Ms Mackereth stated that this protection does not go far enough and that views to the south are also significant as the main fencible settlement was established south of Stockade Hill near the Howick Domain and that the view to East Tamaki indicates where Rev Smale's farm was located and it is significant as a first line of defence against Waikato Maori during the New Zealand land Wars.
58. The relief sought by HRRRA requested a much greater scope of view protection to protect the historic and heritage values of Stockade Hill, including numerous local landmarks and areas of local and historic significance. The relief included:
- a. Protection of the 360° views as currently experienced;
  - b. Extend the blanket height protection further west than the properties along Mellons Bay Road and further east to Walter MacDonald Road;
  - c. Protect the view across Crawford Reserve in addition to PC 3; and
  - d. A reduction of viewing height from the (modified 1.5m) to a lower seated height (as if using the toposcope from a seated position).
59. The HRRRA also disputed the accuracy of the Council photomontages and Ms Mackereth stated that actual permitted development would block substantial parts of the view. She showed us a revised photomontage and building height analysis prepared by HRRRA to demonstrate the discrepancies observed.
60. Robert Findlay lives at 63 Parkhill Road and is a retired civil engineer and member of the HRRRA. Mr Findlay provided the input into the disputed heights presented in the HRRRA evidence of Ms Mackereth. He advised that he was appearing as a resident

and not as an expert engineer or visual effects expert. Mr Findlay stated that in his view the methodology used by the Council to show the effect of the BHRA was flawed and created a false impression of the purported effectiveness of the view protection proposed.

61. He stated that the angle of the viewshaft needed to be widened to 214° if it were to adequately protect coastal views. He added that he also supported a 360° viewshaft around Stockade Hill.
62. Sally Peake is an experienced landscape architect and she gave expert evidence in support of the HRRRA's submission. She stated that PC 3 was too limited in scope as it focussed on limited coastal views and not the wider heritage landscape views. It was her view that the limited scope of the PC 3 viewshaft would diminish the values of the historic resource if it did not encompass a full 360° view as is currently the case. She also agreed with the HRRRA that street level views across Crawford Reserve should also be protected.
63. Ms Peake supported the lowering of the viewing height from 1.7m to 1.5m but supported a further lowering to seated height in line with the HRRRA submission. This was to recognise the viewing height of persons with mobility issues.
64. In response to questions from the Commissioners regarding the additional protection created by limited heights to land zoned Business Mixed in the area under PC4, Ms Peake stated that this would provide some additional protection to Crawford Reserve.

### **Janet Dickson**

65. Ms Dickson lives at 2/24 Selwyn Road and she gave evidence in opposition to PC 3 and to the HNZ submission. She gave us her summary of the planning context and history to zoning and view protection under the Legacy Plan and during the Unitary Plan process, including the High Court proceeding. She stated that it was her view that HNZ and Council had colluded to increase housing heights and densities in the areas. However, she produced no evidence of this accusation.
66. Ms Dickson disputed the photomontages presented by the Council and considered that it only provided protection at the very top of Stockade Hill. She showed us some photos and other images of the community using Stockade Hill a range of viewpoints she considers would be affected.
67. She presented a 3D model created by her husband to represent the effect of potential development under a MHU zoning.

### **Neil Chapman**

68. Mr Chapman lives in the local area and gave verbal evidence in opposition to PC 3. He asked that the protection of views to and from regionally significant maunga also be afforded to Stockade Hill.

## Housing New Zealand

69. Dr Claire Kirman presented legal submissions for HNZ. While HNZ has no land directly affected by PC 3, she submitted that HNZ was concerned with the proposed changes to the RPS and method adopted by the Council through the use of a BHRA was of concern. She submitted that HNZ's concern was to not limit public views from significant local landmark, but the implications region-wide of changes sought by the Council. She stated:

*"... the amendments proposed to the RPS and LPV as part of the Plan Change creates a Trojan Horse whereby once the provisions are provided for at the RPS and District Plan level, there is a restricted ability for persons to challenge the application of the provisions to other sites throughout the Region."*<sup>3</sup>

70. HNZ seek the deletion of the proposed changes to the RPS provisions and the use of BHRA method as opposed to the existing approach where building height is managed by controlling the intrusion of new development through the viewshaft plan of the LPV. Dr Kirman took us through the relevant legal framework, gave us a background to the process of establishing the viewshaft provisions in the Unitary Plan and disputed the notification process for PC 3 on the basis that the public notice did not refer to changes to the RPS provisions as they relate to viewshafts. Dr Kirman then took the Commissioners through the National Policy Statement on Urban Development Capacity and submitted that changes to the RPS provisions has very little or no consideration of the costs in terms of the ability to achieve planned intensification.
71. Mr Matthew Lindberg is an experienced planner and he gave evidence that the changes to the RPS are not necessary to achieve the purpose of the RMA, that the use of a BHRA approach was unnecessary and duplicitous, that the existing method for the LPV assessment was preferred and that the changes sought were not supported by an appropriate section 32 analysis. Of particular concern to Mr Lindberg is potential doubling up of height control mechanisms between the LPV controls that existing in the Unitary Plan already and the use of a BHRA as an additional mechanism for Stockade Hill. In Mr Lindberg's view this would unduly restrict development that would not otherwise affect views to Stockade Hill.

## Council Response and Closing

72. The Council officers provided further analysis on the current and proposed view protection provisions with regard to pedestrian and traffic views along Ridge Road and to comparison views across Crawford Reserve associated with the existing and proposed provisions.
73. At the conclusion of hearing submitters and evidence the Commissioners posed some written questions to the Council officers on the matter of the notification

---

<sup>3</sup> Dr Claire Kirman Legal submissions on behalf of HNZ Page 1

process, effect on Ridge Road users, the use of a BHRA in the Unitary Plan and a number of questions relating to the heritage assessment in the s32 assessment and the merits of a 360° view protection related to historic and heritage reasons. This response was provided and a closing statement was received in writing. As discussed above, the Council having considered the evidence and questions from Commissioners determined to modify the plan change to remove the changes to the RPS provisions.

74. Following the consideration of the Council officers' response, we still had questions relating to heritage which we sought to put directly to Council's heritage expert and this was done at the re-convened hearing.

### **PRINCIPAL ISSUES IN CONTENTION**

75. Having considered the submissions and further submissions received, the hearing report, the evidence presented at the hearing and the Council officers' response to questions, the following principal issues in contention have been identified:

- The relevance of the zoning of adjoining land under the Unitary Plan process;
- Is the proposed viewshaft consistent with the Local Public Views overlay?
- Should the existing LPV be retained in addition to the proposed LPV?
- Should there be 360° views from Stockade Hill associated with its heritage values?
- Has Council used appropriate mechanisms to provide a local public view?
- Is an amendment to the Regional Policy Statement a necessary component of the proposed plan change?

### **FINDINGS ON THE PRINCIPAL ISSUES IN CONTENTION**

#### **The relevance of the zoning of adjoining land under the Unitary Plan Process**

76. A common theme that emerged from submissions and evidence, particularly those from local residents is that the Council had erred when it zoned land to MHU in close proximity to Stockade Hill. The implication of this planning approach was to replace a Legacy Plan zoning, applying to the northern side of Stockade Hill that had an 8m maximum height limit (Residential Heritage 7 zone of the Auckland Council District Plan –Manukau Section) with a zoning that had an 11m (plus 1m roof element) height limit (MHU zone).
77. The implication of the change of zoning, put to us by submitters, was that the increase in height enabled in the MHU zone coupled with standards in the zone that removed a maximum density and enabled terrace housing would result in the loss of 360° views from Stockade Hill. We were advised that the HRRA with support from



residents, lodged an appeal regarding the scope of the IHP to make changes to the area of land zoned MHU and the changes to the standards regarding density and terrace housing. As discussed previously, this challenge failed and the appeal was withdrawn. However, it was made abundantly clear to us that the local residents, supported by the HRRA and the Local Board, preferred a zoning pattern that maintained the current density, presumption of detached dwellings and restricted building heights to no more than 8m (i.e. two stories). We were advised that the preferred zoning strategy for the area adjoining Stockade Hill was the Single House zone as it included all the above-mentioned desired rule components.

78. Looking at the zoning pattern that applied when the Unitary Plan was initially notified by the Council, we note that the land generally to the south of Stockade Hill (i.e. on the southern side of Ridge Road) was zoned MHU from the outset but the land generally between Stockade Hill and the Hauraki Gulf to the north was zoned Single House zone. We note that the MHU zone at that time had a maximum height of 10m + 1m roof element and that the decision version increased this by 1m to 11m + 1m roof element. While maximum height for the notified MHU zone was 1m lower than the final zone provisions, it still enabled three level residential development.
79. PC 3 is Council's response to the new areas of MHU zone (that is, to the north of Stockade Hill) that was applied to the Unitary Plan as a result of the IHP recommendations and the Council decisions on land that was changed from Single House zone to MHU zone. Accordingly, we understand PC 3's purpose being to limit the height of development within identified properties in the MHU zone immediately north of Stockade Hill to no more than 8m to ensure that views to the Hauraki Gulf (within the viewshaft arc identified) are maintained in a manner similar to the Legacy Plan zoning or the Proposed Auckland Unitary Plan Single House zone (notified development standard- maximum height 8m), albeit in terms of height.
80. As a panel of commissioners, it is not within our scope to revisit the zoning decision of the Council or the recommendations of the IHP on those zonings. However, we do consider this zoning history to be relevant to PC 3 and that this plan change is, in most part, a response to the implications of the MHU zone in close proximity to Stockade Hill and their desire to maintain views to the Hauraki Gulf by limiting the permitted maximum height of buildings provided for in the MHU zone.
81. As far as the local residents are concerned, they prefer to see the entire MHU zone removed from the proximity of Stockade Hill (including that MHU zoned land to the south in the notified version) so that the existing 360° view is maintained at a height limit of 8m. In the alternative, local residents would like to see the BHRA height limits extended so that it applies to all MHU zoned land within a 360° arc.
82. Another theme related to the Unitary Plan zoning process put to us was that the MHU zone resulted in higher densities and affordable housing and that this was considered undesirable in Howick. The fact HNZ was a party to the plan change (although not having any land affected by it) seemed to amplify this concern. We consider these

opinions to be ill-informed and based on un-substantiated negative stereotypes associated with intensification. We do not consider the provision of affordable housing leads to an undesirable outcome.

83. Our understanding of the MHU zone is that it enables higher intensities in accordance with a regionwide goal of constraining urban sprawl and creating a compact urban form within Auckland. We also understand the MHU zone to have a focus on achieving positive urban design outcomes, safe streets and high levels of residential amenity. Accordingly, we have not given any of these statements in evidence any weight.

### **Is the proposed viewshaft consistent with the Local Public Views overlay?**

84. The stated purpose of PC 3 in the Explanatory Note is to “*protect views of Rangitoto, Hauraki Gulf and the island from a public open space – Stockade Hill, Howick.*” It is provided for under the Local Public Views (LPV) overlay provisions in section D16 of the Unitary Plan. The Overlay Description in D16.1 provides a useful explanation of the LPV overlay:

*“In addition to the distinctive volcanic landscape and regionally significant outstanding natural landscapes and outstanding natural features, Auckland’s wider landscape and maritime setting provides a sense of identity at the local level. Individual viewing points, and their locally significant viewshafts from public places, contribute to the unique character of many of Auckland’s neighbourhoods and coastal areas. Although many significant local views are naturally self-preserved by topography or proximity to the coast and require no specific protective restrictions, some are in prominent public locations but could be obstructed by buildings occurring in the foreground. These viewing points and the views from them have been scheduled in the Local Public Views Overlay to ensure the benefits they provide are retained for future generations.”*

85. There is a single objective for this overlay in D16.2 and it is:

(1) *Locally significant public views are managed to maintain and enhance the visual integrity of the views.*

86. To achieve this objective, three policies are set out in D16.3:

(1) *Identify and evaluate significant local public viewshafts using the following criteria:*

- (a) *the extent to which the public viewshaft contributes to the aesthetic value or visual legibility of the wider natural landscape;*
- (b) *the community association with, or public appreciation of, the values of the viewshaft;*
- (c) *the visual coherence, unity or integrity of the viewshaft and its view; and*

- (d) *the potential value of the viewshaft for public education, including known historic associations in relation to the site where the viewshaft originates.*
  - (2) *Manage development on sites within the viewshafts to avoid adverse physical and visual effects on the viewshaft including adverse cumulative effects on the viewshaft.*
  - (3) *Require public access to be maintained to the viewing point where the viewshaft originates.*
87. Our reading of the LPV overlay is that it is intended to protect locally significant views primarily to the coast and its maritime setting. This is clearly stated in the Overlay Description, and in the Howick context we consider that there is clear physical, landscape, social and historic association with the Hauraki Gulf. We consider that the proposed viewshaft easily falls within the ambit of this overlay and its objective to maintain and enhance the integrity of this coastal maritime view.
88. With regard to the evaluation of a proposed LPV, we consider Policy D16.3(1) to be fairly directive and essentially sets out criteria for the evaluation of any proposed LPV and associated viewshafts. We evaluate these in turn:
- (a) the extent to which the public viewshaft contributes to the aesthetic value or visual legibility of the wider natural landscape;
89. In her Landscape assessment, Ms Absolum has proposed a view to the Hauraki Gulf from the western edge of Rangitoto (west) to the point where the waters of the Hauraki Gulf disappear behind the headland to the eastern end of Howick Beach. This viewshaft is intended to encompass a number of outstanding natural features and landscapes including Rangitoto, Motutapu, Motuihe, Motukorea and parts of Rakino and Waiheke Islands. Ms Absolum notes that the view itself is not part of an outstanding natural landscape. The composition of the view has also considered the effect of mature trees including pin oaks either side of the ceremonial path within Stockade Hill and two Norfolk Island pines, and has therefore not extended the viewshaft further to the west.
90. We agree with Ms Absolum that in respect of defining an LPV to protect views to the Hauraki Gulf, the proposed viewshaft achieves this. In particular, we consider that the proposed viewshaft maintains and protects a clear legibility of the relationship between Howick and the coastline and Hauraki Gulf beyond. We consider that the viewing angle has been well thought out and encompasses the most significant components of the existing coastal view. Accordingly, we conclude that widening the angle of the viewshaft would not result in significantly better views towards the coast.
- (b) the community association with, or public appreciation of, the values of the viewshaft;

91. We have little doubt that there is clear community support for an LPV viewshaft that as a minimum, protects and celebrates the significance, proximity and historic association of Howick with the Hauraki Gulf and its islands. The need for a viewshaft has arisen from direct community advocacy under the Legacy Plan and during and following the Unitary Plan process, and the need to protect public views from Stockade Hill is a response to intensified residential zoning provisions that enable increased building height and intensity in close proximity to Stockade Hill.
- (c) the visual coherence, unity or integrity of the viewshaft and its view;
92. Having heard from Council officers and submitters, we are satisfied that the existing views from Stockade Hill have coherence, as they relate to the coast and Hauraki Gulf and that the viewshaft proposed will maintain this with regard to the views to the Hauraki Gulf. There is still an issue with the appropriateness and need to maintain a 360° view and how this would be achieved in the context of the Unitary Plan provisions given that the LPV overlay is focussed on coastal views and maritime context only. We discuss this, and the historical context of views from Stockade Hill further in the sections that follow.
- (d) the potential value of the viewshaft for public education, including known historic associations in relation to the site where the viewshaft originates.
93. Stockade Hill is a scheduled heritage site associated with its military function as the Howick Redoubt and as significant focal and gathering point for community events including ANZAC commemorations. The Redoubt is considered to be well-preserved and it serves as an excellent example of this military formation in the Auckland Region. We asked questions directly to Ms Tanya Sorrell (Team Leader – Built and Cultural Heritage Policy) on its potential for further public interpretation and she stated that the opportunity for further public interpretation from Stockade Hill would be possible and should be encouraged including its historic association to the coast and other areas. We are satisfied that the scheduled historic status of Stockade Hill will protect its historic value and the viewshaft will enable, and not limit its potential for further historic interpretation.

## **Finding**

94. Overall, we conclude that the proposed viewshaft has been prepared in accordance with the LPV Overlay provisions and in particular Policy D16.3(1) which sets out evaluation criteria for the establishment of local public viewshafts. While it may fall short of many submitters expectations of protecting a 360° view from Stockade Hill, we find that in terms of the purpose of the Local Public Views Overlay in D16 of the Unitary Plan, being the protection of views to Auckland's coast and maritime setting, the proposed viewshaft achieves this.
95. We also note that the proposed viewshaft also addresses the public outcry that followed the decision of the IHP to include additional areas for higher intensity residential zoning without any public submission or input. In particular, the LPV

viewshaft and BHRA includes land directly to the north of Stockade Hill which changed from a Single House zone (8m maximum height-notified development standard) to MHU (11m +1m maximum height) which occurred during that process. Whereas there was a strong public opposition to the MHU zoned land to the south of Stockade Hill, we note that this land was zoned MHU in the notified version of the Unitary Plan and has maintained this zoning (and a maximum height for three story development) throughout the process.

### **Should the existing LPV be retained in addition to the proposed LPV**

96. We are also mindful of the submissions presented that sought the retention of the existing, albeit narrower, viewshaft from the lower north eastern edge of Stockade Hill across Crawford Reserve as these submitters considered that it offered a specific protection of view over Crawford Reserve and for motorists, pedestrians and cyclists using Ridge Road.
97. We enquired into this aspect of the plan change at some length with Council officers and asked Ms Moghe and Ms Absolum to analyse the effectiveness of the proposed viewshaft in preserving views across Crawford Reserve and from Ridge Road. They analysed three viewpoints along Ridge Road comprising a locations near 28 Ridge Road, 18 Ridge Road and 6 Ridge Road. These viewpoints also represent the high and low points along Ridge Road with views toward and across Crawford Reserve. Ms Absolum also presented a number of photos and panoramas depicting the view from each of these viewpoints.
98. Ms Absolum described these views as being quite restrictive, influenced by existing vegetation and generally looking across Howick to the east toward Beachlands. She described the view from these viewpoints as not being particularly remarkable. In her opinion she considered that the current view had potential to be compromised by existing vegetation (three magnolias in particular) and further development. In her view, it was the view from the summit of Stockade Hill that gave the greatest views and deserved protection and was the basis for the PC 3 viewshaft. She added that there was potential for a further viewshaft to be created that specifically catered for users of Ridge Road but this was not the purpose of the PC 3 viewshaft. She stated that a viewshaft that recognised moving vehicles and people was actually quite complex and required a separate analysis and possibly a different type of view protection than proposed for PC 3.
99. Ms Moghe added that the original viewshaft was not created for the purpose of protecting views from Ridge Road but was created to protect views across Crawford Reserve from the base of Stockade Hill. This was strongly refuted by a number of submitters including the HRRA, the Local Board, and Ms Dickson. Despite these conflicting views, we were presented with no definitive evidence as to the specific purpose of the viewshaft. However, from looking at the previous research undertaken under the Legacy Plan, which was focussed on views from Stockade Hill, and the shape and make-up of the viewshaft, we have concluded that it is most likely

for the purpose of protecting views across Crawford reserve from Stockade Hill. Accordingly, we have concluded that the protection of views from Ridge Road appears to be a positive by-product of this viewshaft rather than a specific intention.

100. We were also advised by both Ms Moghe and Ms Absolum that additional height restrictions that form part of the Council's Plan Change 4 to the Unitary Plan ("PC 4") and limit development in the Business Mixed Use and Town Centre zones (ranging from 7m to 13m) provided additional protection including land either side of Crawford Reserve.
101. In comparing the existing viewshaft to the proposed viewshaft, especially with reference to views across and in the vicinity of Crawford Reserve, we conclude that the proposed PC 3 viewshaft provides protection across Crawford Reserve in a manner similar to the existing viewshaft, but with particular emphasis on views from the summit rather than the base.

### **Finding**

102. We find that the proposed PC 3 viewshaft in combination with the additional height limits which are included in PC 4 adequately protect views in the vicinity of Crawford Reserve to the extent that the existing viewshaft can be removed. We also find that view protection from Ridge Road is not a stated purpose of either the existing or proposed viewshaft but does provide incidental protection as motorists and pedestrians travel along Ridge Road.

### **Should there be 360° views from Stockade Hill associated with its heritage values**

103. The issue which is of central concern to residents and associated groups is the desire to provide for and maintain of 360° views from the summit of Stockade Hill. This was articulated well by Ms Mackereth in the evidence for the HRRA where she stated:

*"The views from Stockade Hill a (sic) totally unique in New Zealand and possibly in the world. We defy anyone to find another site anywhere which encompasses the view of 8 habitable islands, at least 6 volcanic cones, city and gulf views stretching 64km in one direction and taking in most points of significance right round the compass in every direction, with a view from one side of New Zealand to the other."*<sup>4</sup>

104. Ms Mackereth and others also refer to the historic and heritage values of views, as distinct to the values of Stockade Hill itself. The Council s32 analysis undertaken by Ms Freeman (Senior Specialist Historic Heritage) included some analysis of the historic values associated with the views from Stockade Hill and Ms Freeman states:

*"The view from Stockade Hill contributes to its heritage significance by enhancing several aspects of its heritage value. In particular the view supports its historic*

---

<sup>4</sup> HRRA evidence page 7

*importance as a strategic location for the defence of the surrounding population. Fencibles and settlers relied on the elevated position and 360° views to both land and sea to look for and respond to advancing threats. Although Stockade Hill has undergone several modifications throughout its history, it remains one of the best maintained examples of its type in Auckland. This is at least in part due to the generally well-preserved views that add to the meaning to (sic) and understanding of the function of the stockade.*

*“The well-maintained stockade and original views have significance that derives from their interrelationship, reinforcing the quality and value of both. The view has the potential to play an important role in enhancing public understanding not only of the Maori Land Wars, but also the defensive strategies and structures employed during the colonial era.”*

105. We spent considerable time evaluating this matter and in particular the importance of heritage views from a scheduled historic site to other parts of Auckland. We also considered how the Unitary Plan recognised and provided for views of a historic heritage nature and their role within a local public view protection mechanism as set out in D16 of the Unitary Plan.
106. Within the context of the Unitary Plan the Natural Heritage section of the Unitary Plan sets out overlay provisions related to Outstanding Natural Landscapes (ONL's), area with Outstanding Natural Character (ONC's) and High Natural Character (HNC's). It includes an overlay that recognises volcanic viewshafts and associated height sensitive areas, an overlay for the protection of significant ridgelines, and an overlay for the local public views. Within the context of the proposed LPV viewshaft, we are satisfied that the proposed view protection would encompass significant views to a number of matters of national importance including Rangitoto, Motutapu, Motukorea, Motuihe and parts of Waiheke Island and associated coastal landscapes, natural values and geological values. These qualities are well known and there is little or no dispute as to their significance.
107. In terms of built and historic heritage it contains overlays that recognise and protect those resources themselves. However, we are not aware of a section of the Natural Resources section of the Unitary Plan or elsewhere, which recognises and provides for views that contain significant heritage values in themselves, from a scheduled heritage place or otherwise.
108. We are also cognisant that the heritage report from Ms Freeman is little more than a two-page memo which recognises the views that currently exist. We enquired into the s32 assessment that has been undertaken for Stockade Hill and we were advised that there has been no specific assessment as part of the Unitary Plan process with its heritage status effectively being “rolled-over” from the Legacy Plan. No heritage assessment or expert evidence as to the heritage values of the views from Stockade Hill has been provided by the submitters. Accordingly, we were not able to evaluate

the actual heritage values of Stockade Hill or the significance of 360 degree views associated with it.

109. We received evidence from submitters which referred to the heritage significance of the views from Stockade Hill, particularly to the south and in a 360° direction generally. The argument put to us on the historic heritage merits of protecting this view married the comments of Ms Freeman and the need to recognise and protect the function of the Howick Redoubt as an outlook to potential threats from Maori tribes from the Waikato during the New Zealand Land Wars and as the place where protection would be provided should that threat materialise. While we appreciate this historical connection, we were unsure of its significance in terms of view protection, particularly given that, while the threat of attack existed during the New Zealand Land Wars, it did not eventuate. Accordingly, we are not in a position to determine that a 360° view warranted protection based on historic heritage grounds.
110. We understand that this is an important issue for Howick Residents and that there was clear community support behind maintaining the current views from Stockade Hill. However, we are also cognisant that this viewshaft has been promulgated to protect significant local views to the Hauraki Gulf resulting from land north of Stockade Hill up-zoned as part of the Unitary Plan process, and as discussed already, we are satisfied that the proposed viewshaft achieves this.
111. During the hearing, we enquired into the likely impact of a MHU zoning and a 11m + 1m maximum height limit on views to the south. Ms Absolum advised that the land along the southern side of Ridge Road was generally of a lower topography than the land adjoining on the northern side of Mellons Bay Road. We were advised that the difference ranged from 1-3m in height. We were also advised that the land on the southern side of Ridge Road sloped away steeply. Ms Absolum concluded that the combination of these factors coupled with a required 2.5m front yard setback in the MHU zone meant that dwellings built to a maximum height in the zone would not have the same dominance effect as the land on the northern side of Stockade Hill. We are also cognisant of other rules and assessment criteria in the Unitary Plan that would ensure that there would be gaps between any eventual development on the MHU land to the South of Stockade Hill.
112. As part of the hearing we were presented with a model which we understand was prepared by Mr Dickson and this showed a representation of the effect of a 12m height limit within the MHU zone adjoining Stockade Hill. Many residents and submitters appeared to strongly support the representation that this model conveyed. The model showed a continuous block of development across all areas in the MHU zone with no breaks. We were not offered any methodology to confirm the accuracy of the heights depicted, which to our eye, looked excessive. While we recognise the effort put into building this model, we were not in a position to give any weight to it for the following reasons:



- a. The depiction of a continuous block within the zone without gaps between development on individual sites was misleading of development likely to occur that was in accordance with plan provisions regarding front and side yards as well as height to boundary rules;
  - b. The use of a continuous block of development is fanciful as it would have to be based on an assumption that a single developer would own, or at least control, all the sites in the zone and that the Council (especially its urban design specialists) would not require gaps and spacing between buildings;
  - c. The heights depicted were unverified and no methodology of how height was represented was offered;
  - d. There was no expert or specialist evidence to support the accuracy of this model; and
  - e. As a result, the model overall represented a significant over-statement of the likely effect of development within the zone and on the local area.
113. While we were not convinced that the LPV proposed needs to be increased to provide for a 360° view to satisfy the requirements for a LPV in accordance with D16 of the Unitary Plan, we consider that there may be a valid case for investigation of an additional heritage specific viewshaft focussed on the MHU land to the south in the future. In our opinion, any such viewshaft based on heritage views must be supported by a heritage assessment of the heritage values of Stockade Hill as well as any heritage views associated with it. As an expert heritage assessment has not been undertaken we are unable to make a finding based on the protection of heritage views associated with Stockade Hill.

### **Finding**

114. We find, that on the evidence presented, there is insufficient justification for a 360° view protection on the basis of heritage views from Stockade Hill. We find that there may be case for investigation of a separate viewshaft in the future based on heritage views within the region, but this would need to be supported by a full heritage assessment of such values in support of such a heritage based viewshaft.

### **Has Council used appropriate mechanisms to provide a local public view?**

115. The Council has proposed to remove the existing LPV which is based on a contours-based viewshaft and replace it with a viewshaft based on a Blanket Height Restriction Area (BHRA) that applies to specific properties. The notified version of PC 3 proposed a two stage BHRA height limit with an 8m blanket protection for the land closest (and at higher elevation) to Stockade Hill and 9m height restriction applying to a number of sites below that. In response to submissions, the Council undertook further analysis and reduced the area of the BHRA and confined the height restriction to a single 8m limitation.

116. It is HNZ's position that the approach taken is not an appropriate method and reasons for this appear to be two-fold: Firstly, that a BHRA method should only be used for regionally and/or locally significant viewshafts and secondly, that the use of the BHRA sets up a "duplicitous" height control method which would unreasonably constrain development. We address these matters in turn.
117. In his planning evidence Mr Lindenberg states that the BHRA method in the Unitary Plan only relates to the identified Regional and/or Locally Sensitive Viewshafts as set out in Chapter D14 for the protection of Auckland's volcanic cones and that the Local Public Views method is intended to only be used for Local Public Views as set out in Chapter D16. We have reviewed Schedule 11 of the Unitary Plan, which contains the Local Viewshafts that are protected by the LPV overlay and we generally agree that the method adopted is for a contours-based approach. The exception being the St Johns Redoubt viewshaft which is based on a single view plane.
118. We enquired to Council officers about what direction, if any, is in the Unitary Plan regarding which method should be implemented. In the written response Ms Moghe stated that the Unitary Plan does not specify, direct or restrict the use of any specific method for managing heights by way of an overlay. This is also our reading of the height provisions in the Unitary Plan and we see no reason why a BHRA should not be used in the context of an LPV and see no direction or restriction on its use as a height method.
119. From our reading of his evidence, Mr Lindberg appears to be concerned that a BHRA would place an additional "duplicitous" height control in addition to an LPV view plane.
120. This is not our understanding of the provisions in PC 3 and we do not see these provisions being "duplicitous". Dealing with this latter matter first, we consider that Mr Lindberg has miss-used the term "duplicitous" which we interpret in its plain meaning to mean "deceitful". We suspect that he intends for this word to mean "duplicate" or a "duplication" of planning methods. This being the case, we do not agree with Mr Lindberg that the approach taken is a duplication of methods applying to the LPV. Our understanding of the provision is that the BHRA method has been adopted instead of a contours based view plane and the BHRA areas are the only height restrictions applying to the identified sites other than the standard height limit that applies in the relevant underlying residential zone. The identification of the site subject to the BHRA has been analysed by Ms Absolum and modified to only those sites that justify a height restriction in order to protect the LPV from Stockade Hill. In her Landscape Assessment for PC 3 Ms Absolum addresses this matter under the heading: "Manage of Views by Means of a Height Control" where she explains why the BHRA method (when both an 8m plus 9m height was the preferred method) was recommended:

*Initially, it was anticipated that a simple height restriction within those vulnerable parts of the identified viewshaft would protect the view. Such a control would take the form a height restriction over those parts of the viewshaft identified above a particular contour. Buildings within the height restriction area would then be limited to 8m in height, in line with the controls in the Mixed Housing Suburban zone, as illustrated in Figure H4.6.4.1 of the AUP(OiP). However, when potential development enabled by this mechanism was modelled, it was found that because of a combination of landform and proximity, development on some of the properties on Mellons Bay Road at the western edge of the viewshaft had the potential to interrupt views, particularly to Rangitoto.*

Ms Absolum goes on to state:

*A series of different arrangements of building height contours were analysed until those chosen for inclusion in the draft Plan Change were identified as the most appropriate. Because of the changing ground levels across each of the 32 affected properties, 10 properties will require two different building height controls over different parts of the property.*

121. It appears clear to us that the Council has chosen a BHRA method for the Stockade Hill LPV instead a more conventional contour-based method which applies to the majority of other LPV's in the Unitary Plan. From the evidence presented to us there is only one height restriction proposed (in addition to the standard residential zone height) and that the BHRA method has been proposed to respond to the circumstances that apply to Stockade Hill and the combination landform, proximity and desire to protect local views to the Hauraki Gulf justified this approach. We agree that this approach is justified in this case and that a BHRA is an efficient approach as it provides certainty to landowners as to which sites are affected and the extent of limitation on those affected sites.

### **Finding**

122. We find that the BHRA method is an appropriate method for the Stockade Hill LPV and this approach provides an efficient, site specific method for managing public views to the Hauraki Gulf while still enabling reasonable two-storey development on sloping sites within the LPV. We do not find the BHRA method adopted to be a duplication of height methods in the LPV nor one that is restricted to Volcanic Viewshafts and Height Sensitive Areas.

### **Is an amendment to the Regional Policy Statement a necessary component of the proposed plan change?**

123. We heard evidence from HNZ on this matter where their concern was essentially two-fold. The first being that amendments to the RPS provisions were not needed to provide for an LPV at Stockade Hill. In Dr Kirman's submission, she stated that the Unitary Plan had created a clear demarcation between volcanic viewshafts – which

were protected due to regional–level significance and local public views to the coast, ridgelines and other landscapes at a district–level significance. She submitted that the revised provisions would “conflate and confuse” the demarcation between the two types of view protections mechanisms. The second issue was natural justice issue with the notification process itself where the public notice only referred to the LPV component and did not refer to the changes proposed for the RPS.

124. We have already made a finding about the notification process in our discussion of procedural matters in para 24. The matter raised by HNZ has been resolved by the Council withdrawing the RPS changes from PC3.
125. Turning to the proposed changes themselves and the Council justification for them, we are not sure that there was ever a problem that needed to be solved. From our reading of the plan change provisions and the s32 analysis, the prime motivator was always the creation of an LPV from Stockade Hill and that the RPS provisions needed to be amended to correct an apparent “gap” in the regional level provision to enable local public viewshafts to be created. The Hearing Report explains this concern in paras 71-73 where it states:

*... while the RPS contains a clear objective to protect Public Views from inappropriate subdivision, use and development (Objective 2), it is not supported by the RPS policy framework. The RPS policy framework for Public Views addresses only the following matters:*

- a. identify and evaluate views for their regional or local significance (rps Policy 5);*
- b. include in the schedule of AUP (RPS Policy 6); and*

*The policies set out the criteria for identifying and evaluating views for their regional or local significance (policy (5)) however there is no RPS policy directed at the protection of Public Views. I consider that this is a gap in the RPS. Noting that policy gap and having regard to Objective (2) it is considered that the policy gap should be addressed.*

*PC3 addresses this issue by amending B4.3.2.3 Policies to include ‘coastal environments’ to give effect to objective B4.3.1.2.*

126. The HNZ submission refutes that there is a “gap” in the policy framework and asserts that the RPS policy intentionally distinguishes between maunga as a regionally significant matter and local public views as a district level matter. Dr Kirman states in para 6.12-6.14:

*“B4.3.2 Policies (1) through (4) deal exclusively with the management of volcanic viewshafts, setting out how views to and between Auckland’s maunga are identified, evaluated and protected.*

*With respect to other significant views from public places to the coastal environment, ridgelines and other landscapes, these are addressed in B4.3.2 Policies (5) and (6).*

*In contrast to views to and between maunga, the management directive of the Unitary Plan for other significant views from the public places to the coastal environment, ridgelines and other landscapes, as set out in D16.3, is to ‘manage development on sites within the viewshafts to avoid adverse physical and visual effects on the viewshaft including adverse cumulative effects on the viewshaft.’”*

127. Dr Kirman then referred us to submissions and evidence associated with Topic 020 (Viewshafts) for the Unitary Plan hearings
128. We agree with Dr Kirman that this policy distinction at RPS level appears to be deliberate. We also agree that a specific change to the RPS is not necessary to enable this LPV at Stockade Hill. In our reading of the RPS provisions in B4.3 and D16 we find that there is clear linkage and policy framework to provide an LPV as proposed by Council at Stockade Hill. Further, if the Council is concerned that there needs to be a stronger recognition of LPV’s and other significant views we consider that this should be the subject of a separate plan change and associated s32 analysis.

### **Finding**

129. We find that a change to RPS is not necessary to provide for an LPV at Stockade Hill in the manner proposed by the Council.

### **ADDITIONAL CHANGES**

130. We have reviewed the latest version of the plan change document and we generally agree with this version of the text. However, there are two incidental changes to the proposed additions to D16 which we consider need further amendment. One to use the “intrude into” instead of “dominate” with regard to the viewshaft and the other is to add the “to” to make sense of the sentence. The further changes we have determined are as follows:

#### **D16. Local Public Views Overlay**

*In addition to the distinctive volcanic landscape and regionally significant outstanding natural landscapes and outstanding natural features, Auckland’s wider landscape and maritime setting provides a sense of identity at the local level. Individual viewing points, and their locally significant viewshafts from public places, contribute to the unique character of many of Auckland’s neighbourhoods and coastal areas. Although many significant local views are naturally self-preserved by topography or proximity to the coast and require no specific protective restrictions, some are in prominent public locations but could be obstructed by buildings occurring in the foreground. These viewing points and the views from them have been scheduled in the Local*

*Public Views Overlay to ensure the benefits they provide are retained for future generations.*

*This overlay is also used to restrict building heights to ensure that the new development is of a height that does not ~~dominate~~ intrude into or obstruct views to the coastal environment by the use of blanket height restriction areas.*

## **STATUTORY PROVISIONS**

131. The RMA sets out a range of matters that must be addressed when considering a plan change, as identified in the section 32 report accompanying the notified plan change. We note that the plan change is focused on providing a site specific mechanism to maintain local views from Stockade Hill and not significantly amending the objectives and policies of Local Public Views overlay, the main relevant statutory requirements relate to ensuring that the proposed amended method efficiency and effectiveness of the provisions in achieving the objective of overlay.
132. We also note that section 32 clarifies that analysis of efficiency and effectiveness is to be at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
133. Having considered the evidence and relevant background documents, we are satisfied, overall, that PC 3 has been developed in accordance with the relevant statutory and policy matters with regard to providing a Local Public View in accordance with the purpose overlay. The plan change will clearly assist the Council in its effective administration of the Unitary Plan. As discussed above, we have residual concerns regarding the efficacy of the scheduling of Stockade Hill as a historic place and its response to its heritage context and specifically the need to provide for views from and/or to Stockade Hill as part of its heritage values. However, as discussed while we consider this heritage matter to be beyond the scope of this plan change, it is still a matter that is of importance to the community, and the protection of heritage values which can include heritage views, is a matter of national importance under the section 6 of the RMA. We also acknowledge that the protection of views from a heritage place does not appear to be specifically included in any provisions of the Unitary Plan and this presents a problem for how the Unitary Plan should recognise and provide for such matters. We therefore consider that these issues should be further investigated by the Council, including further amendments to the Unitary Plan to recognise and protect heritage views generally and from Stockade Hill should the values justify it.
134. We have identified a number of further relatively minor modifications to PC 3 which relate to consistency and clarity. We have referred to these changes in sufficient detail in the body of this decision to demonstrate that the further evaluation was undertaken in accordance with the requirements of section 32AA.

## DECISION

135. That pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, that Proposed Plan Change 3 to the Auckland Unitary Plan (Operative in Part) be approved, subject to the modifications as set out in this decision.
136. Submissions on the plan change are accepted and rejected in accordance with this decision. In general, these decisions follow the recommendations set out in the Councils section 42A report, response to commissioners' memo and closing statement, except as identified above in relation to matters in contention.
137. The reasons for the decision are that Plan Change 3:
- a. will assist the Council in achieving the purpose of the RMA;
  - b. is consistent with the Auckland Regional Policy Statement;
  - c. is consistent with the provisions of Part 2 of the RMA;
  - d. is supported by necessary evaluation in accordance with section 32; and
  - e. will help with the effective implementation of the plan.

A handwritten signature in black ink, appearing to read 'RBS', written over a large, stylized, hand-drawn figure-eight or infinity symbol.

Robert Scott - Chairperson

for Commissioners Heike Lutz and Angel Dalton

Date: 13 August 2018

# AMENDMENTS TO THE AUCKLAND UNITARY PLAN



**Amendments recommended at Notification of PC3** Proposed additions to text shown in *Italics and underlined* and proposed deletions to text shown in ~~*Italics and strikethrough*~~

**Amendments as part of the Decision for PC3 are shown as** *Italics, double underlined and highlighted* or and proposed deletions to text shown in ~~*Italics, double strikethrough and highlighted*~~.

(These amendments include the amendments recommended by the reporting planner at the close of Hearing)

---

### **B4.3. Viewshafts**

#### **B4.3.1. Objectives**

(1) *Significant public views to and between Auckland's maunga are protected from inappropriate subdivision, use and development.*

(2) *Significant views from public places to the coastal environment, ridgelines and other landscapes are protected from inappropriate subdivision, use and development.*

#### **B4.3.2. Policies**

(1) *Identify and evaluate a view to or between maunga for its regional or local significance considering the following factors:*

(a) *the viewpoint conveys the view to an audience from a public viewpoint that is regionally or locally significant;*

(b) *the view conveys an intact view of the maunga within a wider context which is of high or good quality;*

(c) *the view will contribute to or reinforce an overall appreciation of the region's maunga;*

(d) *the view recognises the importance of the maunga to Mana Whenua;*

(e) *the extent to which there are other public views of and between the maunga; and*

(f) *taking into account the extent to which the viewshaft will affect future development otherwise enabled by this Plan.*

(2) *Include a view in Schedule 9 Volcanic Viewshafts Schedule if it is regionally or locally significant.*

(3) *Protect significant views to and between maunga ~~and or to the coastal environment~~ by:*

(a) *avoiding subdivision, use and development that would:*

(i) *result in significant modification or destruction of view; or*

(ii) *significantly detract from the values of the view; and*

(b) *avoiding where practicable, and otherwise remedying or mitigating, adverse effects of subdivision, use and development that would:*

(i) *result in the modification of the view; or*

(ii) *detract from the values of the view.*

(4) *Protect the visual character, identity and form of maunga by:*

(a) *identifying height sensitive areas around the base of maunga; and*

(b) *establishing height limits in such areas which control future development that could encroach into views and erode their significance.*

(5) *Identify and evaluate a view from a public place to the coastal environment, ridgelines and other landscapes for its regional or local significance considering the following factors:*

- (a) the viewpoint conveys the view to an audience from a public viewpoint ~~including a scheduled historic heritage place~~ that is regionally or locally significant;
  - (b) the view conveys an intact view within a wider context which is of high or good quality;
  - (c) the view will contribute to or reinforce an overall appreciation of the region's natural landscape;
  - (d) the view recognises the importance of the landscape to Mana Whenua; and
  - (e) the extent to which there are other similar public views; and
  - (f) taking into account the extent to which the viewshaft will affect future development otherwise enabled by this Plan.
- (6) Include a view in Schedule 11 Local Public View Schedule if it is locally significant.

## **D16. Local Public Views Overlay**

*In addition to the distinctive volcanic landscape and regionally significant outstanding natural landscapes and outstanding natural features, Auckland's wider landscape and maritime setting provides a sense of identity at the local level. Individual viewing points, and their locally significant viewshafts from public places, contribute to the unique character of many of Auckland's neighbourhoods and coastal areas. Although many significant local views are naturally self-preserved by topography or proximity to the coast and require no specific protective restrictions, some are in prominent public locations but could be obstructed by buildings occurring in the foreground. These viewing points and the views from them have been scheduled in the Local Public Views Overlay to ensure the benefits they provide are retained for future generations.*

*This overlay is also used to restrict building heights to ensure that the new development is of a ~~scale height~~ that does not ~~dominate~~ intrude into or obstruct views to the coastal environment by the use of blanket height restriction areas.*

### *D16.2. Objective*

*(1) Locally significant public views are managed to maintain and enhance the visual integrity of the views.*

### *D16.3. Policies*

*(1) Identify and evaluate significant local public viewshafts using the following criteria:*

- (a) the extent to which the public viewshaft contributes to the aesthetic value or visual legibility of the wider natural landscape;*
- (b) the community association with, or public appreciation of, the values of the viewshaft;*
- (c) the visual coherence, unity or integrity of the viewshaft and its view; and*
- (d) the potential value of the viewshaft for public education, including known historic associations in relation to the site where the viewshaft originates.*

*(2) Manage development on sites within the viewshafts to avoid adverse physical and visual effects on the viewshaft including adverse cumulative effects on the viewshaft.*

*(3) Require public access to be maintained to the viewing point where the viewshaft originates.*

### *D16.4. Activity table*

*Table D16.4.1 specifies the activity status of development activities in the Local Public*

Views Overlay pursuant to section 9(3) of the Resource Management Act 1991.

- The rules that apply network utilities and electricity generation in the Local Public Views Overlay are located in E26 Infrastructure.
- The floor of the viewshaft is determined in accordance with the survey coordinates contained in Schedule 11 Local Public View Schedule.

Table D16.4.1 Activity table

Activity	Activity status
<i>Development (where it intrudes into a scheduled local public viewshaft)</i>	
(A1) Temporary construction and safety structures	P
(A2) Buildings and structures that intrude into a scheduled local public viewshaft <u>except within the Stockade Hill Viewshaft</u>	RD
<u>Buildings in a blanket height restriction area, excluding network utilities, electricity generation facilities, broadcasting facilities and road networks</u>	
(A3) <u>Buildings, structures and external additions and alterations to buildings that do not comply with D16.6.1.1</u>	<u>RD</u>

D16.6. Standards

D16.6.1 Height

Purpose: to manage the height of buildings to:

•maintain the visual integrity of the view by minimising the visual ~~dominance~~ intrusion of buildings

•protect views to the coastal environment from public open spaces, including scheduled historic heritage place

(1) In applying these standards, height must be measured using the average ground level method.

(2) Buildings within the Stockade Hill Viewshaft: blanket height restriction area must not exceed a maximum building height of 8m ~~or 9m~~ as shown on Schedule 11, Map11.1.

D16.8. Assessment – Restricted discretionary activities

D16.8.1. Matters of discretion

The Council will restrict its discretion to the following matters when assessing a restricted discretionary resource consent application:

(1) buildings and structures that intrude into a scheduled local public viewshaft:

(a) effects on the visual integrity of the view from the identified viewing point;

(b) location, nature, form and extent of proposed works;

(c) the functional need or operational need for the proposal and any alternatives considered to fulfil that need without the intrusion into the view; and

*(d) the relevant objectives and policies in D16.*

*D16.8.2. Assessment criteria*

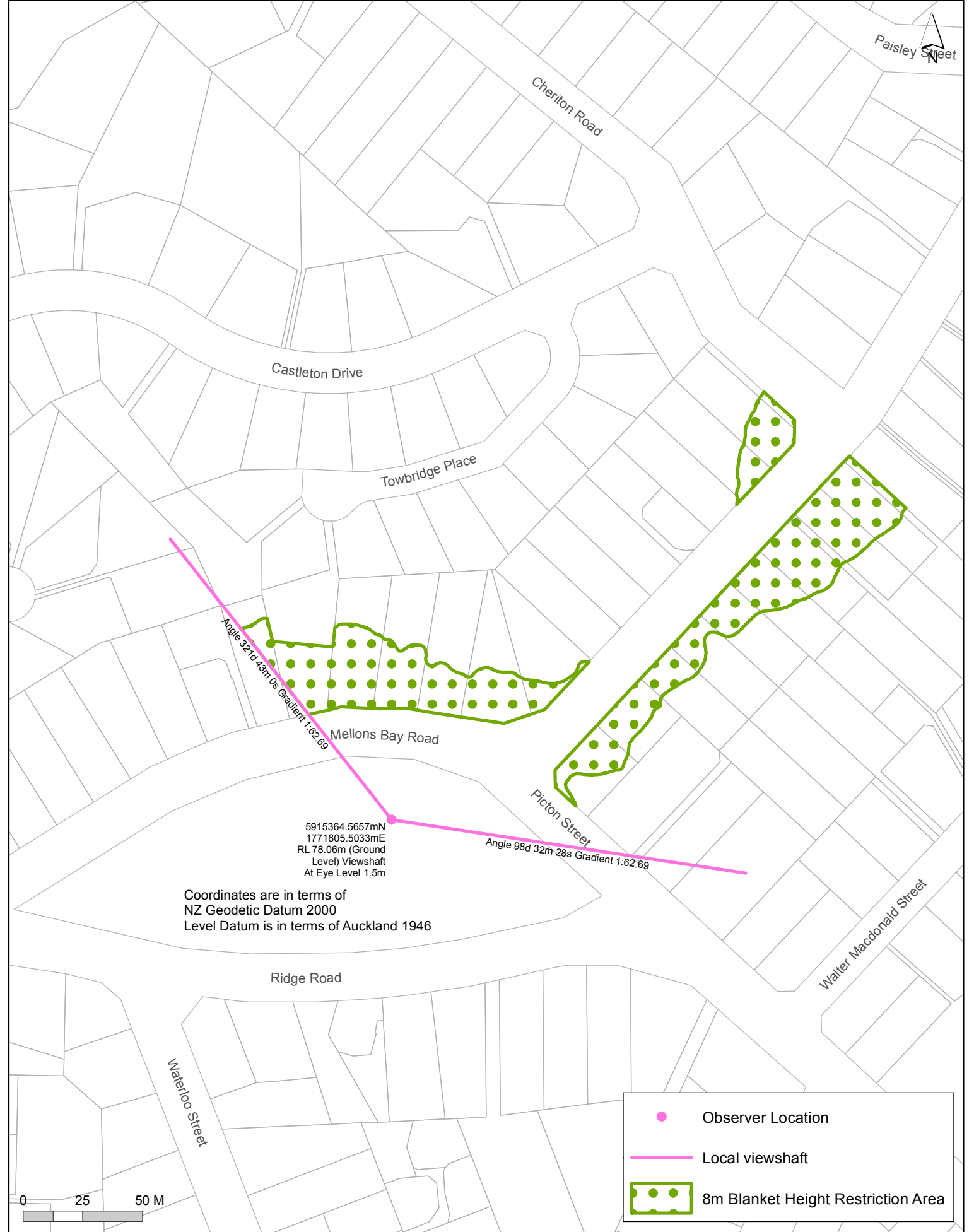
*The Council will consider the relevant assessment criteria for restricted discretionary activities from the list below:*

*(1) buildings and structures that intrude into a scheduled local public viewshaft:*

*(a) whether the nature, form and extent of the building adversely affects the visual integrity of the viewshaft and its view;*

*(b) whether the proposed building has a functional or operational requirement to be in the location proposed and the proposed height of the building is consistent with that requirement; and*

*(c) whether there are practicable alternatives available that will not intrude into, or will minimise the intrusion into the local public viewshaft.*



**Local Public Views Map 1: Protection of Views from Stockade Hill, Howick**

