

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



Proposal

To demolish or remove two character defining buildings and replace them with a new office/retail building at 443 – 445 Mount Eden Road, Mount Eden.

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

Application number:	LUC60322580
Site address:	443-445 Mt Eden Road, Mt Eden
Applicant:	Samson Corporation Limited
Hearing commenced:	Monday 17 June 2019, 9.30am
Hearing panel:	Dave Serjeant (Chairperson) Gavin Lister John Kirikiri
Appearances:	<p><u>For the Applicant:</u> Jeremy Brabant (Legal) Marco Creemers (Corporate) David Hillier (Visual Simulations) Richard Naish (Architect) Helen Mellsop (Landscape Architect) Adam Wild (Heritage) Jeff Brown (Planning)</p> <p><u>Albert-Eden Local Board</u> Graeme Easte Lee Corrick</p> <p><u>For the Submitters:</u> Christine Fletcher Auckland Volcanic Cones Society c/o – Linda Vink Ngairie Malpass Mt Eden Maungawhau Village Centre Society c/o – Mark Thomas Mt Eden Methodist Church Charitable Trust c/o – Mark Thomas Mark Thomas and Margaret Irwin Tūpuna Maunga Authority</p>

	c/o – Tania Richmond and Dominic Wilson Eden Park Neighbours' Association Incorporated c/o – Mark Donnelly Mark Donnelly Lynne Family Trust c/o – Brian Putt and Geoffrey Short Dr Stuart Rabone April Glenday Dick Bellamy Mt Eden Village Incorporated c/o – Steve Roper and Frances Loo Frances Loo <u>For Council:</u> Kerstin Strauss, Team Leader Rebecca Fogel, Team Leader Built Heritage Gabrielle Howdle, Landscape Architect Yu-Ning Liu, Urban Designer Larissa Rew, Hearings Advisor
Hearing adjourned	Tuesday 18 June, 2019, 1.00pm
Commissioners' site visit	Tuesday 16 July, 2019
Hearing Closed:	Tuesday 9 July, 2019

Introduction

1. This decision is made on behalf of the Auckland Council ("**the Council**") by Independent Hearing Commissioners Dave Serjeant (Chairperson), Gavin Lister and John Kirikiri appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("**the RMA**").
2. This decision contains the findings from our deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
3. The applications were publicly notified on 4 September 2018. A total of 79 submissions were received, with 3 in support and 76 in opposition.

Summary of proposal and activity status

4. The applicant proposes to demolish a special character building and replace it with a new office/ retail building. The following land use consents were required pursuant to the Auckland Unitary Plan (Operative in part) (**AUP(OP)**):

Business – Local Centre Zone

- i. To develop and use offices greater than 500m² gross floor area (**GFA**) on the site is a *restricted discretionary activity* under rule H11.4.1(A19).
- ii. To construct a new building is a *restricted discretionary activity* under rule H11.4.1(A44).
- iii. The proposal involves use and development that fails to meet the following standard and is a *restricted discretionary activity* under rule C.1.9(2):
 - o H11.6.5. Landscaping: A landscape buffer of 2m in depth must be provided along the street frontage between the street and car parking, loading, or service areas which are visible from the street frontage. This rule excludes access points.
A screen to the carpark is proposed, but this is not solid and therefore the carpark is visible (able to be seen) from the street frontage. No landscape buffer is proposed.

Special Character Areas Overlay – Business: Mount Eden Village

- iv. Total demolition and removal of character defining buildings is a *discretionary activity* under rule D18.4.2(A9).
- v. To construct a new building in the Special Character Areas Overlay – Business with identified character defining buildings is a *restricted discretionary activity* under rule D18.4.2(A12).

Volcanic Viewshafts and Height Sensitive Areas Overlay

- vi. Buildings in a height sensitive area not otherwise provided for under Table D14.4.1 is a *non-complying activity* under D14.4.1(A11).
 - o The proposed building will exceed the 9m height sensitive area limit by a maximum of 2617mm (southern elevation).

Infrastructure

- vii. Small scale electricity generation facilities that intrude into the regionally significant volcanic viewshaft and height sensitive area are a *restricted discretionary activity* under E26.11.3.1(A159).
 - o There are four roof-top photovoltaic solar panels that will intrude into the regionally significant volcanic viewshaft and height sensitive area.

Noise and vibration

- viii. Construction noise and vibration not complying with the permitted activity standards is a *restricted discretionary activity* under E25.4.1(A2):

- Noise from rock breaking will exceed the long term construction noise limits (70dB LAeq) at the closest buildings within 20m from the subject site (by up to 10dBA) for up to three weeks. These closest buildings include 437-441 Mount Eden Rd (with 441A, 437, 439 and 441 Mount Eden Rd being occupancies), 1 Ngauruhoe St and 447 Mount Eden Rd (with 447 and 447A Mount Eden Rd being occupancies). Vibration levels are predicted to exceed the AUP(OP) human comfort limit at the same sites that noise exceedances will occur at.

Note: The maximum limit of 70 dBA Leq specified above takes into account standard E25.6.27(4) where the noise limits shall be decreased by 5dB where a project involves a total duration of construction work that is more than 20 weeks.

Transport

- ix. The proposal involves accessory parking and access that does not meet the following parking and access standards and is a restricted discretionary activity under rule E27.4.1(A2).
 - E27.6.4.3.2(T152): For activities within Centres serving nine or less parking spaces, the minimum and maximum vehicle crossing width allowable is 3.0m (one way) and 3.5m (one way), respectively. The proposed vehicle crossing is 4.0m wide, therefore exceeding the maximum permitted by 0.5m.
 - E27.6.4.3(2): Access must be designed so that vehicles using or waiting to use entrance control mechanisms do not queue into the adjoining road reserve or obstruct entry to or exit from the site.

Comprehensive development signage

- x. Comprehensive development signage is a restricted discretionary activity under rule E23.4.2(A53).

5. Overall the proposal has been considered as a *non-complying activity*.

Relevant statutory provisions considered

- 6. In accordance with section 104 of the RMA, we have had regard to the relevant statutory provisions including the relevant sections of Part 2 and section(s) 104, 104B and 104D.

Relevant standards, policy statements and plan provisions considered

- 7. We accept the advice of the reporting planner that there are no national environmental standards, regulations or national policy statements that are relevant

to determining this application. Also that there are no additional matters pursuant to section 104(1)(c) for us to consider.

8. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant policy statements and plan provisions of the AUP-OP as identified in the section 42A report and in Attachment B to the evidence of Mr Jeff Brown. Our consideration of the relevant provisions is provided under a later heading.

Local Board comments

9. Mr Graeme Easte and Ms Lee Corrick appeared at the hearing on behalf of the Albert-Eden Local Board. Mr Easte presented examples of new development within the special character area at Three Lamps in Ponsonby that he considered was appropriate to its setting. By contrast he considered that the proposed building was inappropriate due to its structural approach and that more effort should have been made to design it to 'fit in' with the special character area of Mount Eden village. He advised that the local board had unanimous opposition to the proposal. The local board cannot be a submitter (i.e. a party to the proceedings) however the Commissioners have taken its views into consideration.

Applicant's evidence

10. The Commissioner's received the applicant's evidence as required prior to the hearing. Following our reading we decided that we had no need for the applicant's civil engineering, traffic, geotechnical or acoustic witnesses to attend the hearing. This was due to agreement between these experts and their Council counterparts as to matters of assessment and appropriate conditions of consent to address any environmental effects. Should it have been the case that any submitter raised a matter of concern in these areas of expertise, and we (or the applicant) considered that the matter required a response, then we would have called the relevant witness. As it happened, no such need was demonstrated.

Legal Submissions

11. Mr Jeremy Brabant presented legal submissions on behalf of the applicant. Mr Brabant summarised the key aspects of the proposal including the demolition of the building on the Mount Eden road frontage, the relocation of the villa on the rear of the site, and the erection of a new building containing 211m² of retail space, 856m² of office space, and 4 carparks and 12 bike parks accessing the site from Newnham Lane.
12. Mr Brabant emphasised the difference in the AUP(OP) recognition of historic heritage and special character, with historic heritage being confined to the buildings scheduled as such in the plan. He submitted that the Special Character Area Overlay – Business (**special character area**) for Mount Eden Village, the extent of which is defined in the AUP(OP), contains buildings with an "eclectic, built form", and had been subject to "evolution... over time". Mr Brabant also emphasised that

redevelopment within the special character area was not prohibited and that new buildings were not required to mimic the existing buildings.

13. In relation to the potential effects of the proposal on views of Maungawhau, Mr Brabant emphasised that buildings within a Height Sensitive Area up to 9m in height are a permitted activity (Table D14.4.1 (A7), thus providing for a “reasonable scale of development” (Policy D14.3.1(b)). He submitted that it was important not to conflate the overall activity status of non-complying with the permitted activity maximum of the rule.
14. Mr Brabant also addressed us on various aspects of the statutory framework including the approach to section 104D, the receiving environment, the permitted baseline and Part 2 of the RMA. In relation to the higher order documents and Part 2 it was Mr Brabant’s submission that as the AUP(OP) was “newly minted” it is safe to assume that the Plan provisions accord with the legal requirements and that Part 2 matters have been addressed during the comprehensive AUP process.
15. Finally we note the matter of a letter from Origins Obstetricians and Gynaecologists Limited (Origins). Origins were not a submitter but had written to the Council objecting to what it saw as a factual inaccuracy in the evidence of Mr Naish, whereby it could have been implied that Origins supported the proposal. We did not interpret Mr Naish’s evidence in that way, and we make clear that this matter has no bearing on our decision.
16. Mr Marco Creemers is the Project Director for the applicant. Mr Creemers spoke to his evidence and took us through a powerpoint presentation of other projects that Samson Corporation has undertaken in Auckland over the years. Mr Creemers also provided evidence of the cost of earthquake strengthening for the existing buildings on the site and compared this with other earthquake strengthening projects that Samson Corporation had undertaken. Mr Creemers considered that the cost of earthquake strengthening the front building on the site was too high to be economically feasible.
17. Mr David Hillier, a qualified architect, had provided the 3D rendering and visual simulations for the project. Mr Hillier answered some questions on his methodology and outputs that other experts had relied on in relation to the viewshaft, the height sensitive area and special character.
18. Mr Richard Naish and his company, RTA Studio, are the architects for the proposal. Mr Naish is an architect of many years’ experience and has won many national and international awards. Mr Naish took us through the key points of his evidence. Mr Naish had analysed the existing character of Mount Eden village, noting that a key feature of this character was the mixture of building typologies which had evolved over time. After considering that mixture through a series of bulk and location studies Mr Naish stated that he had designed a building that “seeks its form, scale and proportion from its mixed historic neighbours and context”. Mr Naish identified a

number of the features of the proposed building that responded in this manner including:

- A building that steps down to Mount Eden Road frontage (from three storeys to two);
 - The highly modulated roof form;
 - Fully glazed, activated street frontages;
 - The rebuilding of the existing large canopy;
 - The use of timber detailing and terracotta, referencing traditional materials used in nearby villas and commercial buildings; and
 - The faceted façade along Newnham Lane referencing the bays in villas.
19. Mr Naish also emphasised a number of building features that broke down the bulk of the building overall and reduced its sense of scale to Newnham Lane.
20. Mr Naish presented a supplementary statement of evidence that responded to the matter raised in the pre-circulated evidence of Ms Richmond for the Tupuna Maunga Authority which queried the volcanic viewshaft as it relates to the proposed building. The supplementary statement by Mr Naish confirmed that the AUP(OP) Schedule 9 viewshaft information had been used together with a topographic survey and RTA Studio CAD (computer-aided design) confirmed the proposed building was beneath the floor of the viewshaft.
21. Ms Helen Mellsop is an experienced and qualified landscape architect. She spoke to her evidence that focussed on the effect of the proposed buildings on views to Maungawhau. Ms Mellsop established that the proposed building had no effect on the Regionally Significant Volcanic Viewshafts that applied to Maungawhau.
22. The remainder of Ms Mellsop's evidence addressed the matter of the local views of the maunga to the extent that these are protected by the Height Sensitive Areas Overlay. Ms Mellsop explained the purposed of the overlays and reviewed the objectives and policies of Chapter D14 in support of her view. In particular Policy D14.3 (5) which states:
- (5) Avoid new buildings or structures that exceed two storeys in height in a height sensitive area, except where they would have no adverse effect on the visual integrity of any volcanic maunga to which that height sensitive area relates, as seen from any public place.*
23. Based on her opinion that those parts of the building under 9m in height were a permitted activity in terms of the matters in Chapter D14, Ms Mellsop provided evidence and answered our questions on whether the infringements of the 9m height standard would have any additional effects on the 'visual integrity' of the maunga.

She advised that the AUP(OP) did not contain a definition of ‘visual integrity’, however it was her view that even if such a definition did include more than the direct view, the building “did not compete with the maunga”.

24. Mr Adam Wild is a qualified architect, with a specialisation and long experience in heritage and conservation architecture. His evidence was based on his assessment of the effects of the proposal on the special character values of Mount Eden village. This included both the demolition/removal of the existing buildings and the proposed new building.
25. Mr Wild accepted that the buildings to be demolished are recognised within the special character overlay as character defining buildings. However, given that the AUP(OP) provides for their demolition as a discretionary activity, the value that they contribute to the village is a matter for assessment. Based on a detailed analysis of the village streetscape Mr Wild came to a conclusion that the buildings to be demolished/removed “*do not contribute to local group value, are not strong contributors to streetscape character, and have been modified themselves*”. Consequently, he considered that the effects of the demolition/removal on the special character of Mount Eden village would be minor.
26. In terms of the effects of the proposed building, Mr Wild had conducted an independent assessment of how the building responded to the AUP(OP) requirements for the Special Character Areas Overlay – Business for Mount Eden. He supported Mr Naish’s description of the local character and how the proposed building had drawn from the characteristics of form, scale, height, rhythm, and materiality. He emphasised, as had Messrs Naish and Brabant, that the new building should not mimic the existing buildings. Rather the “design enhances these characteristics [of the existing buildings] through its interpretation and evolution”.
27. Mr Wild had analysed the Special Character Area statement (AUP(OP) Schedule 15) and advised that we should be guided by that in our decision. He considered that the building was appropriate to its location and contributed to the evolution of the village’s character as anticipated by the Special Character Area statement.
28. Mr Jeff Brown is an experienced and qualified planner and resource management consultant. His company had prepared the resource consent application for the proposal. Mr Brown had conducted a comprehensive analysis of the relevant statutory documents including the Auckland Council RPS (Chapter B of the AUP(OP) and Chapters D14 and D18 as these related to the volcanic viewshaft and special character overlays, Chapter H11 in relation to the Local Centre Zone, and other Auckland-wide provisions. He largely relied on the conclusions of the specialist witnesses in order to conduct his analysis.
29. To arrive at our decision on section 104D and more generally on section 104, it was Mr Brown’s view that we should consider all objectives and policies together, with none having any greater weight than others, although he acknowledged that such

matters as transport were not so critical. He helpfully attached all of the relevant provisions and his summary analysis to his evidence.

30. In relation to section 104D, Mr Brown concluded that adverse effects were minor and that the proposal was consistent with and achieves the relevant objectives and policies.

Submitter's evidence

31. As noted, submissions were virtually all in opposition to the proposal. The section 42A report summarised the issues raised in Section 11. We have read the submissions and accept that the section 42A report is a fair summary. Most submissions expressed concern in one way or another at what were considered to be adverse effects on special character and the inappropriate height/scale/bulk of the new building, and at the obstruction of views or adverse effects on the visual integrity of Maungawhau.
32. Twelve of the submitters spoke to their submissions at the hearing. In addition we received a further written statement from Mr Errol Tongs, in support of his original submission. The key matters addressed by individual submitters were as follows:
33. Mrs Christine Fletcher, focussed on the strong and continuing exercise of stewardship that the Mount Eden community had exercised over the village and retaining its current scale and appearance. She said that the village had not succumbed to larger stores and lower quality retail outlets as the public, and community generally, saw the value in heritage. Mrs Fletcher considered that the village attracted persons from across the region wanting to experience the 'village culture' and 'vibrancy' that is associated with the special character of the surroundings.
34. Ms Linda Vink spoke on behalf of the Auckland Volcanic Cones Society. Ms Vink answered our questions on the matter of the 'visual integrity' of the maunga. Her view was that this was more than just a direct line of sight to the maunga. It included the overall perspective of the maunga, its connection to other maunga in the Auckland volcanic field and how the maunga sits in relation to the village.
35. Ms Ngaire Malpass emphasised the 'human scale' of the existing buildings. She was concerned about the proposed demolition and considered that the special character derived from the buildings as a group. Ms Malpass also expressed concern about the safety along Newnham Lane and the reserve area.
36. Mr Mark Thomas spoke to his own submission, made jointly with Ms Margaret Irwin, and on behalf of the Mount Eden Maungawhau Village Centre Society and the Mount Eden Methodist Church Charitable Trust. Mr Thomas took us through a powerpoint presentation which addressed a wide range of concerns with the proposal including the removal of the character defining buildings, the intensity and scale of the building, the excessive floor area of the building, the impact on Newnham Lane and the height

of the building. We had some discussion with Mr Thomas, as with other submitters, about whether they considered the Methodist Church to be a public place, which was important for the consideration of Policy D14.3 (5). Mr Thomas, and others, considered that the high level of use of the building made it a public place. We address this matter specifically below.

37. Tupuna Maunga o Tamaki Makaurau Authority (TMTMA) were represented by Ms Tania Richmond and Dominic Wilson. Ms Richmond spoke to her filed statement of planning evidence and Mr Wilson more generally about Auckland's Tupuna Maunga and the role of the TMTMA. He advised that as a matter of policy the TMTMA opposed intrusions into viewshafts and height sensitive areas.
38. Ms Richmond pointed out that the special character area statement refers to the strong association between the maunga (Maungawhau) and the village and more broadly that the maunga is a critical part of the suburb's landscape and contributes to its identity and sense of place.
39. Ms Richmond accepted that the viewshaft was not threatened. In relation to the 9m permitted building height, Ms Richmond accepted that the AUP(OP) provided for a permitted level of development on the site. However, in the context of a non-complying activity, she considered that we should conduct an overall assessment of visual integrity. In terms of 'visual integrity' she considered that it was important to be able to 'read' the form of the maunga and its archaeology.
40. Addressing mana whenua values, Ms Richmond referred us to the Tupuna Maunga Integrated Management Plan June 2016 wherein it states that Maungawhau, along with the other Tupuna Maunga, are sacred to mana whenua as taonga tuku iho (heritage features). Consequently, it was Ms Richmond's interpretation that an adverse effect on visual integrity would be an adverse effect on mana whenua values.
41. Eden Park Neighbours Association was represented by Mr Mark Donnelly. Mr Donnelly explained that the Association has a broad interest in the local area, not just Eden Park activities, and was concerned about the scale of the proposed development. The Association considered that in the context of the significant 'up-zoning' of the surrounding residential areas it was even more important for the village to be a place where people could meet and enjoy a human scale environment.
42. Lynne Family Trust was represented by Mr Geoffrey Short and Mr Brian Putt. The Trust has owned 437 Mount Eden Road, immediately to the north of the subject site for many years. Whilst the written submission opposed the development in part and sought that the application be declined, the Trust recognised that redevelopment of the village was necessary and now accepted the proposal subject to conditions. Mr Putt expressed the concern of the Trust at the potential for construction effects to damage the Trust's buildings. The recommended conditions of consent included conditions addressing the condition of neighbouring buildings before and after

construction to address this concern. Mr Putt also detailed concerns about access to the Trust's property during construction.

43. Dr Stuart Rabone, a geologist, presented an oral statement in support of his original submission. In addition to expressing similar concerns as in other submissions about special character and adverse effects on views to Maungawhau, Dr Rabone considered that the proposed development's foundations would require the blasting of basalt requiring the evacuation of the village. We note here that Dr Rabone's view was contrary to the applicant's proposal whereby rock breaking would be likely necessary, but rock blasting was not proposed.
44. Ms April Glenday, presented an oral statement in support of her original submission. Ms Glenday's submission was in her own name but referred also in her submission to the activities of the Friends of Maungawhau, a local group whose activities are focussed on the preservation and protection of the natural and cultural character of Maungawhau. While accepting the baseline of what is provided for as a permitted activity within the height sensitive area, Ms Glenday nevertheless considered that the building intruded into local views of the maunga that should be protected.
45. Mr Richard (Dick) Bellamy spoke to his original submission. In addition to having the concerns expressed by other submitters, Mr Bellamy addressed the specific matter of the removal of the villa on the Newnham Lane frontage. Mr Bellamy considered that minimal attention had been paid to the Newnham Lane frontage where in his view the removal of the villa would result in the loss of character value attributable to the current group of buildings as a whole. He also considered that the proposed building would affect the use and enjoyment of Essex Reserve.
46. Mt Eden Village Incorporated were represented by Mr Steve Roper and Ms Frances Loo. Ms Loo addressed the matters raised in the submission made by her family at the same time. Ms Loo recounted the long history of her family as residents, property and business owners in Mount Eden. She observed that the opposition to the proposal in Mount Eden was very broad-based – the Council's report, the local board, local business and residents associations, TMTMA and the Volcanic Cone Society all opposing the application.
47. Ms Loo disagreed with the applicant's position which, in her words, was that "Special Character is fundamentally one of evolution" including the modern buildings. Her view was that modern buildings in Mount Eden may just be located within the special character area, but not contribute to it in any way. Rather she considered that the special character area was defined by the "historic heritage" of the area.
48. From a business point of view, Ms Loo considered that the competitive position of the village suffered from the expansion of retail offering at other larger centres and online. Mount Eden's point of difference was its character and it was very important that this was retained.

49. Ms Karen Holdom spoke to her original submission which focussed on the intrusions into the viewshaft.

Council reports

50. The Council 42A report and specialist reports in support were pre-circulated and pre-read by us prior to the hearing. The author of the section 42A report Ms Hsaio had taken maternity leave and was replaced by her Team Leader, Ms Strauss for the hearing. Ms Fogel also replaced Ms Priyanka Misra, a senior built heritage advisor in her team for the hearing as Ms Misra had left the Council following the preparation of her report. Ms Fogel, Ms Howdle and Ms Liu attended the hearing.
51. Each of the Council specialists confirmed the reports they had prepared. The key elements of their presentations were as follows.
52. Ms Fogel's advice was that we should be primarily guided by the Special Character Statement in AUP(OP) Schedule 15. She noted that the statement refers to a range of Victorian and Edwardian buildings. She agreed that a new building needed to be 'of its time' and that to mimic the special character buildings would detract from the value of both the special character buildings and the new building. Ms Fogel considered that there was a "middle ground" between these approaches that would best meet the requirements of the special character area. However, she reiterated the view in her report that the approach taken in the proposal was 'too different in too many ways'. Ms Fogel detailed how she considered the scale, form and materials of the building did not respond sufficiently to the Special Character Statement or the assessment criteria for the special character area.
53. Ms Howdle addressed the matter of the visual integrity of Maungawhau. Ms Howdle's view was that the additional (up to) 2.66m of building height did have adverse effects on the visual integrity of the maunga. In drawing this conclusion she had placed some reliance on the statements in Appendix 20 AUP(OP) Volcanic Viewshafts and Height Sensitive Areas about the dominance of Maungawhau and its importance to the village and suburb generally.
54. Ms Howdle accepted the proposed building did not intrude into any viewshafts, and was not concerned about the 100mm solar panel structure intrusion.
55. Ms Liu distinguished her comments on urban design as being distinct from the natural and built heritage matters addressed by the above Council reviewers. Ms Liu was generally supportive of the design and the appropriateness of its scale and built form to the zone. However, she did express concerns about the interface of the car park area and commercial entrances with Newnham Lane.
56. Ms Strauss summarised the Council's position on the application in the context of the relevant planning provisions. The key points of Ms Strauss' summary are:
- The 9m permitted height limit for the Height Sensitive Area cannot be regarded as a permitted baseline in the context of a (at least) restricted discretionary

activity. However, the purpose of the rule could be considered in terms of the objectives and policies;

- The non-complying status of the activity requires all effects to be considered in a bundled fashion;
- In terms of the section 104D(1), while there are elements of the proposed activity that have effects that are less than minor and which are not contrary to the relevant objectives and policies, Ms Strauss considered that, overall, the application failed both of the 'gateway tests';
- The zone height limit of 13m was not particularly relevant in the context of a 9m height limit within the Height Sensitive Area.
- The fact that Newnham Lane is not contained within the special character overlay does not lessen the importance of that side of the site in terms of special character considerations; and
- The term 'visual integrity' encompasses the relationship of the maunga with the surrounding landscape, not just views to or from the maunga.

Applicant's reply

57. Mr Brabant provided a comprehensive oral reply at the end of the hearing and a written reply following the hearing end. Mr Brabant reiterated some of the matters addressed in his opening submissions. The key points in the reply are summarised as follows:

- Despite the fact that the buildings are identified as character defining buildings, the AUP(OP) specifically enables the demolition or removal of character defining buildings consequent on grant of consent;
- With reference to relevant case law, Mr Brabant emphasised that the section 104D(1)(a) assessment of adverse effects must be undertaken on a holistic basis, looking over the entire application and a range of effects, not individual effects. A similar approach is to be taken in relation to section 104D(1)(b) on the objectives and policies assessment;
- In relation to the potential effect of the proposed building on Maungawhau, Mr Brabant urged us to undertake a 'real-world' assessment of this during our site visit;
- On the important matter of the building's design, Mr Brabant referred to Mr Naish's response to questions that made clear that the design was influenced by a range of reference points in the village and an assessment of the bulk, location and style of surrounding built form. He submitted that there was no (AUP(OP)) direction from a character perspective that any new buildings must reflect 1870s to 1930s style. He noted that this was also Mr Wild's evidence,

which added that all of the buildings in the village formed part of its special character, not just the earlier buildings;

- Again with reference to Mr Wild's evidence, Mr Brabant submitted that the focus of the Special Character Statement was on Mount Eden Road, not Newnham Lane, and that the villa to be removed plays no role in the special character or streetscape of the main street;
- Mr Brabant rebutted many of the specific points made by submitters, including the matters that, in law, the Methodist Church land and buildings are not a public place (with reference to assessment under Policy D14.3.(5));
- Mr Brabant commented on the Council officer's response drawing attention to the evidence from the applicant on points of disagreement and submitting on what he considered to be the correct legal approach to our decision-making.

Principal issues in contention

58. After analysis of the application and evidence (including proposed mitigation measures), undertaking a site visit, reviewing the Council planning officer's recommendation report, reviewing the submissions and concluding the hearing process, the proposed activity raises a number of issues for consideration. The principal issues in contention are.

- Effects on views of Maungawhau.
- Effects on the Special Character of Mount Eden Village through demolition/removal of character defining buildings, and the characteristics of the replacement building.
- Effects on urban design qualities including those of Newnham Lane.

59. Our main findings on the principal issues that were in contention are set out in the following three sections.

Views of Maungawhau

60. The site falls under three of Volcanic Viewshafts identified in Schedule 9 of the AUP-OP, and within the Height Sensitive Overlay which limits building height to 9m in certain areas around volcanic cones.

61. As discussed, we received evidence on this matter from two landscape architects, Ms Helen Mellsop for the applicant, and Ms Gabrielle Howdle for Auckland Council. We also heard lay evidence from submitters about the importance they placed on views of Maungawhau.

Volcanic Viewshafts

62. We were informed that the proposed building itself would not infringe the viewshafts, but that four roof-mounted solar panels would infringe the viewshafts by up to approximately 100mm. Ms Mellsop's evidence was that this infringement would have no adverse effect because such views would be obscured by topography, other buildings, and/or vegetation. In response to questions, she clarified that views would be obscured by topography and buildings regardless of vegetation. She explained that any infringement would be screened by the Methodist Church in Viewshaft E01, by a number of buildings in E02, and by topography in E03. Ms Howdle agreed there would be no adverse effects because of the distance of the viewpoints and the minimal extent of the intrusion. This evidence was not contested. We therefore find there will be no adverse effects on the Volcanic Viewshafts.

Height Sensitive Overlay

63. As discussed, the site is subject to the height sensitive overlay. Rule D14.4.1 (A7) provides for buildings up to 9m as a permitted activity within the height sensitive overlay, and Policy D14.3.(5) is to "avoid new buildings or structures that exceed two storeys in a height sensitive area, except where they would have no adverse effect on the visual integrity of any volcanic maunga to which the height sensitive area relates, as seen from any public place". 'Visual integrity' is not defined in the AUP(OP). We note for the purpose of Policy D14.3.(5) that it is a quality of views from public places. We were told integrity means wholeness, unity, and coherence and that 'visual integrity' therefore refers to such qualities of views of the maunga. Witnesses highlighted the importance of such aspects as the maunga's skyline profile, visibility of the terraces and other archaeological features, visual connections between the maunga, and the relationship between the maunga and the surrounding area. We assume 'visual integrity' means more than straightforward 'visibility' and that we should consider broader qualities of views of the maunga. We also noted that the relationship between Mount Eden Village and Maungawhau is part of the village's special character described in the Schedule 15 Special Character Statement.
64. Ms Mellsop identified the potentially affected public views as limited to Ngauruhoe Street and a short section of Mount Eden Road in the vicinity of intersections with Ngauruhoe and Poronui Streets. She referred to the photo-simulations prepared by Mr Hillier from six representative viewpoints in this area. The figures included photos on which were superimposed the outline of the proposed building in comparison with a 9m high envelope. Ms Mellsop's evidence was that, while the proposed building will screen some existing views of the maunga from Ngauruhoe Street, it would screen no more of the maunga than would be screened by a building conforming to the 9m height standard. Ms Howdle agreed with this analysis.
65. Ms Howdle, however, considered the building would have adverse effects on 'visual integrity' where the building and maunga appear alongside each other in a view because the additional height above 9m (up to an additional 2.6m) mean the building would 'compete' in scale and prominence with the maunga. She considered the

building would “be of a scale that is dominant to a degree that Maungawhau appears flat and therefore is no longer appreciated for its prominence.” She focused in particular on the photo-simulation from the steps of the Methodist Church (Viewpoint 2) to explain her evidence.

66. We accept that a foreground element might detract from a view in the manner Ms Howdle described. However, we questioned whether a two-dimensional photo from a single viewpoint might exaggerate the perceived prominence of a foreground building relative to that of the maunga, and that difference in scale would be more apparent in the ‘real world’ with the benefit of three-dimensional perspective and parallax arising from movement. Ms Howdle said that she had not relied solely on the photo-simulations. Ms Mellsop, on the other hand, acknowledged that a tall building in the vicinity of a volcanic maunga could compete with it in terms of scale and prominence (she used ‘The Pines’ apartment as an example) but did not think that would be the situation with the proposal.
67. We preferred Ms Mellsop’s evidence on this matter because it was consistent with our site visit observations. We observed instances where large foreground buildings – for example the Methodist Church – appear in views together with Maungawhau without visually competing with the maunga. We observed that the scale and presence of Maungawhau is more apparent in the real world than in photos. We took into account also that the part of the proposal that exceeds the 9m standard is set back from the Mount Eden Road building line.
68. We concluded the proposed building would not have adverse effects on the visual integrity of Maungawhau as seen from public places.
69. Two additional points of contention arose with respect of this topic:
 - a. The first was whether the front steps of the Methodist Church (Viewpoint 2) are a ‘public place’ for the purpose of interpreting Policy D14.3.(5). It is relevant because Viewpoint 2 is the location where the building and maunga are most closely juxtaposed in views from this direction. Submitters pointed out that the Methodist Church doubles as both a Church and a Community Centre, and that Auckland Council had spent public funds on the facility. It therefore has public functions and we understood that the local community thinks of it as a public facility. We also understand, though, that the site’s owner is the Methodist Church which is a private entity. On reflection, we considered this something of a moot point given the proximity of public viewpoints (for example ‘Viewpoint 3’) on the adjacent Mount Eden Road footpath. This also highlighted the pitfalls of over-reliance on a single viewpoint to understand how views would typically be experienced from public places. The computer model video was also useful and a salutary reminder to consider effects moving through the village rather than over-emphasising fixed viewpoints.
 - b. The second point, suggested by Ms Strauss, was that we should not disregard adverse effects on views to Maungawhau from a building less than the 9m

height standard because there is no permitted baseline (consent is needed for any new building within the Special Character Overlay). Mr Brabant submitted that, while he agreed on the absence of a permitted baseline, the effects on views of Maungawhau from a 9m building are anticipated by the AUP(OP) with respect of the Height Sensitive Overlay. Our review of the provisions is that the AUP(OP) provides certainty for development within the Height Sensitive Overlay by providing for a permitted activity limit of 9m, beyond which the activity status of the building becomes non-complying (D14.4.1(A11)). The Height Sensitive Areas are “to ensure that development is of a scale and/or location that does not dominate the local landscape or reduce the visual significance or amenity values of the volcanic feature.” Clearly, views to Maungawhau are not able to be maintained from every public place given the urban context and the 9m height limit has been adopted to allow a “reasonable scale of development” to use the words in Policy D14.3(1) (and noting that the relevant zone height limits and special character area limits also apply within many parts of the Height Sensitive Area.) We accept Mr Brabant’s submission that we are able to disregard the effects of a 9m high building for the purpose of assessing effects on the visual integrity of Maungawhau in views from public places.

Effects on the special character values of Mount Eden village

70. Under the provisions of the Special Character Overlay, consent is required for both the demolition/removal of a ‘character defining building’ (discretionary) and the construction of a new building (restricted discretionary).
71. As discussed, we heard expert evidence on this topic from Mr Richard Naish and Mr Adam Wild on behalf of the applicant and Ms Fogel – relying in part on the earlier report by Ms Misra – as Council expert. We also heard considerable lay evidence from submitters on their experience of Mount Eden’s special character and the value they put on it.
72. A matter of interpretation that arose is the distinction between ‘character’ and ‘special character’. This is relevant to determining the benchmark against which effects on special character should be assessed. We consider ‘special character’ is determined by the village’s physical fabric (as described by the witnesses) referenced against the Special Character Statement. The Special Character Statement states that the “overlay area is significant for its physical and visual qualities as it demonstrates in its built fabric the 19th and early 20th century development of an outlying rural village to a consolidated suburban commercial area. The village retains buildings from the period of considerable expansion and growth that occurred from the late 19th century through the 1920s and 1930s.” In other words, development of Mount Eden Village between the late nineteenth century and early twentieth century is key to the village’s ‘special character’.
73. A second matter was the distinction between ‘historic heritage’ and ‘special character’. Mr Brabant highlighted the difference between ‘historic heritage’ as a

section 6 matter given effect to by such methods as scheduled historic buildings, compared with 'special character' as a section 7 matter which relates to the area as a whole. Some of the lay witnesses appeared to use the terms 'historic', 'heritage' and 'special character' in conjunction and sometimes interchangeably. We consider this is understandable given that Mount Eden Village's special character focuses on a historic era (the late nineteenth and early twentieth century) as described in the Special Character Statement). While 'historic heritage' and 'special character' have different provisions, in Mount Eden's case the historic fabric is an important part of the special character.

Demolition/removal of the villa

74. 'Character-defining and supporting buildings' are described as those which make an 'important' and 'considerable' contribution to the area. However, the relevant map (15.1.6.10.1) only identifies sites with character defining or supporting buildings rather than identifying the specific buildings. In this case the site contains two buildings that might potentially be considered 'character defining'; the 1920s shop facing Mt Eden Road and the 1890s villa located on Newnham Lane behind the shop. We were told that the villa is one of four that were built on residential lots facing Mount Eden Road in the 1890s. Shops were subsequently built in front of the villas as Mount Eden Village grew.
75. Ms Fogel's opinion is that the villa is a 'character defining building' because it is part of the history and fabric of the village. Ms Misra also considered the villa is 'character defining'. In her report she referred to the contribution the villas make as a group to Newnham Lane.
76. Mr Wild, on the other hand, in assessing the contribution of the villa to special character pointed out the villa no longer has a frontage or visibility to Mount Eden Road, that Newnham Lane was not part of the village's original form, and consequently the villas are 'back to front' to Newnham Lane. He noted the modification of the villa. Newnham Lane adjoins but is not in Special Character Overlay.
77. The Special Character Statement establishes Mount Eden Road as the focus of the Special Character Area. The only specific relevant reference to the villas is under the heading 'form and relationship to the street' on page 84 which notes: "the block...also includes commercial buildings located in the front yards of earlier villas, some of which (still) exist."
78. We accept that the group of villas behind the shops provide physical evidence of how the village developed. However, we questioned whether a building that is not visible from Mount Eden Road (i.e. from public places in the Special Character Area) could be considered 'character defining'. In any event, for the same reasons, we concluded that any adverse effects of the villa's removal on 'special character' would be minor. We preferred Mr Wild's evidence on this point.

Demolition of the shop

79. We were told the shop at 445 Mount Eden Road was built in 1926/7. It is a single-storey commercial building with a decorated parapet. Additions were constructed on the northern side of the site (441 Mount Eden Road) in the 1980s and 2006. The witnesses agreed these additions did not constitute 'character defining' or 'supporting' buildings. Our consideration is therefore confined to the original 1920s building.
80. Mr Wild acknowledges the 'character defining' classification of the buildings on the site and acknowledges there would be some adverse effects on special character from their demolition. However, he considers the buildings do not contribute to local group value, do not strongly contribute to streetscape, and have been modified. He considers the adverse effects would be minor.
81. Ms Fogel highlighted the features of the shop façade including the parapet, the original recessed doorway, the fenestration pattern, and lead-light windows. She described its consistency with commercial buildings typical of the period. She considered the shop does contribute to the value of the block in which it is located, that block being characterised by commercial buildings on both sides of Mount Eden Road. While there are some modern insertions, the majority of buildings facing Mount Eden Road in the block are late nineteenth or early twentieth century.
82. Taking this evidence together, we considered the 1920s shop does contribute to the special character of the village. It is not the most distinguished or prominent of such buildings (although it does have interesting details) but it is of a historic type that as a group contributes to Mount Eden's special character as described in the Special Character Statement.
83. Demolition of the building would therefore erode the 'special character values'. While the degree of adverse effect would be modest compared to other more prominent or distinguished examples of such buildings, it is the type of effect that could cumulatively erode 'special character' (e.g. 'death by a thousand cuts').
84. It is difficult to assess such cumulative effects with respect to single applications. We note Mr Creemers' evidence that the applicant owns other historic shops in Mount Eden Village which it has restored and upgraded to meet earthquake regulations, thereby helping maintain the village's special character. He referred to 397-407, 413 and 415 Mount Eden Road. We were told that this is the only one of the applicant's buildings in the village that it is seeking to demolish and replace, and that it had made this decision following a considered approach taking into account the quality of the building, the cost of earthquake upgrading, and the likely return.
85. We consider the adverse effects from demolition of the shop are more than minor. However, this finding also needs to be considered in conjunction with the benefits of the proposed replacement building and the effects of the new building on the special

character values of Mount Eden Village (which we discuss below under Relevant Objectives and Policies).

New building

86. The AUP(OP) provides for new buildings within the Special Character Overlay as a restricted discretionary activity subject to consideration of effects on the special character. Criteria for assessing new buildings are listed under D18.8.2.2.(4).
87. As noted above, Mr Naish explained the design influences and architecture of the proposed building.
88. Mr Wild concluded the new building would have positive effects on special character. He said “through its considered use of materials, scale and form, it is consciously a building of its time and, through its architectural response, of its place, which appropriately responds to, and enhances the particular and distinctive characteristics of Mt Eden Village business area.” He went on to say that the “sense of recognised ‘variation’ and ‘evolution’ found within Mt Eden Village as found in the character statement is critical to this hearing as it recognises that change itself is characteristic of the special character of Mount Eden Village.”
89. Ms Fogel, on the other hand, focused in a more detailed manner on aspects she considered did not reflect or have regard for the special character. She considered it was out of character with respect of:
 - a. Materials (terra-cotta tiles that reference brick rather than brick itself, profiled steel rather than corrugated iron, natural timber rather than painted weatherboard).
 - b. Scale (she considered the combination of height and length would result in an uncharacteristically bulky building).
 - c. Form (she considered the building exhibited a ‘confusing of forms’ including adopting a typical domestic or ecclesiastical roofline form is uncharacteristic of the village’s commercial street-fronts).
 - d. Details (she considered the glass frontages did not reflect the fenestration pattern, and the verandas did not align with those of neighbours).
 - e. Colour (she considered the building’s colour would highlight its difference).
90. In response to questions, Ms Fogel said it is the collective differences that count in that a new building doesn’t have to be the same in every way as those defining the special character of the area, but that this proposal is ‘too different in too many ways’.
91. We understood the explanations of Mr Naish for each aspect of the design. However, we preferred Ms Fogel’s evidence in this matter and while no single aspect alone is

determinative, we considered the package collectively does not sufficiently reflect and have regard for the special character values.

92. We consider Mr Wild's emphasis on such characteristics as 'variation', 'evolution' 'change' and 'dynamism' does not accurately reflect the Special Character Statement as a whole. As discussed, the Statement highlights that the special character derives from a period between the late nineteenth and early twentieth centuries, and describes characteristics relating to that period. We note that the references to 'evolution' and 'variation' are confined to the description of the form and relationship of development to the street in the Special Character Statement. The description of 'architectural values', on the other hand, give detailed description of style, materials and construction. Mr Wild appeared to conflate 'character' and 'special character' in a number of places in his evidence – an impression that was confirmed through questions. Mr Naish similarly confirmed that he considered all the buildings in Mount Eden contributed to its special character.
93. Witnesses for the applicant emphasised that a new building should be 'of its time' rather than a historical facsimile. We do not understand Council's experts as arguing otherwise. Ms Fogel said in response to questions that mimicry would detract from the value of both the new building and the special character buildings. However, Ms Fogel did consider the new building should be more 'neutral' and 'recessive' rather than what she described as an 'architectural statement'. We agree with the evidence that a new building should be of its time. We do not consider a new building should necessarily be neutral. Mr Naish presented examples of distinctive contemporary designs that fitted their context. Rather, we considered the relevant matter is whether the building responds to the architectural form, bulk, proportions, materials and colour of the character-defining or character-supporting buildings within Mount Eden Village, and reflects and has regard for the special character context as identified in the Special Character Statement. There are different ways of doing this without resorting to facsimile or pastiche. We concluded the proposed building did not sufficiently achieve these outcomes when considered in the round. This was not a judgement on the quality of the architecture itself, or its contemporary nature, but on the extent to which the building responded to the village's special character.
94. Accordingly, we found that the proposed new building would have adverse effects on the special character of Mount Eden Village that are more than minor.

Urban design

95. The urban design report from Yu-Ning Liu focused on objectives, policies and matters of discretion under AUP H11.2, H11.3 and H11.8.1(3) respectively. As discussed, it avoided the matters discussed above relating to the Special Character Overlay or the Height Sensitive Area Overlay.
96. Ms Liu concluded that the development is appropriate in terms of the type of activity and the scale anticipated within the underlying zone (Business Local Centre). However, she raised concerns about the interface with Newnham Lane, particularly

the location of the commercial entrance from the lane (rather than Mount Eden Road), legibility and amenity of the entrances via the under-croft car park, and the lack of landscaping to screen car parking from Newnham Lane. Some submitters similarly raised concerns with effects on the amenity and safety of Newnham Lane and Essex Reserve opposite the site.

97. Mr Naish explained detailed design measures taken in paving and lighting within the under-croft to provide legibility of the commercial entrance, and the use of the permeable screen to soften views of the car park while maintaining sight-lines. He explained there was also another door direct from Newnham Lane – although it is to a corridor and is marked on the plans as being for fire egress only. Mr Naish explained the benefits of the building for activation and surveillance of this area. He also explained the manner in which the low height of the under-croft resolved the change in level between Mount Eden Road and Newnham Lane.
98. On balance, we preferred Mr Naish’s evidence on this matter. Newnham Lane is a relatively recent intervention along the rear of the commercial properties, that it is reasonable to assume the adjacent properties will be redeveloped with time to take advantage of the frontage, and that its character will change. As discussed earlier, Newnham Lane itself does not fall within the Special Character Overlay. While an active frontage at street level would be a preferable urban design outcome to that of a car park, we note that Newnham Lane is not a primary retail frontage, and the proposal does provide a first and second floor commercial frontage that would overlook and bring activity to the lane. The building complies with height-in-relation-to-boundary recession plane from the edge of Essex Reserve. The under-croft car parking is an improvement on the existing ad hoc car parking on properties facing the lane. The proposal partly internalises the car parking and mitigates adverse amenity effects through the design detailing of the under-croft area and the proposed use of a permeable screen. While we accept Ms Liu’s criticism of the legibility of the commercial entrance and potential appearance of the screen, we consider this could be mitigated through design measures described by Mr Naish that could be addressed through conditions.
99. We find that the urban design effects – setting aside matters relating to the Special Character Overlay above – are acceptable.

Positive effects and other effects

100. The section 42A recognised the following positive effects from the proposal which were also referred to in evidence by the applicant’s witnesses:
 - The proposal provides additional office space in the Mount Eden Village town centre and retail activity on ground level, which has economic and social benefits.
 - The new building will provide economic benefits for the consent holder and future users of the building, as the building will better meet the requirements of

the consent holder for the intended activities, and will be of a modern design and quality.

- The applicant has proposed that the fabric of the building employs the use of sustainable and energy-efficient material which has environmental benefits.

101. Other matters raised in submissions include the exceedance of office space floor area, and adverse effects relating to car parking and construction. We considered such effects would be minor and could be addressed through conditions. To avoid repetition, we cover these below in the discussion on objectives and policies.

Overall conclusion on adverse effects

102. Our findings in relation to the adverse effects on the visual integrity of Maungawhau, of the removal of the villa located on the rear of the site, on the amenity of the zone as these relate to urban design, transport matters and construction-related effects are that these effects would be minor. However, we consider that the adverse effects of the removal of the commercial building fronting Mount Eden Road, and of the new building on the special character of Mount Eden village are more than minor, and that overall our conclusion is that adverse effects are more than minor.

Relevant objectives and policies

Auckland Council Regional Policy Statement

103. The section 42A report referred us to Auckland Council Regional Policy Statement (RPS) Chapter B2 – urban growth and form and Chapter B5 – historic heritage and special character, and Chapter B4 – natural heritage in relation to the viewshafts. Mr Brown addressed these same provisions, and Chapter B6 – mana whenua, comprehensively in Appendix B to his evidence. We agree with the approach taken in the section 42A report that the lower order objectives and policies in the Auckland-wide zone and overlay provisions appropriately give effect to the RPS and consequently we concentrate our commentary on those lower order provisions. In terms of Mr Brown's analysis of the RPS provisions we agree with his conclusions, except for those in relation to the provisions of Chapter B5.3.1 and B5.3.2 on special character areas, for the reasons set out below.

Chapter H11 Business - Local Centre Zone

104. The general objectives and policies for all centres and those specifically for the Local Centre Zone were assessed in the section 42A report and by Mr Brown. The key aspects of these provisions are summarised as reinforcing the function of city, metropolitan and town centres as the primary focus of commercial activity, enabling activities for local service needs, and larger scale commercial activity which supports diversity in the centre but manages adverse effects on the transport network and pedestrian safety and amenity.

105. These provisions raise the matter of the overall size of the proposal and the transport interface with Newnham Lane. While some submitters specifically mentioned the large gross floor area of the building, most comment on its bulk was from a special character point of view. The section 42A assessment was that the development is of a scale that is commensurate with the village overall (in terms of floor space), would have positive effects in supporting existing village businesses, and was not of a scale that threatened the larger centres. It is possible that the activities occupying the floor space would generate the need for more parking than is provided, however no car parks are actually required by the Transport rules consistent with the AUP(OP) approach of supporting growth along transport corridors and the use of public transport. While we acknowledge Ms Liu's point about the interface with the lane and the lack of a landscaped strip, we consider that the proposal does manage effects on transport and pedestrian amenity. Overall we agree with both the section 42A report and Mr Brown that the proposal is generally consistent with these provisions.

Chapter E27 Transport

106. The section 42A report referred us to the objectives and policies under E27.2 (4) and (5) and E27.3 (17) in relation to the provision of safe and efficient parking, loading and access. Mr Brown also addressed other objectives and policies in E27. As noted above, there was a high level of agreement between the experts, including the applicant's traffic engineer who we did not require to attend the hearing. Some submitters raised traffic and safety issues relating to Newnham Lane however we agree with the experts that access, parking and loading, and the promotion of active modes make the proposal consistent with these objectives and policies.

Chapter E25 Noise and vibration

107. The section 42A report and Mr Brown have assessed the relevant objectives and policies in this chapter. The report also refers to the adoption of best practicable option pursuant to the assessment criteria in E25.8.2. As with transport matters we did not require the applicant's noise expert to attend the hearing as these matters appeared to be non-contentious. At the hearing the Lynne Family Trust raised specific concerns about construction vibration and potential effects on the Trust's buildings on the adjacent property. We note that such effects can be typically addressed by conditions relating to pre and post construction building condition surveys. More generally, construction noise and vibration can be effectively managed to achieve best practicable option through appropriate conditions. We find that this approach would enable the proposal to be consistent with the E25 objectives and policies on protecting persons from unreasonable noise and vibration and controlling the duration, frequency and timing of activities to manage adverse effects.

Chapter D14 Volcanic viewshafts and height sensitive areas

108. The provisions address each of the matters in the chapter heading. In relation to volcanic viewshafts, it was established by supplementary evidence from Mr Naish

that, with the exception of the 100mm intrusion by the solar panels, there would be no intrusion into any volcanic viewshaft relating to Maungawhau (Policy D14.3(4)).

109. In relation to the height sensitive areas, we noted above the reference in Policy D14.3(1) to providing for a reasonable scale of development, beyond which the key policy to be referred to is Policy D14.3(5) which states:

(5) Avoid new buildings or structures that exceed two storeys in height in a height sensitive area, except where they would have no adverse effect on the visual integrity of any volcanic maunga to which that height sensitive area relates, as seen from any public place.

110. Our analysis and conclusions above on the effects of the building are that the proposed building would not have adverse effects on the visual integrity of Maungawhau as seen from any public places, therefore the proposal is consistent with the above policy and the policies of D14 generally.
111. On a matter of interpretation, we have assumed that the permitted 9m height limit equates to two storeys including a reasonable dimension for a roofline. The proposed building exceeds two storeys and the policy must therefore be applied. However, we do not think that the policy is to be applied irrespective of the permitted height limit. In other words, the adverse effect is to be assessed only in relation to those parts of the building in excess of 9m.

Chapter D18 Special Character Areas (Business) Overlay

112. Objectives D18.2 (1) – (3) are to maintain and enhance the special character values as identified in the Special Character Statements, and to retain the physical attributes that define, contribute to, or support the special character of the area. The policies under D18.3 (8)-(14) include a requirement that an application for demolition of ‘character defining’ buildings demonstrate that the loss of the building would not (individually or cumulatively) erode the special character values of the area or disrupt the cohesiveness of the streetscape and wider special character area, including links with scheduled historic heritage places, and that any new building have regard to and respond positively to the identified special character values and context of the area.
113. Our analysis under the heading ‘Effects on the Special Character Values of Mount Eden Village’ found that the demolition of the existing ‘character defining’ shop would erode the special character values of the area.
114. In relation to the replacement building, we have also examined the matters of discretion and the assessment criteria set out for new buildings in the special character area. In relation to amenity values, Mr Brabant referred us to the decision *SKP Inc & Onr v Auckland Council [2018] NZEnvC 081* where at paragraph 205 the Court observed:

“The Plan itself gives some guidance, but at its most fundamental level the assessment of amenity value is a partly subjective one, which in our view must be able to be objectively scrutinised.”

115. We considered that observation to be helpful in our assessment of the new building. As stated at paragraph 93 above, our decision is not a “judgement on the quality of the architecture itself, or its contemporary nature, but on the extent to which the building responded to the village’s special character”. While there is necessarily an element of subjectivity in this assessment, the matters of discretion in D18.8.1.2 and the assessment criteria of D18.8.2.2(4), which includes the relevant objectives and policies, have guided our objective scrutiny. The above criteria refer to whether the building:

- has been designed to respond positively to the architectural form, character and detailing, and the bulk, proportions, materials, colour of any surrounding scheduled historic heritage place, character-defining or character-supporting buildings;
- has been designed to respond positively to the built form characteristics and the physical features of the special character area and the established horizontal and vertical modulation of any surrounding scheduled historic heritage place, character-defining or character-supporting buildings; and
- reflects or enhances the continuity of the historic front façade alignments and incorporates building entries that reflect traditional forms in order to maintain good visual connections with Mount Eden Road.

116. Taking all of these matters into account, we find that the proposed replacement building, in the round, does not have sufficient regard or respond to the identified special character values of the village and is therefore contrary to the objectives and policies of Chapter D18.

117. While the consideration of what replaces a building (that has been demolished or removed) is not explicitly provided for in the objectives, policies or assessment criteria, we consider, implicitly, that an evaluation of the extent to which the “loss of the building” erodes the special character values of the area or disrupts the cohesiveness of the streetscape and wider special character area, including links with scheduled historic heritage places, should incorporate how well its replacement has regard to and responds positively to the identified special character values and context of the area. In other words, there is the potential for a new building within the special character overlay to mitigate the adverse effects of the loss of a character defining building. However, in this case, our finding is that this would not occur.

Overall conclusion on objectives and policies

118. As with our findings on adverse effects, while we find the proposal is consistent with the objectives and policies in Chapter D14 in relation to Maungawhau, the relevant

zone and the general provisions relating to transport, noise and vibration, we consider that overall the proposal would be contrary to the relevant objectives and policies of the AUP-OP, particularly Objectives D18.2.(1) and (2), and Policies D18.3 (8), (10) and (12) in relation to special character values.

Gateway tests of section 104D, decision and reasons

119. In reaching this decision, we have considered the range of environmental effects, including the positive effects, those effects that we have found to be minor and those which are more than minor. We have also considered the relevant objectives and policies for activities requiring resource consent. The detail of our assessment, the reasons for our decision, and summaries in each case is provided above and we will not repeat it here.
120. If an overall assessment was simply a 'numbers game' then our conclusion might have been different, however the proposal is located within the Special Character Overlay Area – Business for Mount Eden Village and this overlay distinguishes the village environment from other similarly zoned areas. Consequently, we find that:
- i. The proposal is unable to satisfy the gateway tests of section 104D as:
 - a. Pursuant to section 104(1)(a) the overall proposal to demolish or remove two character defining buildings and replace them with a new office/retail building at 443 – 445 Mount Eden Road, Mount Eden would have adverse effects on the special character values of Mount Eden Village that are more than minor; and
 - b. Pursuant to section 104(1)(b) the overall proposal would be contrary to the relevant objectives and policies of the AUP(OP).
121. In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, pursuant to section 104D of the RMA, we determine that resource consent for the removal and demolition of the character defining buildings and their replacement with a new office/retail building at 443-445 Mount Eden Road is **REFUSED**.



Dave Serjeant

Chairperson
(and on behalf of Commissioners Kirikiri and Lister)

19 August 2019