



Section 42A Hearing Report for Landuse Consent Application LUC21/47890

Applicant:	Regina Properties Limited
Applicant's address for service:	390 Devon Street East NEW PLYMOUTH 4312
Site Address:	1 – 3 Dawson Street, New Plymouth
Legal Description:	LOT 1 DP 19148, Lot 2 DP 19418 and Lot 1 DP 10510
Site Area:	1553 m ²
<u>Zone and Overlays:</u>	
Operative District Plan:	Business B
Proposed District Plan:	Mixed Use Zone
Operative District Plan Overlays:	Cameron Street View Shaft Section 3 and Pūkākā/Marsland Hill Viewshaft Section 3
Proposed District Plan Overlays	Coastal Environment, Coastal Erosion Hazard Area, Notable Tree Group (ID 357) , Cameron Street View Shaft Section 2 and Section 4 Pūkākā/Marsland Hill Viewshaft
Proposal:	Land use consent for alterations and extensions/additions to an existing commercial building to establish a new residential rooftop apartment.
Status:	The proposal is a Restricted Discretionary Activity under the following rules of the Operative New Plymouth District Plan: Bus13, Bus19, Bus87, Bus88, OL63 and OL71.
Date consent application received:	29/04/2020
Further information/report received:	A response was received from the applicant on 29/03/2021. The response responded to the Section 92 requests made in the NPDC letter dated 12/03/2021 with a suitable level of information to

<p>Further information/report received following submissions period:</p>	<p>allow for the consideration of the application to continue.</p> <p>Following input from external specialists and the closing of the submissions period further information was sought regarding the accuracy of the shading plans, details of shading assessment methodology, effects on private views and effects on privacy. A response was received on 15/07/2021.</p>
<p>Notification Decision:</p>	<p>Survey and Shading analysis peer reviews received on 26 and 28 July 2021 respectively.</p> <p>The Section 95 Notification Report determined that under Section the application required limited notification in accordance with Section 95B of the Resource Management Act 1991.</p>
<p>Submission Period</p>	<p>14 April 2021 to 5pm 12 May 2021</p>

PURPOSE OF THIS REPORT

1. This Hearing Report has been prepared to assist the Independent Commissioner in the consideration Regina Properties Limited's (the applicant) resource consent application, subject to Section 42A of the Resource Management Act 1991 ("the Act or RMA"). This report is to provide a recommendation as to whether the resource consent should be granted or refused and if granted what conditions it should be subject to. It is not a decision, and the recommendation should not read as though it is a decision.
2. The statutory provisions under the Act which will be applied and considered for the purposes of this report are:
 - Sections 104 and 104C, the proposal carries a Restricted Discretionary Activity Status under the Operative District Plan.
 - Consent is not required under any rules within of the Proposed District Plan with legal effect.

PREPARATION OF REPORT & QUALIFICATIONS & EXPERIENCE

3. My name is Luke Balchin. I am employed by the New Plymouth District Council and have been since March 2020. My qualifications are a bachelor's degree in Environmental Management Majoring in Policy and Planning and a Postgraduate Diploma in Resource Studies from the Lincoln University and I am an Intermediate Member of the New Zealand Planning Institute. I have had approximately 7 years of experience as a planner, 5.5 years as a consultant planner with Aurecon based in Tauranga before moving to New Plymouth in March 2020 to start my role at NPDC.

4. My experience has largely been focussed around the preparation and processing of land use consent and subdivision consent applications. As a consultant planner I have prepared and presented planning evidence at a Council Hearing and as a Council Officer I have reported on one publicly notified application including attendance and contribution to the hearings process. I have had considerable experience preparing and processing a variety of small, medium and large scale land use and subdivision consent applications including applications with a variety of cultural issues, policy issues, amenity issues and engineering issues or more complicated applications with a combination of the above mentioned matters.

Other Reports and Reviews Relied Upon

5. The following reports and communication have been used to inform the discussions and conclusions within my report.
 - The Applicant's final Assessment of Environmental Effects (AEE) Rev1 dated 12/02/2021 including all appendices;
 - Erin Griffith – Landscape Peer Review Dated 10 March 2021, Landscape and Visual Impact Assessment (LVIA) Peer Review Version 2 dated 19 January 2021 and Landscape Peer Review Dated 27 July 2021;
 - Verbal and e-mail commentary from;
 - Council's Development Engineer Debbie Taplin regarding wastewater, water and stormwater servicing; and
 - John Eagles regarding transportation, parking and road safety effects.
 - The Applicants Section 92 responses including a revised set of plans and LVIA Memo (s92 response): 5 July 2021 Revision 3; and
 - Taylor Patrick Surveyors Limited (TPS) and Ardern Peters Architects Peer Reviews (Appendix A).

SITE DESCRIPTION AND SURROUNDING ENVIRONMENT

Site Description

6. I've carried out a site visits on multiple occasions. Site visits have included viewing the site from different aspects including relevant view-shaft locations, surrounding streets, Kawaroa Point, the coastal walkway, Oceanview Apartments and the Richmond Estate. Several were carried out to gain a greater appreciation of the site and its surroundings including at times during the earlier morning and afternoons on fine days to gain a better understanding of shading in the area. It is also a location I frequently pass by foot or bike and have developed a greater appreciation of the location and its surroundings.
7. The site includes three records of title under the following lot descriptions.
 - Lot 1 DP 19148;
 - Lot 2 DP 19418; and
 - Lot 1 DP 10510

The sum of the three allotments account for approximately 1553m² of land. Lots 1 DP 19148 and Lot 1 DP10510 consists of the majority of the site area and all of the area subject to the proposal. Lot 2 DP 19148 is a narrow strip of land owned by the New Plymouth District Council (NPDC) which the existing commercial building (Govett Quilliam or GQ building) extends into. The narrow strip of land owned by NPDC currently accommodates landscape planting, the existing building encroaches over this. Each lot is held under a separate certificate of title.

8. Historical natural topography in the area is reflective of Dawson Street which slopes gently towards the coast. The site itself is generally flat but has historically been terraced in to two levels. The lower level accommodates the GQ building which was been cut in to what would have once been the sites natural sloping contour. The lower terrace has an RL of approximately 8.5 metres while the upper approximately 13 to 13.5 metres RL. Ground levels to determine maximum height limits under the ODP are to be taken from the last deposited survey plan of which was 1997. As specified by the applicants agents BTW, Council records show building inspections for the GQ building occurring in 1996 so the present terraced ground levels are reflective of the ground levels when the survey plan was deposited, this forming the ground levels used by the applicant to determine height exceedances and develop plans.
9. Relevant consenting background includes the existing resource consent for the Govett Quilliam Building referenced RC 12288 and granted in March 1996. RC 12288 allowed a building height exceeding restrictions and the operation of the office tenancies with reduced parking (13 parks provided). A recent application made by the same applicant for a similar development to that currently at had was recently withdrawn. The proposal was in lots Lot 1 and 2 DP 19148 only. The application was limited notified and then withdrawn during the notification period as the applicant wished to make changes to the design.
10. The site is separated from the Coastal Marine Area (as defined in the Act) by the Coastal Walkway and Marton Railway line and therefore the site is not subject to Statutory Acknowledgment for Te Ātiawa Iwi.
11. The site is illustrated in red on Figure 1 below.



Figure 1: Site Location Plan

Surrounding Environment

12. The immediately surrounding environment has been described in the applicant's proposal, the description is adopted and quoted below. I also elaborate on the surrounding environment in further detail.

"the land use in this area is mixed. Commercial buildings and residential apartments are located to the south and east of the site. The Hine Street area to the west is generally in low to medium density residential use. A strip of Business D Environment Area is located along the western side of Dawson Street, developed as residential sites. St Aubyn Street supports a mixture again of residential and commercial sites."

13. To the west the site adjoins Dawson Street, to the north the coastal walkway (Regina Place) and to the east the "Oceanview Apartments". The remaining adjoining properties to the south are owned by the applicant and accommodate vacant commercial buildings. Across Dawson Street are medium density residential properties (generally 2 storey), across of St Aubyn Street to the south are the

14. Devonport Apartments (4 storey) and to east of the Oceanview Apartments is the Richmond Estate. Richmond Estate offers a mix of 1 to 3 storey terraced residential apartments and an 8 storey tower block.
15. Other activities in the area includes commercial activities such as a dentist at 124 St Aubyn Street, vacant commercial properties owned by the applicant and a corner dairy. However, residential activities are considered to be predominant. Buildings in the area are of a varying scale and character including the high rise Richmond Tower and the mid-rise Devonport Apartments, both provide high density residential living. All other surrounding residential land uses are of a medium density and generally low-rise (one to three levels), including the terraced housing within the Richmond Estate, Oceanview Apartments and the residential dwellings along Dawson and Hine Streets. The area is predominantly characterised by residential activities of varying height and density and with some commercial/business activities, although mostly vacant. The site, Oceanview Apartments, Richmond Estate and Davenport Apartments are all located in the Business B Zone.
16. The site is located outside of the Coastal Policy Area under the operative district planning maps but the Coastal Policy Area does adjoin the sites northern boundary. Under the Proposed District Planning Maps the site is within the "Coastal Environment". The area carries recreational and natural amenity values given the proximity to the Coastal Walkway. A further notable feature includes the "Honey field Fountain" a heritage item in both the ODP and PDP as a heritage item.
17. The adjoining road network includes Dawson Street which turns to Hine Street as it rounds the corner near the Coastal Walkway. Both Dawson Street and Hine Street are classified as Local Roads under the Operative District Plan and have a 50 kph speed limit. Further to the south, but not adjoining the site, is State Highway 44.
18. From a cultural context, the site is not subject to statutory acknowledgment nor identified to contain any mapped sites of significance to Maori (SASMs) under either the ODP or PDP.
19. Overall the immediately surrounding area is consistent with its underlying business zoning which supports both medium to high density residential living and business activities. Residential activities do however dominate over commercial/business activities.

PROPOSAL

General

20. The applicant proposes to undertake substantial additions and extensions to the existing commercial building at the site described. The proposal is to construct a single residential apartment with an annexed construction. A fourth story will be atop of the existing three story GQ building and the remaining bulk of the proposed building will adjoin the GQ building to the south. The main elements of the proposal are summarised below.

- Additions to the existing building resulting in a three storied annex addition to the GQ building as an extension;
 - In addition to the three story annex extension the third story of this extension will extend over the existing three story GQ building resulting in a fourth story to that structure, this is due to the terrace down from Lot 1 DP 10510 to Lot 1 DP 19148;
 - The fourth/third storey respectively provides for a rooftop apartment including both indoor and outdoor areas and an outdoor pool;
 - The existing commercial tenancy will be retained ground, first and second floors;
 - Car parking for the existing commercial facility would be reduced from 13 to 11 car parks including one accessible park, an e charging park and bike parking area.
 - A separate two car garage will be provided for the house.
 - Existing vegetation will be retained where possible including all of the landscaping within Lot 2 DP 10510 and the large palm tree located at the north-eastern corner of the site;
 - 6 landscaping tree are shown
 - Building finishes have not been confirmed but neutral colours are indicated
21. The proposed extensions results in a maximum building height of 15.4 metres above existing ground level within Lot 1 DP 19148 and therefore a maximum infringement of 5.4 metres above the permitted 10 metre height limit for the zone. However, and as the site is not uniform, differing height infringements occur at different parts of the site as illustrated on the set of plans that have provided. The existing GQ building is already approximately 1.7 metres taller than the 10 metre height limit set for the zone.
22. The proposed use of the building extensions/additions is described below on a floor by floor basis. Building layouts are also illustrated in the plans provided by the applicant. The following descriptions only relate to the proposed residential additions as the commercial tenancy is to remain largely unchanged with exception to cosmetic refits and refurbishments.

Ground Floor

- Two bay internal garage accessed from Dawson Street
- Pedestrian access corridor to main entry/foyer
- Gym, single bedroom with ensuite and storage
- Courtyard adjoining eastern boundary.

First Floor

- Stairwell and lift access with two bedrooms, one bathroom, a lounge and eastern and western balconies.

Second Floor

- The remainder of the apartment building including the main living spaces being two separate lounges, kitchen, dining area, master bedroom with ensuite and wardrobes, additional bedroom, an office/library, eastern and western balconies

and then an extensive outdoor deck area toward the north including a pool and outdoor seating.

- Each floor has a generous floor to ceiling height.
23. The proposal replaces a previous but similar proposal made by the applicant which was withdrawn following limited notification part way through the submissions period. Comparison is made to the previous proposal within the applicants AEE and plans, however the proposal is entirely separate to the previous consent application. The proposal would also supersede a historical resource consent for the site granted in 1996 to construct the office building including balconies overhanging a designated recreation reserve / landscape strip and the provision of 13 car parks.
24. The proposal will not increase the extent of the existing airspace encroachment, changes to the existing building will largely be limited to updating external cladding and painting.
25. Figure 2 below is the proposed Dawson Street elevation, a full set of plans, including shading diagrams, elevations and floor layouts are provided with the application made to Council by the applicant's agent BTW Company Limited.



Figure 2: Dawson Street Elevation

Site Preparation and Earthworks

26. Earthworks will be required to form the building foundations for the southern extension within Lot 1 DP 10510. Earthworks anticipated are minimal and described by the applicant in the vicinity of 0.5 metre cut depth, 205m³ cut material and 11m³ fill material.

Design Approach and mitigation

27. The following design approach and mitigation has been described by the applicant to mitigate actual and potential effects associated with the proposal;
- Achieve building density through vertical development as opposed to reliance on site coverage.
 - Provision of a landscape planting plan in conjunction with retaining existing vegetation.
 - Setting the bulk of the southern extension away from eastern and western boundaries;
 - Siting a bulk of the building extension behind the existing GQ building to reduce dominance effects on the coastal environment;
 - A stepped back top level on the seaward mitigate effects on the coastal walkway;
 - Glazing that provides modulation to the façades and a degree of transparency;
 - The existing building will be painted a grey colour, more recessive than the building is presently coloured; and
 - The southern extension comprises a material with a neutral palette and recessive (cladding material and colours yet to be finalised).

APPLICANTS ASSESSMENT OF EFFECTS AND ADDITIONAL INFORMATION RESPONSES

28. The applicant has provided an assessment of effects of the activity on the environment (AEE). The AEE provided is supported by technical reports and plans including the following:
- Landscape Visual Impact Assessment;
 - Elevation Plans;
 - Shading Plans – including updated versions; and
 - 3d shading diagrams.
29. Through the Section 92 process several changes were made to the plans. The changes made were to make the proposal easier to assess from an effects perspective, including shading diagrams, rather than any material changes to design. The revised plans have been consolidated with all amended and additional supporting documents including the LVIA memo, shading diagrams and Council peer review. The original AEE and plans dated 12/02/2021 was included with the information made available as part of the public notification process. The latest plans have been made available to the submitters prior to the hearing and are what is being considered for the purpose of this report.
30. The applicant's AEE provides for an overall summary of the actual and potential effects as a result of the development. The assessment concludes that the actual and potential adverse effects on the wider environment, and with particular consideration to building bulk and location, character and amenity, traffic effects and positive effects is overall, and on balance, to be acceptable. It is acknowledged by the applicant's landscape and visual amenity expert (Richard Bain) that effects associated with bulk and dominance

on 122 St Aubyn Street will be "highly noticeable" but similar to which would be experienced by a permitted activity.

31. Discussion is provided within the AEE and section 92 responses. The AEE provides for an assessment of the actual and potential effects of the development on the following matters;
- Building height;
 - Positive effects;
 - Character and amenity effects;
 - Existing building height
 - Shading
 - Permitted Baseline
 - Urban Viewshafts; and
 - Parking, loading and queueing effects.
32. I have assessed the application under Section 88 of the Resource Management Act 1991 (RMA) and have determined that the application is complete. It is noted that subsequent information was requested by Council under Section 92 and all responses have now been sufficiently supplied by the applicant.
33. Overall the application in conjunction with the additional information contains sufficient information to allow for an assessment of effects as required for notification.

REQUIREMENT FOR OTHER CONSENTS

34. Regulations 5(4)(5)&(6) of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS.) describes subdivision, change of land use and disturbing soil as activities to which the NES-CS applies. However, only where an activity that can be found on the Ministry for the Environment Hazardous Activities and Industries List (HAIL) has occurred and the site is considered to be a "piece of land" under the NES-CS. For the following reasons I consider that the NES-CS does not require further consideration.
35. The site has no record of any activity included on the Hazardous Industries and Activities List (HAIL) having occurred on or more likely to have occurred on the site.
36. The site is not included on the Taranaki Regional Council's register of selected land uses for contaminated sites.
37. There is no requirement for any other consents under a Regional Plan.

STATUTORY PROVISIONS AND ACTIVITY STATUS

Operative District Plan

38. The New Plymouth District Plan (District Plan) became operative on the 15th of August 2005. The site is within the Business B Environment Area and is subject to ODP map overlays including;
- Section 3 Cameron Street Viewshaft;
 - Section 3 Marsland Hill Viewshaft; and
 - Coastal Hazard Area - Lot 2 DP 19148 only.

An extract from the ODP planning map C24A and C24B is provided in Figure 2 and 3 below.

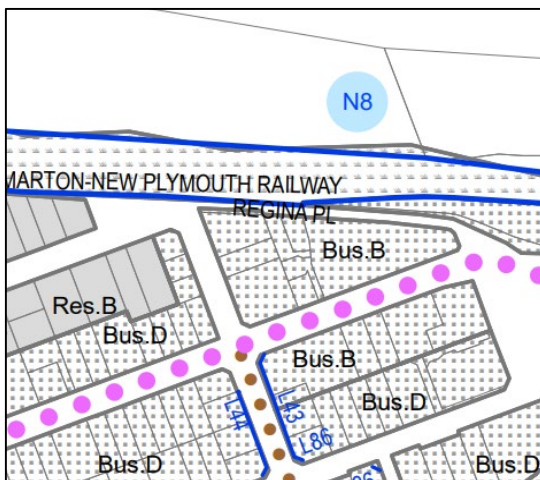


Figure 3 – Map C24A Zone

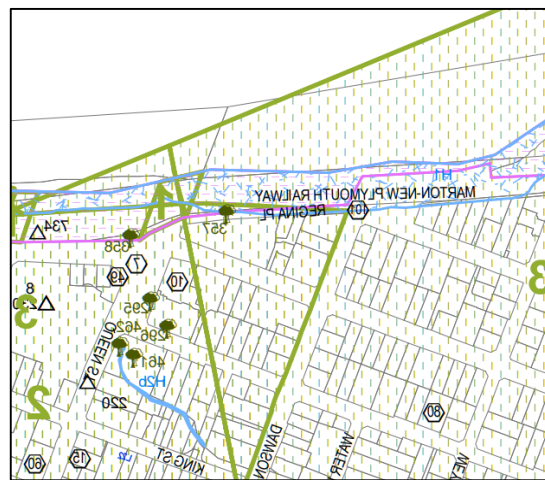


Figure 4 – Map C24B overlays

39. The proposal does not comply with the following **Operative District Plan** rules:

Rule Bus 13 – specifies a 10m maximum height limit for the location. The proposal cannot meet the permitted conditions of this rule because the building height is a maximum of 15.4m. This is a **restricted discretionary** activity.

Rule Bus 19 – specifies that seven landscaping trees would be required along the Regina Place road boundary, out of the 7 required 2 are proposed. This is a **restricted discretionary** activity.

Rule Bus 87 – specifies the quantity and design standards for car parks to be provided. The proposal would require 16 parks to meet the standards set under Bus 87, 13 are proposed. This is a **restricted discretionary** activity.

Rule Bus 88 – specifies the loading and standing space requirements. No designated loading or standing space has been proposed by the applicant. This is a **restricted discretionary** activity.

Rule Bus 91 – specifies the queuing space requirements. Queuing space of 6m is not provided between the front boundary and the first carpark. This is a **restricted discretionary** activity.

Rule OL 63 – Maximum height of a building within the Cameron Street viewshaft specifies a 10m maximum height. The proposal cannot meet the permitted conditions of this rule because the building height is a maximum of 15.4m. This is a **restricted discretionary** activity.

Rule OL 71 – Maximum height of a building within the Cameron Street viewshaft specifies a 10m maximum height. The proposal cannot meet the permitted conditions of this rule because the building height is a maximum of 15.4m. This is a **restricted discretionary** activity.

40. The proposal is therefore a **restricted discretionary activity** under the ODP.

Proposed District Plan

41. The Proposed New Plymouth District Plan (District Plan) was notified on 23 September 2019 and the further submissions process closed on 12 August 2021. Currently officer's reports are being prepared and hearings have recently commenced but will continue throughout the remaining months of 2021 and into 2022. The site is within the Mixed Use Zone and is subject to PDP map overlays including;

- Section 2 Cameron Street Viewshaft;
- Section 4 Pūkākā / Marsland Hill Viewshaft;
- Coastal Environment;
- Coastal Hazard Area - Lot 2 DP 19148 only;
- Notable Tree Group Site ID 357 - Lot 2 DP 19148 only; and

42. There are no rules in the PDP relevant to the application with immediate legal affect. An assessment against the relevant objectives and policies of the PDP is provided in later sections of this report.

Overall Activity Status

43. The proposal is a **restricted discretionary activity** under Rules Bus13, Bus19, Bus87, Bus88, Bus91, OL63 and OL71 of the ODP.

NOTIFICATION DECISION

44. The Council as consent authority must follow the steps set out in the section below, in the to determine whether to publicly notify an application for a resource consent (s95A(1)).

S95 NOTIFICATION ASSESSMENT

Effects Disregarded

45. The following effects were disregarded for the purposes of the notification decision and s104 assessment (s95D, 95E and 104(2)&(3)(a)):

- The permitted baseline has been applied as the applicant has demonstrated that the site could be developed in a manner which would provide for a 10 metre tall building (100% GFA) without the requirement for resource consent. As part of the permitted baseline argument, an assessment the effects of a building which could be developed as a permitted activity have been compared against the effects of the building proposed. As an important component to this report and an eventual decision I have elaborated on the Permitted Baseline under Paragraph 46 below.
- Effects on persons who own or occupy the site and adjacent sites who have provided written approval, or are owned by the applicant, have been disregarded. These include the owners of the properties identified in blue on Figure 3 below.
- The application is for a Restricted Discretionary Activity and therefore the assessment of adverse effects has been restricted to the matters of which Council have restricted their discretion to as set out under Rules Bus13, Bus19, Bus87, Bus88, OL63 and OL71 of the ODP. The assessment criteria should be read in conjunction with the assessment of effects provided within this report. The relevant assessment criteria in full is included in Appendix B of this report.

The Permitted Baseline

46. Case law has defined the permitted baseline as comprising of non-fanciful activities that would be permitted as of right by the Landscape Peer Review Dated 10 March 2021 Operative District Plan and any provisions of a proposed district plan being treated as operative (if there is one). The permitted baseline applies to both consideration of notification and whether effects are likely to be more than minor. When the permitted baseline is applied it is only adverse effects over and above those permitted by a plan which require assessment.

47. The applicant has demonstrated that the permitted baseline is relevant. The relevant section of the Business Chapter is under the heading "Structures-Buildings", consideration has also been made to relevant overlay chapters, the viewshaft overlay requirements also limit height to 10 metres as does the Business Chapter. As the site adjoins Business B to the east and south, and road reserve to the north and west, the ODP entails that the site is not subject to any site coverage, setback or daylighting restrictions. Further, and even if the applicant developed the site to half the extent show on the applicants plans effects on properties to the east would be similar to if the applicant developed the site to its fullest extent.

48. The Business B Zone permits and encourages larger scale, bulky buildings such as warehouses.
49. With respects to the interface of the site with the eastern boundary where effects are mostly directed, the applicant could rightfully construct a building on the boundary. The building may be 10 metres tall with no daylighting requirements and with no requirement for windows or any façade treatment. The applicant has illustrated on drawing SK3.13 the extent of a permitted building on the site taking into account all relevant zone and overlay provisions in the ODP and the PDP. The permitted baseline scenario is shown in Figure 3 below.

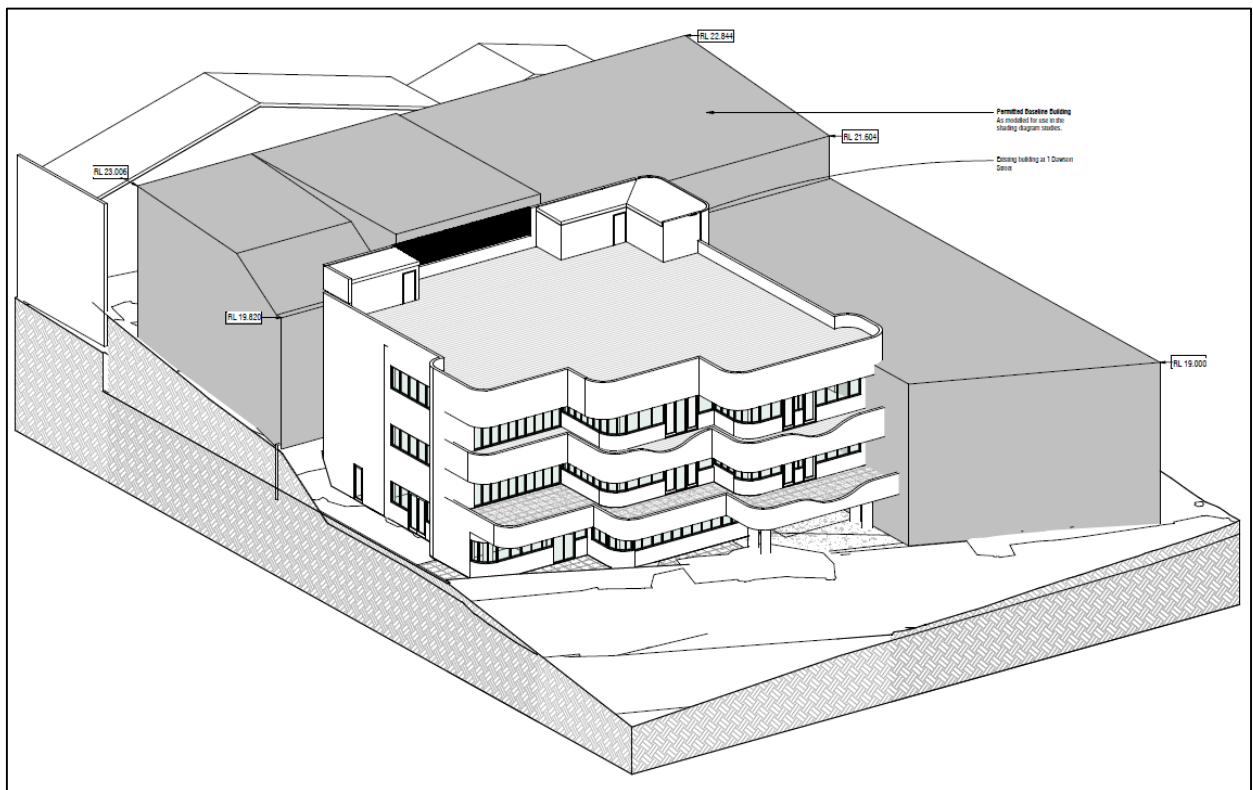


Figure 5: Permitted Baseline

50. The owners of the properties illustrated on Figure 4 below include 2 and 4 Dawson Street, 3 Hine Street and 141 St Aubyn Street have provided their written approval.
51. It is noted that the following units within the Richmond Estate and Devonport Apartments also provided written approval but are not illustrated on Figure 3 below as other Richmond Estate and Devonport Apartments residents have not provided written approval.
- Unit 7A Richmond Estate at 120 St Aubyn Street; and
 - Unit 2I (Apartment 38) Devonport Apartments at 127 – 131 St Aubyn Street

52. A list of the properties which the applicant sought to obtain written approval from is included within the AEE. The table includes the owners of those properties who provided written approval and those which did not.



Figure 6: Written Approvals Received

Section 95A – Public Notification

Step 1: mandatory public notification in certain circumstances

53. The application must be publicly notified if it meets any of the criteria below:

Step 1: mandatory public notification in certain circumstances.

- The applicant has not requested that the application be publicly notified.
- The applicant has not refused to provide further information or refused to agree to commissioning a report under s95C.
- The application is not made jointly with an application to exchange recreation reserve land.

Step 2: if not required by step 1, public notification precluded in certain circumstances.

- The application is not subject to a rule or national environmental standard that precludes notification.
- The application is not precluded from public notification being a restricted discretionary activity.

Step 3: if not precluded by step 2, public notification required in certain circumstances.

- If the activity will have or is likely to have adverse effects on the environment that are more than minor the application must be publicly notified.

Assessment of Effects

54. Council are required to publicly notify an application if it decides that the proposal will have, or is likely to have adverse effects on the environment that are likely to be more than minor. Except for those associated with any Section 95A preclusions or adverse effects to be disregarded as described above.

55. With respects to public notification, and upon review of the restricted discretionary activities assessment criteria, I consider that the following matters and associated adverse effects on the environment are relevant;

- Effects on character including the coastal environment and public walkway;
- Landscape and visual effects;
- Shading effects on public receptors; and
- Traffic safety and efficiency.

56. To avoid repeating the assessment of effects made within the Council s95 Notification Report dated 12 April 2021, a copy of the notification report is included as Appendix C to this s42A report. It was concluded that effects on the relevant matters of restricted discretion including;

- Effects on existing character including the coastal environment and walkway;
- Landscape and visual effects;
- Shading effects on public receptors; and
- Traffic Safety and Efficiency.

Would be minor or less than minor nature and therefore public notification not applicable. This is reflective of an earlier s95A assessment made by Council for a similar proposal on the same site undertaken in 2020. However the applicant later withdrew the limited notified application to undertake design changes including moving a bulk of the building further away from the Coastal Walkway and to the south.

Step 4: Public Notification in special circumstances

57. The location is adjacent to the coastal walkway of which may generate wider public interest. However for the reasons discussed in the s95 Report, the proposal did not

constitute an exceptional matter which would be the threshold of being considered as a special circumstance.

Step 4: Public Notification in special circumstances

58. It is concluded under Section 95A of the RMA that the application did meet the requirements for publicly notification.

Section 95B – Limited Notification Assessment

Step: certain affected groups and affected persons must be notified

- No protected customary rights groups or customary marine title groups are affected by the activity.
- The proposal is not on land that contains a Statutory Acknowledgement Area.

Step 2: If not required by Step 1, limited notification precluded in certain circumstances

- The application is not subject to a rule or national environmental standard that precludes notification.
- The application is not precluded from limited notification as it fails to meet the preclusion tests under Section 95B

Step 3: If not precluded by Step 2, certain other affected persons must be notified

- A person is affected if the consent authority decides that the activity’s adverse effects on the person are minor or more than minor.

59. For the reasons discussed within the notification report included in Appendix C to this Report the following parties were served limited notification on the 14th of April 2021.

Table 1: Submissions Received

#	Legal Description	Physical Address	Property Owner
1	Unit 6A – Lot 2 DP 6788	120 St Aubyn Street (Richmond Estate)	WH and KJ Gardiner, LW Nominees Ltd
2	Unit 5A – Lot 2 DP 6788	120 St Aubyn Street (Richmond Estate)	BR and JA O’Byrne
3	Unit 4A – Lot 2 DP 6788	120 St Aubyn Street (Richmond Estate)	LM Sharrock, CB Wilkinson, GR and PM Sarten
4	Unit 3A – Lot 2 DP 6788	120 St Aubyn Street (Richmond Estate)	EA Pease
5	Unit GA – Lot 2 DP 6788	120 St Aubyn Street (Richmond Estate)	DVJ Trustees Limited
6	Unit GB – Lot 2 DP 6788	120 St Aubyn Street (Richmond Estate)	Trevor Clegg, Kay Clegg
7	Unit GC - Lot 2 DP 6788	Richmond Estate being 120 St Aubyn Street	Sr Taranaki Trustees Lim, Kaylene Stewart, Larry Stewart

8	Unit 1A – Lot 2 DP 6788	120 St Aubyn Street (Richmond Estate)	Paul Carrington, Hendrika Hey, Morris Hey
9	Unit 1B – Lot 2 DP 6788	120 St Aubyn Street (Richmond Estate)	William Hurlstone, Judith Hurlstone
10	Unit 2A – Lot 2 DP 6788	120 St Aubyn Street (Richmond Estate)	Kotuku (2012) Limited, Lynette Elizabeth White
11	PU 2C on DP13859 (Apartment 12)	127-131 St Aubyn Street Devonport Apartments	LA White and Kotuku 2012 Limited
12	Unit 2D DP 13859 (Apartment 4)	127-131 St Aubyn Street Devonport Apartments	Bridget Kathleen St George, Hamish Jon Nelson, Bailey Ingham Trustees Limited
13	Unit 2E DP 13859 (Apartment 3)	127-131 St Aubyn Street Devonport Apartments	Gerusio & Silvia Matonse
14	Unit 2F DP 13859 (Apartment 35)	127-131 St Aubyn Street Devonport Apartments	Samantha Billie Pigott
15	Unit 2G DP 13859 (Apartment 36)	127-131 St Aubyn Street Devonport Apartments	Julia Lee Black & CT Legal Trustees
16	Unit 2H DP 13859 (Apartment 37)	127-131 St Aubyn Street Devonport Apartments	PD Jensen & HK Parsons
17	Unit 3C DP 13859 (Apartment 9)	127-131 St Aubyn Street Devonport Apartments	Jason Mark Whakaari & Estelle SHAW
18	Unit 3D DP 13859 (Apartment 2)	127-131 St Aubyn Street Devonport Apartments	Lois Marlene, Scott & Young & Carrington Trustees Ltd
19	Unit 3E DP 13859 (Apartment 1)	127-131 St Aubyn Street Devonport Apartments	BC, EM and SA Holt
20	Unit 3F DP 13859 (Apartment 43)	127-131 St Aubyn Street Devonport Apartments	Sally-Ann Dean
21	Unit 3G DP 13859 (Apartment 44)	127-131 St Aubyn Street Devonport Apartments	Thomas Mark Jason Farley
22	Unit 3H DP 13859 (Apartment 45)	127-131 St Aubyn Street Devonport Apartments	M and K Osborne
23	Unit 3I DP 13859 (Apartment 46)	127-131 St Aubyn Street Devonport Apartments	Matthew Frank Lethbridge
24	Lot 2 DP 521079	122 St Aubyn Street	Diane Elizabeth MacArthur, William John MacArthur
25	Lot 3 DP 521079	122A St Aubyn Street	Colin Michael Comber, Margaret Josephine Comber
26	Lot 4 DP 521079	122B St Aubyn Street	Kay Barbara Lynskey, Timothy Graham Lynskey, NKS Trustees (2018) Limited

27	Lot 1 DP 105 Lot 2 DP 10510 10	3 Dawson Street & 126, 132 St Aubyn Street	Katee Investments Limited
28	Lot 3 DP 377813	4a Dawson Street	Mr Louis Stephen KURIGER, Mrs Barbara Joan KURIGER, KURIGER TRUSTEES LIMITED
29	Lots 3-6 DP 2533	6, 6A, 8, 8A Dawson Street and 144-150 St Aubyn Street	Housing New Zealand Limited
30	Lot 2 DP 6436	3A Hine Street	Rosalie Bennett
31	Lot 4 DP 4608	8 Hine Street	Anne Fitzgibbons, Harold Paul Fitzgibbons, Gavin Alexander White
33	Body Corporate	120 St Aubyn Street (Richmond Estate)	Chairperson Kaylene Stewart
34	Unit 11 – Lot 2 DP 6788	120 St Aubyn Street (Richmond Estate)	Bill Williams

60. The application was limited notified to 33 parties identified as affected persons under Section 95E and 95B of the RMA on 14 April 2021. Submissions closed at 5pm on 12 May 2021. Subsequently, and upon advice from the Richmond Estate Body Corporate, a further privately owned apartment was identified as not being notified where should have. This occurred as both the applicant and Council did not identify at the time that the apartment was a separate property. Therefore the application was notified to this 34th person (Bill Williams – Unit 11) on 10 May 2021. In accordance with Section 97 of the RMA this person was provided 20 working days to make a submission before the submissions period could be closed. However a submission was received on the 12th of May, therefore the submissions period was closed under Section 97(4) of the RMA at 5pm on the 12th of May 2021.

SUBMISSIONS RECEIVED

61. The conclusions in the notification report were based on the required assessment under sections 95A and 95B of the RMA. They do not predetermine any conclusions that may be made under section 104 of the RMA in this report when considering the actual and potential effects on the environment.

62. At the close of the submissions period, 15 submissions were received by the Council; of which 14 were in opposition and one neutral. All submissions provided a degree of reasoning to their position. A majority of the submissions came from property owners within the Oceanview Apartments and Richmond Estate. The submissions received are summarised below in no particular order. The submissions in full are included on NPDC's hearings page.

Table 2 – Summary of Submissions Received and the Matters Raised

#	Name	Key Submission Points Raised	Status of Submission
1	Lynette Elizabeth White –	<ul style="list-style-type: none"> • Some loss of sea views • Development should stay within ODP height limits. 	<ul style="list-style-type: none"> • Oppose

	Devonport Apartments		<ul style="list-style-type: none"> • Wishes to be heard.
2	Diane & Bill MacArthur – 122 St Aubyn Street	<ul style="list-style-type: none"> • Oppose an already over height building being extended higher. • Will cast additional shading over winter + loss of sun. • Reduced sky space. • Questioning accuracy of shading plans provided by applicant. • Effects on privacy. • Impacts on outlook and accuracy of LVIA assumptions. • Precedent set by past applications being rejected in the area for over height buildings. 	<ul style="list-style-type: none"> • Oppose • Wishes to be heard
3	Morris Hey Unit 1A/120 (Richmond)	<ul style="list-style-type: none"> • Seeks height reduction to comply with district planning requirements. • Outlooks effected. • Adverse shading effects. 	<ul style="list-style-type: none"> • Opposes • Wishes to be heard
4	Elizabeth Anne Pease – 3/120 St Aubyn Street (Richmond Estate)	<ul style="list-style-type: none"> • Oppose building that exceeds height limits. • Loss of views and privacy. • Noise pollution. • Additional shading over Richmond Estate and shading plans provided by applicant are inaccurate. 	<ul style="list-style-type: none"> • Oppose • Wishes to be heard
5	Kenneth James Gardener – G/120 St Aubyn Street (Richmond)	<ul style="list-style-type: none"> • Opposes height exceedance. • Assessment of shading effects is inadequate. • Diminishment of amenity and quality of living in the area. 	<ul style="list-style-type: none"> • Oppose • Does not wish to be heard
6	Bill Williams – Richmond Estate (Unit SGA)	<ul style="list-style-type: none"> • The development will result in sever shading of ground floor apartment in the Richmond Estate. • Shading will create dampness. • Diminish quality of life. • A modified design to reduce shading would partly address concerns. 	<ul style="list-style-type: none"> • Oppose • Wishes to be heard
7	Larry & Kaylene Stewart – 11/120 St Aubyn Street (Unit GC - Richmond Estate)	<ul style="list-style-type: none"> • Development should stay within ODP rules. • Will cast additional shading + loss of sunlight. • Loss of amenity and quality of life. • Questioning accuracy of shading plans provided by applicant. • Reduction of views of the sky. • Proposed building is closer than stated in application. • Loss of views/outlook to the west. • Precedent set by past applications being rejected in the area for over height buildings. 	<ul style="list-style-type: none"> • Oppose • Wishes to be heard
8	Lynette Elizabeth White - 2/120 St Aubyn Street (Richmond Estate)	<ul style="list-style-type: none"> • Opposes because area is predominantly residential. • Building will intrude and block views from apartment. • Adverse shading effects on Richmond Estate. • Shading studies provided have errors. • Parking is congested in the area. • Would endorse any development within the height thresholds of the ODP. 	<ul style="list-style-type: none"> • Oppose • Wishes to be heard
9	Susanne Anne Patten / Richmond	<ul style="list-style-type: none"> • Bulk and height of the development will be out of character with what is now a predominantly residential neighbourhood. 	<ul style="list-style-type: none"> • Oppose

	Estate Body Corporate.	<ul style="list-style-type: none"> Shading plans inaccurate. AEE is inadequate regarding shading. Adversely effects views to the west from the Richmond Estate. 	<ul style="list-style-type: none"> Wishes to be heard
10	Leonce Sharrock - 4/120 St Aubyn Street (Richmond Estate)	<ul style="list-style-type: none"> Adverse shading effects Lose most of western outlook. Reduction in afternoon sunlight admission. Shading plans inaccurate. Shadows would create darkness and lack of warmth. Proposal should keep in line with district planning requirements. 	<ul style="list-style-type: none"> Oppose Wishes to be heard
11	Trevor & Kay Clegg – 10/120 (Richmond Estate)	<ul style="list-style-type: none"> Proposal will result in excessive shading onto outdoor deck and living areas. Negative effects on quality of life. Shading assessments are an underestimate. Proposal is out of character and will visually dominate 	<ul style="list-style-type: none"> Oppose Wishes to be heard
12	Colin Michael & Margaret Josephine Comber -	<ul style="list-style-type: none"> Out of character with the neighbourhood Does not meet ODP requirements. Shading diagrams are inaccurate and no information regarding methodology. Accuracy of elevation plans (general) Application fails to acknowledge that the neighbourhood is primarily residential. Uncertainty around mechanical services and noise effects. Would prefer to see a redesign. 	<ul style="list-style-type: none"> Oppose Wishes to be heard
13	Barbara Colleen Holt - Devonport Apartment	<ul style="list-style-type: none"> Effects on views from my apartment Building will be uncharacteristic with the surrounding area. Impact values of property. Seeks application is declined 	<ul style="list-style-type: none"> Oppose Wishes to be heard
14	William & Judith Hurlstone – 1B/120 St Aubyn Street (Richmond Estate)	<ul style="list-style-type: none"> Would cast shadows into their light filled rooms. Loss of daylight and sunlight admission. Adversely effects views Shading plans are not accurate and does not illustrate effects on living areas Adverse effect on ability to enjoy home. Adverse effects on value of property. Building is not in character with the area and will have adverse amenity effects. 	<ul style="list-style-type: none"> Oppose Wishes to be heard
15	Rosalie Bennett	<ul style="list-style-type: none"> Basically supports the project. Has concerns over winter shadows which might have an impact on lichen and moss growth. 	<ul style="list-style-type: none"> Neutral Does not wish to be heard

Assessment of Environmental Effects – Section 104

Approach

63. My approach to undertaking the assessment of effects is to identify each relevant topic as determined by the relevant matters of restricted discretion and then assess each in turn under a series of subheadings.

64. The assessments aim to provide context, identify relevant submission points, assess the effects, and eventually provide an overall summary of the effects. An objective and policies assessment is made separately under later paragraphs. Consideration of expert opinions will be made where such information is available and relevant. When required for mitigation, consent conditions (if consent were to be granted) are also commented on.

65. With consideration to the matters of restricted discretion. The following sections of this report assesses the actual and potential effects on the environment anticipated from the proposal and includes the following key matters:

- Character and visual amenity;
 - Shading;
 - Bulk and dominance;
 - Outlooks;
 - Coastal walkway
 - Privacy; and
 - General character of area.
- Landscape and visual effects;
 - Urban viewshafts;
 - Coastal environment;
- Natural environmental values;
 - Coastal environment
- Effects of reduced landscaping; and
- Traffic and transport.

Under each topic I make reference to how the effects assessment relates to the relevant matters of restricted discretion. Where appropriate I will also comment on positive effects to encourage the balancing of effects and the concept of applying a broad judgement approach when considering an application.

Effects on Character & Visual Amenity

66. An assessment of the effects which relate to character and visual amenity are relevant and include the following matters of restricted discretion quoted from the ODP.

"Bus 13 – Max Height

- 1) *The extent to which the extra HEIGHT of the proposed BUILDING will:*
 - ***adversely affect the character and visual amenity of the surrounding area;***
 - ***have an overbearing effect on SITES within the RESIDENTIAL ENVIRONMENT AREA;***
- ... "

67. The following submission points relate character and amenity effects. I note the table may seem like a repeat of Table 2 above but this simply highlights a bulk of the submission points related to character and amenity effects and therefore my AEE has also.

Table 3 - Submission Points Relating to Character and Visual Amenity Effects	
Leonce Sharrock – Richmond Estate	<ul style="list-style-type: none"> • Cast shadows and darkness over the Richmond Apartments. • Block outlooks and views.
Lynette Elizabeth White – Devonport Apartments	<ul style="list-style-type: none"> • Some loss of sea views • Shading
Diane & Bill MacArthur – 122 St Aubyn Street	<ul style="list-style-type: none"> • Will cast additional shading over winter + loss of sun. • Reduced sky space. • Effects on privacy. • Impacts on outlook and accuracy of LVIA assumptions.
Elizabeth Anne Pease – 3/120 St Aubyn Street (Richmond Estate)	<ul style="list-style-type: none"> • Loss of views and privacy. • Additional shading
Kenneth James Gardener – G/120 St Aubyn Street (Richmond)	<ul style="list-style-type: none"> • Additional shading • Diminishment of amenity and quality of living in the area.
Bill Williams – Richmond Estate (Unit SGA)	<ul style="list-style-type: none"> • The development will result in sever shading of ground floor apartment in the Richmond Estate. • Shading will create dampness. • Diminish quality of life.
Larry & Kaylene Stewart – 11/120 St Aubyn Street (Richmond Estate)	<ul style="list-style-type: none"> • Will cast additional shading + loss of sunlight. • Loss of amenity and quality of life. • Reduction of views of the sky. • Loss of views/outlook to the west.
Lynette Elizabeth White - 2/120 St Aubyn Street (Richmond Estate)	<ul style="list-style-type: none"> • Building will intrude and block views from apartment. • Adverse shading effects on Richmond Estate.
Susanne Anne Patten / Richmond Estate Body Corporate.	<ul style="list-style-type: none"> • Bulk and height of the development will be out of character with what is now a predominantly residential neighbourhood. • Adversely effects views to the west from the Richmond Estate.
Leonce Sharrock - 4/120 St Aubyn Street (Richmond Estate)	<ul style="list-style-type: none"> • Adverse shading effects • Loss of western outlook. • Reduction in afternoon sunlight admission. • Shadows would create darkness and lack of warmth.
Trevor & Kay Clegg – 10/120 (Richmond Estate)	<ul style="list-style-type: none"> • Proposal will result in excessive shading onto outdoor deck and living areas. • Negative effects on quality of life. • Proposal is out of character and will visually dominate
Colin Michael & Margaret Josephine Comber -	<ul style="list-style-type: none"> • Out of character with the neighbourhood • Application fails to acknowledge that the neighbourhood is primarily residential.
Barbara Colleen Holt - Devonport Apartment	<ul style="list-style-type: none"> • Effects on views from my apartment • Building will be uncharacteristic with the surrounding area.
William & Judith Hurlstone – 1B/120 St Aubyn Street (Richmond Estate)	<ul style="list-style-type: none"> • Would cast shadows into their light filled rooms. • Loss of daylight and sunlight admission. • Adversely effects views • Adverse effect on ability to enjoy home. • Building is not in character with the area and will have adverse amenity effects.
Rosalie Bennett	<ul style="list-style-type: none"> • Basically supports the project. • Has concerns over winter shadows which might have an impact on lichen and moss growth.

68. Amenity is to degree subjective and non-specific, and often relates to various different types of effects that all tie back to an overall concept of amenity values as a whole. The RMA defines amenity as follows;

"Amenity values means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes."

With respect to this definition I have considered the actual and potential effects under the following sub-headings to better understand the overall effects on amenity values. I've focused on matters raised in submissions as this defines the amenity of the area appreciated by residents with concern.

69. The character of the area is described in earlier sections of this report as predominantly residential, of which I believe it is. However there are also characteristics of business activities consistent with the underlying Business Zone occurring. These include higher density apartment living as well as commercial properties such as the GQ building itself, which is a 3 storey commercial building, a dentist and vacant commercial buildings to the south.

Shading Effects

70. The applicant has provided a series of 2d shading diagrams, 3d shading diagrams and a graphic summary of shading effects on properties most likely to be effected. The plans provide a summer and winter shading analysis and for both effects at sunrise and sunset. The illustrations also identify the shading effects of the existing built form and a building which would be permitted. Comment is provided within the applicants AEE, LVIA and Erin Griffith's peer reviews. The most useful detail is demonstrated on the plans. I have relied on these plans to undertake my analysis.

71. Further to the analysis within the AEE, LVIA and Ms Griffith, a peer review of the shading assessment was undertaken by Taylor Patrick Surveying and Ardern Peters Architects. The peer review confirmed that both the survey and shading analysis work undertaken is accurate and a reliable representation of the effects anticipated. However some updates to the plans are required with reference to the timing displayed due to an error associated with giving consideration to daylight savings.

72. In reviewing the shading diagrams provided I am required to limit my assessment to effects over and above what would be permitted by the ODP. To the west effects are experienced during sunrise. I note the written of approvals received along the western side of Dawson Street. With respect to remaining properties effects are considered to be minor. The most affected property to the west is in my opinion 3A Hine Street. There is a 20 minute effect shown on 3A Hine Street during the winter solstice, as shown on the plans the effect is on the roof, surrounding ground is already in shade. The effects will be lesser either side of the solstice and therefore effects on 3A from

shading are considered to be minor. As shown on the series of sunrise plans there are no other significant effects on properties which have not provided written approvals and the effects on public receptors are also minor. Particularly in the context of the permitted baseline

73. Effects on properties to the east require greater consideration, particularly considering the submissions received. To assist this assessment BOON has provided shading effects summary on drawings SK5.05, SK5.06, SK5.07 and SK5.08. The original drawings by BOON illustrated effects compared to the proposed and existing environment. A updated set of drawings were provided to illustrate effects of the proposed building compared to a permitted building, these are included as Appendix E and are also included within the final set of consent drawings provided by the applicant. I have assessed the key to SK5.05 to SK5.08 in its simplest form and have assumed it is correlation of the amount of shading and on what part of the receiving building shading is hitting, I.E. highest degree directly into a living area and lowest degree on to a wall without windows. I think the applicant should elaborate on these definitions within their evidence.

- Shading effects associated with all sunset studies on 122B are considered to be minor as the additional shading is shown to be on roofs and western walls with only 1.5 Hours of additional shading with mid-range level of shading effects experienced during the months of January and November, all other months there is no shading effect or a shading effect of the lowest degree demonstrated by the applicant.
- Effects on 122A St Aubyn Street are more notable as shading will impact for greatest duration of time. Due to the close proximity of 122A to the site, effects will actually be greatest during summer months. However SK5.06 indicates no shading effects of the "highest degree" will result. A majority of the additional shading has been shown to be of the "lowest degree" and the remaining of a "mid degree". I refer to Figure 7 below from the approved building consent for 122A St Aubyn Street which indicates shading will not impact living areas and instead a laundry, scullery, toilet and a bathroom with a dual aspect, floor plans are included in Appendix F. As illustrated on the graphs included in Appendix E the duration of the additional effects are comparable to that which would be experienced from a permitted building and therefore effects from shading on this property when compared to the permitted baseline are considered to be minor.

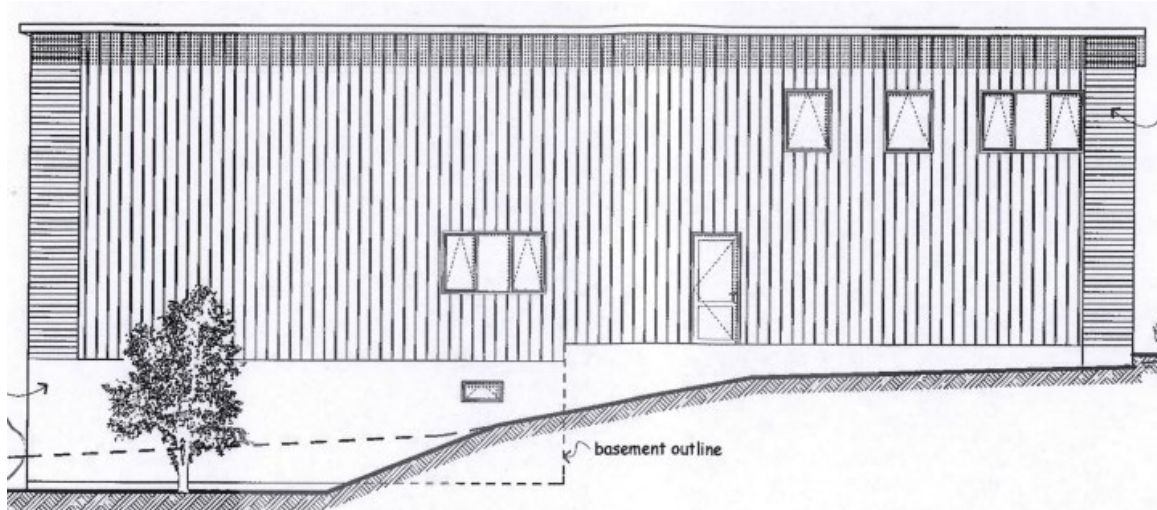


Figure 7: West Elevation of 122A St Aubyn Street

- Effects on 122 St Aubyn Street are more notable as shading will impact bedrooms and living areas and includes shading effects of the “highest degree” as per the key provided. The analysis of additional shading by boons has provided an assessment of the proposed shading against the existing environment and the permitted baseline. When compared to the existing environment the effects on 122 St Aubyn Street are clearly more than minor. However when compared the permitted baseline the anticipated shading effects are similar scale if not a slightly lesser scale when compared to the permitted baseline as shown on the drawings included in Appendix E. When compared to the permitted baseline the shading effects on 122 St Aubyn Street are considered to be minor.

74. Beyond the Oceanview Apartments towards the west is the Richmond Estate. As a larger residential apartment complex there are a number of units. Based on the plans provided, particularly SK5.01, SK5.02, SK5.03 and SK5.04, and in no particular order, I have found that the units most likely to be effected by shading include unit 1A, GA, 1B, GB and Unit GC, the units described are illustrated in Appendix G. Ground level units are shown to already be in shade of existing buildings and more elevated units in the tower will not be effected. The remaining units of which a majority of the effects will be directed are considered in greater detail as follows.

- Unit 1A and Unit GA – are shown to be effected for a short time in September, this is illustrated on the 2 dimensional shading plans and also indicated by the short overall duration of additional shading illustrated by the graphs on drawings SK5.05 to SK5.08. Effects are shown to be comparable to the permitted baseline and therefore I consider effects from shading on these units to be minor;
- Unit 1B – The shading plans provided by BOONs indicates that Unit 1B is likely to be effected during September for approximately 1.5 hours a day and

then not effected during the remaining months of the year. Effects on the Richmond Estate as a whole are shown to be comparable to the permitted baseline and therefore I consider effects from shading on this unit to be minor.

- Unit GB – is reflective of the comments made above for Unit 1B but earlier in the afternoon as the unit is lower than 1B.
- Unit GC is effected for more months of the year, March June and September. The plans provided show the most notable effects are an additional 1.5 hours of shading in March and September when compared to the existing environment. As illustrated on SK5.08, effects overall for Richmond estate are minor when compared to the permitted baseline as the duration and degree of shading effects are comparable.

In summary of the above assessments I consider that effects from shading is an effect on amenity as a whole. Properties in the Oceanview Apartments and Richmond Estate have an outstanding level of amenity including impressive outlooks to the north east, access to recreation and sunlight. With deliberation, and taking a broad judgment approach which has included an overall assessment of amenity, I consider that the additional shading effects on the units identified will be acceptable.

75. Shading is an effect anticipated as even a 10 metre building would cast additional shading. Overall, my assessment, BOON's assessment, the applicant's AEE and Natural Capital's Peer Review have found that shading effects of the proposal would be acceptable when compared to the existing environment and permitted baseline.

Bulk and Dominance, Privacy and Outlook

76. As an over height building there is the potential for there to be overbearing bulk and dominance effects. In assessing the overall bulk and dominance, and effects on visual amenity, I have carefully considered the existing environment, underlying zoning, matters of restricted discretion and permitted baseline. The GQ building is what I would describe as a prominent building. When travelling eastbound along Hine Street or along the coastal walkway the GQ building and the subject site clearly delineates the edge of the Business Zone. A zone which accommodates buildings with a taller built form, higher density of residential living and opportunity for commercial activities. In my opinion the proposed building plays a key role in the continuation of defining the edge of the business zone. In this respects the location is appropriate and I believe the additions would result in only minor bulk and dominance effects when compared to the existing fabric of the area and permitted baseline.
77. Consideration to surrounding properties in a more specific sense is also necessary, these include those along Dawson Street, Hine Street, Oceanview Apartments, Devonport Apartments and Richmond Estate.

Dawson Street Properties

78. The properties across of Dawson Street with an eastern aspect toward the building have provided written approval and therefore effects have been disregarded. Buildings along Hine Street are well distanced and separated by Dawson Street, further they focus an outlook orientation to the north, and the building is located to the east. As such the effects associated with bulk and dominance are considered to be less than minor in nature.
79. I note the wording in the matters of restricted discretion above highlighted in bold, the matters of restricted discretion associated with bulk and dominance is limited to those effects on properties in a residential area. All of the properties to the west are in a business area, this has had an implication on my conclusion of effects.

Oceanview Apartments

80. I consider that the bulk and dominance effects on 122A and 122B St Aubyn Street to be minor. This is due to the western walls of these buildings containing few windows and these dwellings not having western outlooks. Outstanding outlooks and outstanding levels of amenity are enjoyed by these properties toward the northeast, of which the proposed building has no effect on. Effects associated with the bulk and dominance of the proposed building, and when considering the matters of restricted discretion, existing environment and permitted baseline, will overall be minor on these properties. This is well illustrated on the plans provided by BOONs and in particular the 3D diagrams included within SK5.01 to SK5.04.
81. From an amenity, bulk and dominance perspective effects on 122 St Aubyn Street will be highly noticeable, quite simply due to proximity. However as specified under paragraph 79, Council's discretion does not extend to any overbearing effects of the buildings over height components on properties that are in a business zone.
82. Other amenity effects do still require consideration. The proposed building will have balconies and bedrooms overlooking 122 St Aubyn Street which will be elevated above the property given the proposed height and higher ground level of the application site. Therefore effects on privacy are considered.
83. When comparing privacy effects resulting from the additional height on 122 St Aubyn Street against the permitted baseline effects would be minor. In reaching this conclusion, I note all windows and balconies of the proposed building fall below the 10 meter height limit at the boundary. Additionally, the building is set back from this boundary as opposed to on the boundary of which the ODP permits. A further consideration, and as detailed in Richard Bain's LVIA Memo dated 5 July 2021, the owners of 122 St Aubyn Street maintain their main outlook and the amenity associated with this outlook toward the northeast. For these reasons I conclude that the effects over and above the permitted baseline are anticipated to be acceptable.

Devonport Apartments

84. The top two levels of the Devonport apartments which have an outlook toward the east were notified. Two submissions in opposition were received. The Devonport apartments are in a business zone. Therefore I consider that bulk and dominance effects on these apartments is beyond the scope of what I can consider. However other amenity effects are relevant. The top level apartments of the Devonport Apartments have an outstanding 160 degree view, outlook forms part of amenity and should be considered. I agree with the findings of Richard Bain and Erin Griffith that the overall effects on amenity values associated with the outlooks enjoyed by these properties will be minor as a high level of amenity will be maintained by these properties including expansive seaviews.

Richmond Estate

85. A number properties in the Richmond Estate were notified, 9 formally lodged opposing submissions. I consider that the bulk and dominance effects on these apartments beyond the scope of what I can consider as the Richmond Estate is zoned a Business Area.

86. With respect to outlook I have visited the Richmond Estate and have assessed the main outlooks and concur with that described by Richard Bain within his LVIA Memo dated 5 July 2021. I concur that there are effects on western outlooks appreciated by properties in the Richmond Estate, including views toward Paritutu and the Chimney Stack. However I note that neither the ODP, PDP nor the Act protects views specifically but requires a broader assessment of effects on amenity values of which I believe an outlook contributes to. In light of this the opposing submitters all have primary outlooks toward the northeast maximising sunlight and seaviews. Properties with a higher elevation (3/120 St Aubyn and 2/120 St Aubyn) enjoy more expansive views, including views toward the west, however once again primary outlooks and amenity is to the northeast. Overall I agree with the findings of Richard Bain that the effects on amenity values associated with the outlooks enjoyed by these properties will be minor and a high level of amenity will be maintained. This conclusion has also taken into account the permitted baseline.

Coastal Walkway and Recreational Amenity

87. Consideration of the effects on the coastal walkway from the bulk and dominance of the building and particularly the over height elements is important. I have already considered it as part of the notification assessment, but further consideration is applicable. This has been considered by both Richard Bain and Erin Griffith as the applicant's and Council's respective landscape experts. Following their guidance effects on the landscape values from the coastal walkway are characterised as very low (less than minor). I agree, I pass the site regularly and note when heading west the GQ building is noticeable, however the proposed extensions are setback from the walkway and coastal policy area and therefore would not be highly noticeable when compared to existing buildings in the area which adjoin the walkway including the GQ building and three storey Oceanview Apartments.

88. When traveling east the building is absorbed by the built fabric of the business zone of which starts at the subject site. The GQ building and proposed building will, if granted, further define this change in environment area.
89. Overall effects on the amenity values attributed to the coastal walkway will be less than minor in nature and a high level of amenity will remain as the status quo.

Summary of Effects on Character and Visual Amenity

90. The character of the area is that of a mixture of residential and business activities, an urban coastal environment and recreational values attributed to the Coastal Walkway. The proposal is consistent with the residential character of the area as it provides for residential living. Albeit larger and more extravagant than typically experienced for a single dwelling. As such I consider that the effects on the character of the area are acceptable.
91. Effects on amenity have also been assessed in detail. The assessment has provided for both consideration of individual properties but also surrounding public areas. It has been noted that there are clearly adverse effects from the proposal on 122 St Aubyn Street. However the permitted baseline is being applied and when assessing the proposal against effects which would be anticipated by a permitted activity I consider that the proposal is acceptable. Overall, and with specific regard to the existing environment, permitted baseline and reasons discussed above it is my opinion that the overall level of effects on character and amenity are minor and therefore acceptable.

Effects on landscapes, viewshafts and the coastal environment

92. The assessment of effects relating to landscape and visual effects are considered to relate the following matters of restricted discretion quoted from the ODP.

Bus 13 – Max Height

...

- 2) *The extent to which the extra HEIGHT of the proposed BUILDING will:*

...

- *adversely affect OUTSTANDING and REGIONALLY SIGNIFICANT LANDSCAPES;*
 - *intrude into and/or block an URBAN VIEWSHAFT (see section 3 of the planning maps);*
 - ...
- 3) *The extent to which SITE layout, separation distances, topography, planting or setbacks can mitigate the adverse effects of extra HEIGHT.*

OL63 and 71 – Viewshafts

- 1) *The extent of intrusion of the additional HEIGHT of the STRUCTURE into the viewshaft, and the elements of the view affected (see section 3 of the planning maps).*
- 2) *The extent to which the core of the view is impinged upon by the additional HEIGHT of the STRUCTURE (refer to "view details" in section 3 of the planning maps).*

- 3) *Whether the STRUCTURE results in the removal of existing intrusions or increases the quality of the view.*
- 4) *Whether the additional HEIGHT of the STRUCTURE will frame the view.*
- 5) *The proximity of the STRUCTURE to the inside edge of the viewshaft.*

Submissions received relating to urban viewshafts, landscape and visual effects and Coastal Environment.

93. The submission of Colin Comber & Margaret Comber comments that there are viewshafts intrusions, no other submission raises any submission points related to viewshafts.

Outstanding and Regionally Significant Landscapes

94. The nearest outstanding and regionally significant landscape is the Sugar Loaf Islands and Paritutu, these are approximately four kilometers away. As such there will be no effects on any nearby outstanding and regionally significant landscapes.

Urban viewshafts

95. The AEE provides a comprehensive description of the site and the surrounding environment. This is supported by the LVIA completed by Bluemarble which provides a description of the site and surrounding environment but with a greater landscape and visual amenity context. The LVIA conducted by Bluemarble adopts an approach which provides an overall assessment of the various landscape and visual amenity effects including those on the urban viewshafts affected by the proposal.

96. Based on the findings of the LVIA provided by the applicant and Natural Capital's independent peer reviews appended to this report, I have come to the following conclusions regarding effects on the urban viewshaft rules that the proposal triggers.

Cameron Street Viewshaft

97. The assessment criteria within the overlays chapter provides for the protection of public viewshafts. I agree with the findings of Mr. Bain's LVIA and Ms Griffith's peer reviews which state effects on the Cameron Road Viewshaft are minor. The building will not be highly visible within this viewshaft.

98. As part of Bluemarble's LVIA visual simulations are provided to facilitate the assessment of effects. The simulations have greatly helped with the assessment of the Cameron Street viewshaft. The simulations illustrate that the building will not be visible within.

Marsden Hill / Pūkākā Pa Viewshaft

99. The Marsden hill view shaft is identified as being a pedestrian audience. Looking in a northwestern direction toward the site the building is visible. I have visited the viewshaft and note that the views from the viewshaft are interrupted by mature trees.

However there are locations which provide a clear view of the subject site. As shown in the visual simulation the proposed building would be visible and generally in line with the height of the Devonport Apartments. The proposed building is noticeable given the colours shown on the LVIA, this has been described in Natural Capitals most recent LVIA peer review. The applicant has specified that the cladding will be a neutral colour. Black is a neutral colour, but given the other buildings in the area and coastal background a black colour would stand out. I believe the conditions of consent would be able to manage this effects so that it would be acceptable.

100. I invite the applicant and the applicant's landscape expert to investigate tones which better fit within the coastal environment and other surrounding buildings in the area. Overall I do not consider that the building would be visible in the sense which would result in significant adverse effects should a suitable cladding colour be confirmed or otherwise a suitable condition of consent imposed. This is reflected in the draft conditions of consent.

Summary of effects landscapes and viewshafts

101. With reference to the matters of restricted discretion listed above, I consider that effects resulting from the proposed additional height will be at minor levels and therefore acceptable. In reaching this conclusion considerable weight was given to both the permitted baseline, applicants LVIA, the visual simulations relating to the viewshafts and the Council's peer review of the LVIA.

Natural Character and Coastal Environment

102. The assessment of effects relating to natural environment values are considered to relate the following matters of restricted discretion quoted from the ODP.

Bus 13 – Max Height

- 4) *The extent to which the extra HEIGHT of the proposed BUILDING will:*

...

- *adversely affect the natural character of the coastal environment or PRIORITY WATERBODIES.*

Submissions received relating to the Coastal Environment.

103. No submissions were received relating actual and potential effects on the natural character of the coastal environment.

Coastal environment

104. The New Zealand Coastal Policy Statement (NZCPS) describes the New Zealand's coastal environment. Under the NZCPS territorial authorities are required to define and map areas considered to be part of the coastal environment. Under the ODP this is identified as the "Coastal Policy Area". The application is not within the coastal policy area. However in my view this does not mean that the site is not within a

coastal environment with respects to the intention of the NZCPs and disregarding the requirement to assess effects on the coastal environment would be prudent. I also note that the site is in what is defined as the coastal environment in the PDP.

105. In reading the NZCPS it is detailed that the coastal environment has differing degrees of naturalness and effects from development are likely to be relative to the surrounding natural character attributed to the area of coastal environment subject to development.
106. The location is entirely built up, particularly those areas to the south, east and west. To the north there is a transition to what I consider to be a more natural environment. However, a fully natural environment is not reached until the CMA as the coastal walkway, railway line and rock seawall features are all manmade structures. The area also consists of a built environment which can best be described as varying in heights. There are 2 storey, 3 storey, 4 storey and the 8 storey buildings in the area and there is a medium to high density residential living environment with a scattering of commercial activities. These existing features limit the potential for proposal to have significant adverse effects on the "natural character" of the Coastal Environment.
107. Overall the height of the building does not detract from the level of natural character of the Coastal Environment currently attributed to the area, which is highly modified by human structures, at more than minor levels.

Summary of effects the coastal environment

108. With reference to the matters of restricted discretion listed above, I consider that effects resulting from the proposed additional height on the coastal environment will be at minor levels and therefore acceptable. In reaching this conclusion considerable weight has been given to the existing environment and surrounding character of the area.

Reduced landscaping

109. The assessment of effects relating to the proposed reduced landscaping relate the following matters of restricted discretion quoted from the ODP.

Bus 19 – Landscaping of Road Boundary

- 1) *The adverse effects of reduced, alternative or no planting on the streetscape of the area.*
- 2) *Any adverse visual effects on the New Plymouth entrance corridors.*
- 3) *Alternative methods used to soften the appearance of the BUILDING from the ROAD and enhance the streetscape.*
- 4) *The extent to which existing topography, planting and SITE design can mitigate the adverse visual effects resulting from reduced, alternative or no planting.*

...

110. I am generally accepting of the reasons detailed within the applicants AEE regarding the proposal to have reduced landscaping. The landscape strip along the northern boundary of the site will continue to be maintained in consultation with NPDC to achieve the best outcome for this area which interfaces with the public coastal walkway. With regard to the Dawson street frontage the stepped nature of the site entails planting within the lower level in accordance with BUS19 would provide little benefit. None the less sufficient tree planting will be provided along the Dawson street frontage in the way of 1 tree per every 6 metres of boundary. These have been bunched due to site characteristics at the boundary with the road reserve. The Boundary along Dawson Street is approximately 50 metres long, 8 trees are shown to be proposed on the applicant's drawings.
111. For the above reasons effects are considered to be less than minor in nature in association with the reduced landscaping.

Submissions received relating to reduced landscaping

112. No submissions were received relating to the proposal to reduce the level of landscaping required at the road boundary.

Traffic & Transport

113. The assessment of effects relating to traffic and transport matters relate to the following matters of restricted discretion quoted from the ODP. Assessment is required as consent is required under rules Bus 87, 88 and 91.

Bus 87, 88 and 91 – Traffic and Transport

- ...
- 7) *The types of VEHICLES serving the SITE, their intensity, the time of day the SITE is frequented and the likely anticipated VEHICLE generation.*
 - 8) *Whether parking provided on a separate SITE is compatible with the surrounding land uses.*
 - 9) *Whether it can be demonstrated that a less than normal incidence of traffic generation and associated parking, LOADING or STANDING SPACES will be required by the proposal.*
 - 10) *Whether it is physically practicable to provide the required parking, LOADING, STANDING, QUEUING and/or MANOEUVRING SPACES in the SITE in terms of existing location of the BUILDINGS, DEFINED RETAIL FRONTAGE, and access to the ROAD, or topography.*
 - 11) *Whether the parking, LOADING, STANDING, QUEUING and/or MANOEUVRING SPACES will be required for use outside of peak traffic, cyclist or pedestrian flows.*
 - 12) *Whether the design, grade or formation of the alternative construction of parking, LOADING or STANDING SPACE, or DRIVEWAY will assist in managing any actual or potential adverse effects that arise.*
 - 13) *The adverse effects of using parking, LOADING or STANDING SPACES for manoeuvring and/or QUEUING SPACE.*
 - 14) *Whether a significant adverse visual or nuisance effect on the character and amenity of the surrounding area will occur as a result of not providing the required parking,*

LOADING, STANDING, QUEUING and/or MANOEUVRING SPACE or access in the required manner.

15) The adverse effects on the safety of people, both on and off the SITE, due to not providing the required parking, LOADING, STANDING, QUEUING or MANOEUVRING SPACE, VEHICLE ACCESS POINT or DRIVEWAY and/or inappropriate design or construction of these.

16) The extent to which the safety and efficiency of the ROAD TRANSPORTATION NETWORK would be adversely affected by parking, loading, manoeuvring and/or queuing VEHICLES due to inappropriate design or construction.

114. The applicant's AEE has provided a specific and detailed assessment of effects relating to the parking, loading and queuing effects. I generally agree with the assessments made by the applicant. There is an existing parking area for the GQ building which has functioned without issue during the operation of the commercial tenancy. Further there is a shift in direction from a reliance on vehicles, not only under the National Policy Statement for Urban Development Capacity 2020, but also under the PDP as currently drafted. There has also been a shift driven by the public including the increased use of e-bikes e-scooters and bikes. Given the sites proximity to the coastal walkway I consider that the site is highly suited to such alternative means of travel. I would encourage the applicant to consider the provision of end of trip facilities with respects to the GQ building. A bike parking area is shown on the plans.
115. Loading is available within the GQ parking area, otherwise this is available on street depending on preference of delivery drivers. The parking in the area is time limited (60 mins) which benefits delivery drivers with regard to the regular availability of parks. The roading environment is that of a local road with low speeds. The low speeds ensures a safe environment for individuals servicing the development to cross the road.
116. The parking layout, parking shortfalls and queuing has been considered by Council's Roding Team and Development Engineers and with no significant concerns raised. The parking area is considered to be functional, on street parking will be used by office workers in surrounding areas and the location is highly conducive to the use of alternate modes of transport. The parking layout is considered to be the most effective use of land and the provision of a two car garage and stacking space in the driveway for visitor parking ensures effects associated with overspill from the residential component of the development will be minor in nature.

Submissions Received Relating to Transport and Parking

117. The following submission included points relating transport and parking related matters. Lynette Elizabeth White - 2/120 St Aubyn Street (Richmond Estate) "Parking is congested in the area". The submitter has a property in the Richmond Estate of which contains private resident and visitor parking.

Summary of Transport Related Effects

118. It is my view that as the applicant has provided sufficient detail regarding parking and functionality. Overall, and based on the internal advice received from Council's Development Engineer's and Roading Team it is considered that any effects associated with transport related matters including parking, queuing and loading will be minor in nature.

Positive Effects

119. Positive effects also require consideration. In relation to this I consider that positive effects would result from the GQ building facelift and re-establishment of the site so it is functional and consistent with the underlying zoning. Currently the site is underutilised, the site is important in the sense it represents the transition from the residential area to the business area, of which fringes the central city.

120. I consider that the new building and re-opening of the office tenancies would reinvigorate the currently underutilised site and surrounding area.

Conclusion on Assessment of Effects

121. Based on the above assessments I consider that the effects of the proposal will be acceptable. Considerable weight has been given to the restricted discretionary status of the application, the permitted baseline argument presented and the existing surrounding environment.

122. Overall effects are acceptable subject to fair and reasonable conditions of consent.

National, Regional and District Objectives and Policies Assessment

Operative New Plymouth District Plan (ODP)

123. The following tables provide an assessment of the relevant objectives and policies in the ODP and PDP. My assessments are tableside with the relevant objectives and policies listed in the left column and my comments / assessments provided in the right. I have formatted it in this way to make it easier for the reader to consider comments against the relevant objectives and policies rather than referring to an appendix.

Table 4 – Relevant ODP Objectives and Policies Assessment

Relevant Objectives and Policies	Assessment
<i>Objective 1 - To ensure activities do not adversely affect the environmental and amenity values of areas within the district or adversely affect existing activities.</i>	The objectives and policies identified are particularly relevant given the submission points raised and potential effects on amenity values and character from the development.

<p>Policy 1.1 - <i>Activities should be located in areas where their effects are compatible with the character of the area.</i></p> <p>Policy 1.2 - <i>Activities within an area should not have adverse effects that diminish the amenity of neighbouring areas, having regard to the character of the receiving environment and cumulative effects.</i></p> <p>Policy 1.3 - <i>New activities that are sensitive to the elements that define the character of the area in which they intend to locate should be designed and/or located to avoid conflict.</i></p>	<p>I believe that the proposal will result in adverse amenity effects on surrounding properties. However given the purpose descriptions for the Business Zone I also consider that the proposal is appropriate for the zone and the effects assessment has been required to make consideration to the existing environment, matters of restricted discretion and permitted baseline. The existing environment is built up, the site is currently somewhat out of character given it underutilisation. The character of the area is residential but with multi storey buildings (including the 8 storey Richmond Estate), in that sense the proposal is consistent with the character the area being a mid-rise residential apartment and office block (existing but consistent with zoning).</p> <p>In on overall sense, and with reference to the assessment of effects sections of my report, I consider that consistency with Objective 1 and the relevant underlying objectives is achieved. If it weren't for the concept of a permitted baseline my assessment would have likely concluded otherwise.</p>
<p>Objective 5 - <i>To maintain and enhance the character and coherence of the urban areas of the New Plymouth District.</i></p> <p>Policy 5.2 - <i>Buildings and structures should not detract from or reduce the visual amenity of the Urban Viewshafts.</i></p> <p>Policy 5.3 - <i>The positive contribution vegetation makes to urban amenity should be recognised, maintained and, where possible, enhanced.</i></p>	<p>Urban areas are made up of a variety of types including residential, industrial and business areas. Each carries different attributes but they also tie areas together where fringing zones, such as in this case.</p> <p>The site has been vacant since GQ moved to their new offices on King Street several years ago. Currently the Dawson Street GQ building is neglected. It is my view that the proposal aligns with Objective 5 through the provision of enhancement of urban form. Noting that a building of excessive scale may however be inappropriate and detract from the amenity of urban areas. In assessing this, consideration was made toward the coastal environment and urban viewshafts, both of which are matters of restricted discretion. I found that the proposal to set the top level (fourth storey) away from the sites interface with the coastal walkway reduces effects on the coastal walkway and coastal environment. The applicant has also demonstrated the effects on protected viewshafts are minor in nature.</p>

	<p>For these reason, and with deliberation, I believe that the proposal is consistent with Objective 5 and the relevant underlying policies when taking a broad judgement approach. Particularly given the impending GQ facelift and architecturally modern features of the building which is at a location that defines the edge of the Business Zone.</p>
<p>Objective 6 - To ensure:</p> <ul style="list-style-type: none"> • <i>Sufficient space is available to protect residential amenity.</i> • <i>Visual and aural amenity is protected.</i> <p>...</p>	<p>The site is not in a residential zone.</p>
<p>Objective 7 - To ensure the attractive, vibrant, safe, efficient and convenient character of the business environment is maintained.</p> <p>Policy 7.1 - Buildings, signs and other structures should be designed and/or located to avoid, remedy or mitigate adverse effects on the character and visual amenity of business areas.</p> <p>Policy 7.2 - Buildings and structures within business areas should be designed and/ or located to ensure that areas of high pedestrian usage have access to daylight and sunlight and protection from the weather.</p>	<p>Objective 7 seeks to promote functional business zones while also promoting amenity.</p> <p>I consider that the proposal is not contrary to Objective 7 and the underlying policies identified. The proposed use of the site is preferred than the status quo of vacancy. Further the development aligns with the residential character of the area as the extension is for residential purposes. As opposed other activities promoted in the Business B zone which might detract from the character of the area, as per the following quote from the Business Environment Area chapter.</p> <p><i>"BUSINESS B ENVIRONMENT AREAS are characterised by larger scale, bulky BUILDINGS (such as warehouses), orientated towards the motorised customer, with parking usually provided on-SITE"</i></p> <p>The building proposed is of contemporary design with architecturally pleasing features and avoids 100% site coverage and solid block walls, as would be permitted by the zoning, albeit to height of 10 metres. As such the proposal is not contrary to Policy 7.1 and consistent with Objective 7.</p>
<p>Objective 11 - To recognise the district's heritage resources, provide for their protection and promote their enhancement.</p>	<p>The project will not adversely effects the ability to appreciate heritage features in the area including the adjoining notable tree group, Honey filed Fountain and Devonport Apartments.</p>
<p>Objective 14 - To preserve and enhance the natural character of the coastal environment,</p>	<p>Business zones are inherently built-up environments, the planning provisions allow for 100% site coverage. Although being a coastal</p>

<p>wetlands, and lakes and RIVERS and their margins. Policy</p> <p>Policy 14.1 - The natural character of the coastal environment should not be adversely affected by inappropriate subdivision, use or development and should, where practicable, be restored and rehabilitated.</p>	<p>environment, and as discussed within the AEE above, there is little in the way of natural character in the area.</p> <p>When the existing environment and permitted baseline is compared against the proposal, it is considered that the proposal is consistent with Objectives 14 and Policy 14.2.</p>
<p>Objective 19 - To recognise and provide for the cultural and spiritual values of Tāngata Whenua in all aspects of resource management in the district in a manner which respects and accommodates Tikanga Maori.</p> <p>Policy 19.1 - The use of land for traditional Maori activities should be recognised and provided for.</p> <p>Policy 19.2 - Subdivision, land use or development should not adversely affect the relationship, culture or traditions that Tangata Whenua have with Waahi Taonga/ Sites Of Significance To Maori.</p> <p>Policy 19.3 - The cultural and spiritual values of Tangata Whenua should be recognised and provided for in the resource management of the district.</p> <p>Policy 19.4 - The principles of the Treaty Of Waitangi (Te Tiriti O Waitangi) will be taken into account in the management of the natural and physical resources of the district.</p>	<p>The site is not subject to statutory acknowledgment nor is it effected by any identified sites of significance to Maori in either the ODP or PDP. Consideration is given to the cultural values attributed to the coastal environment, however it is not considered that the proposal is contrary to the relevant objectives and policies identified when compared to the existing environment and permitted baseline.</p>
<p>Objective 20 - To ensure that the road transportation network will be able to operate safely and efficiently.</p> <p>Policy 20.1 - The movement of traffic to and from a site should not adversely affect the safe and efficient movement of vehicles, both on-site, onto and along the road transportation network.</p> <p>Policy 20.2 - The safe and efficient operation of the road transportation network should not be adversely affected by land use activities that have insufficient or substandard parking or loading areas.</p>	<p>Based on advice received from Council's Development Engineers and Roading Team I consider that the proposal is not contrary to Objective 20 and the relevant underlying policies.</p>

<p>Policy 20.3 - Potential conflict between vehicles, pedestrians and cyclists moving on the road transportation network should be minimised to protect the safety and efficiency of road and footpath users.</p>	
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Summary of Objectives and Policies Assessment

124. Based on the above assessments, the applicants AEE, supporting plans, supporting information and my AEE I consider the proposal to be generally consistent with the relevant objectives and policies as set out above. There are clearly amenity effects on neighbouring’s persons and the surrounding environment, these are undeniable. However the permitted baseline and existing environment limits my ability as to how much weight I can give to these effects. More so the restricted discretionary status of the application limits the ability to assess bulk and dominance effects on properties in a Business Zone, of which is where a bulk of the effect will be. Written approvals have been obtained from the nearest properties across of Dawson Street, of which are within a residential zone. For these reasons the proposal is considered to be consistent with objectives policies identified as relevant to the proposal above.

125. There is also effect on the coastal environment and coastal walkway. The existing built form of area reduces the naturalness and ultimately the effects of the development. For this reason I believe the proposal is not contrary to Objectives 5, 11, 14 and 19.

Proposed District Plan

Table 5 – Relevant ODP Objectives and Policies Assessment

<i>Strategic Objectives</i>	
<i>Relevant Objectives and Policies</i>	<i>Assessment</i>
<p>Natural Environment</p> <p>NE-4 -The district's natural environment contributes to our district's sense of place and identity and is recognised and provided for.</p> <p>NE-5 - A well-functioning and resilient natural environment is sustained that provides for the social, economic and cultural well-being of communities and for the needs of future generations.</p> <p>NE-6 - An integrated management approach is taken where land use activities impact on waterbodies and the coastal environment, in collaboration with government, councils and tangata whenua.</p> <p>NE-7 - Tangata whenua are able to exercise their customary responsibilities as mana whenua and</p>	<p>Under the PDP the site is within the Coastal Environment. As detailed throughout the NZCPS, New Zealand’s Coastal Environment is subject to varying degrees of naturalness. This site, and as result of the underlying Business zoning carries little in the way of natural value and therefore I consider the proposal to not be contrary to the objectives and policies identified.</p> <p>I also note the site is not subject to statutory acknowledgement nor is it impacted by any sites of significance to Maori. The nearest mapped site is approximately 110 metres away under the PDP and over 300 metres away under the ODP planning maps.</p>

<p><i>kaitiaki in the protection and management of the natural environment</i></p>	
<p>Tangata Whenua</p> <p>TW-8 - <i>Tangata whenua actively participate in resource management processes.</i></p> <p>TW-9 - <i>Recognise that only tangata whenua can identify impacts on their relationship with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes and other taonga of significance to Māori.</i></p> <p>TW-10 - <i>Tangata whenua are able to protect, develop and use Māori land in a way which is consistent with their culture and traditions and their social and economic aspirations.</i></p> <p>TW-11 - <i>Provide for the relationship of tangata whenua with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes and other taonga of significance to Māori.</i></p> <p>TW-12 - <i>Recognise the contribution that tangata whenua and their relationship with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes, and other taonga of significance make to the district's identity and sense of belonging.</i></p>	<p>Consent is not required under the PDP, the site is not subject to statutory acknowledgment nor is not impacted by any mapped sites of significance to Maori. With consideration to the matters of restricted discretion it was considered that consultation in this instance was not pertinent to the processing of the consent.</p> <p>Therefore the proposal is considered to be consistent with the relevant objectives and policies identified.</p>
<p>Urban Form and Development</p> <p>UFD-13 - <i>The district develops in a cohesive, compact and structured way that:</i></p> <ol style="list-style-type: none"> <i>1. maintains a compact urban form that provides for connected, liveable communities;</i> <i>2. manages impacts on the natural and cultural environment;</i> <i>3. recognises the relationship of tangata whenua with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes and other taonga of significance;</i> <i>4. enables greater productivity and economic growth;</i> <i>5. enables greater social and cultural vitality;</i> <i>6. takes into account the short, medium and long-term potential impacts of climate change and the associated uncertainty;</i> <i>7. utilises existing infrastructure and/or can be efficiently serviced with new infrastructure; and</i> <i>8. meets the community's short, medium and long-term housing and industrial needs.</i> 	<p>I consider that the proposal is generally consistent with UFD-13, UFD-15 and UFD-19 which are relevant to this proposal.</p> <p>The activity provides for high quality residential living. Albeit just one apartment. The proposal is reflective of the existing built form which includes a variety of housing types and buildings. Building heights in the area vary from 2 to 8 storeys. The area is heavily modified and the site defines the edge of the business zone. For these reasons I find the proposal is not contrary to the relevant objectives and policies identified.</p>

<p>UFD-15 - A variety of housing types, sizes and tenures are available across the district in quality living environments to meet the community's diverse social and economic housing needs in the following locations:</p> <ol style="list-style-type: none"> 1. suburban housing forms in established residential neighbourhoods; 2. a mix of housing densities in and around the city centre, town centres and transport nodes, including multi-unit housing; 3. opportunities for increased medium and high-density housing in the city centre, town centres and local centres that will assist to contribute to a vibrant, mixed-use environment; 4. a range of densities and housing forms in new subdivisions and areas identified as appropriate for growth; and 5. papakāinga housing that provides for the ongoing relationship of tangata whenua with ancestral land and for their cultural, environmental, social and economic well-being. <p>UFD-19 - Urban environments are livable, connected, accessible, safe and well-designed spaces for the community to live, work and play, which:</p> <ol style="list-style-type: none"> 1. integrate and enhance natural features and topography into the design of development to minimise environmental impacts; 2. recognise the local context and character of an area; 3. reduce opportunities for crime and perceptions of crime through design solutions; 4. create ease of movement in communities through connected transport networks, a range of transport modes and reduced reliance on private motorised vehicles; 5. incorporate matauranga Māori principles by involving tangata whenua in the design, construction and development of the built environment; 6. use low impact design solutions and/or healthy, accessible, energy efficient buildings; and 7. are adequately serviced by utilising and/or upgrading existing infrastructure or with new infrastructure. 	
Energy Infrastructure and Transport	
Transport	Based on the assessment of effects provided by the applicant, comments received from Council's Roding

<p>TRAN-O3 - <i>Activities generate a type or level of traffic that is compatible with the local road transport network they obtain access to and from.</i></p> <p>TRAN-O4 - <i>The existing and future transport network is not compromised by incompatible activities which may result in reverse sensitivity effects and/or conflict.</i></p> <p>TRAN-O5 - <i>Adverse effects from the construction, maintenance and development of the transport network are managed.</i></p> <p>TRAN-P3 - <i>Manage activities that occur on or in close proximity to the transport network, including:</i></p> <ol style="list-style-type: none"> 1. <i>erection of structures on or adjacent to an indicative road transport network;</i> 2. <i>erection of structures on or adjacent to a railway corridor;</i> 3. <i>high trip generator activities;</i> 4. <i>vehicle access points onto a state highway; and</i> 5. <i>vehicle access points over a railway level crossing.</i> <p>TRAN-P11</p> <p>Encourage buildings and new developments to:</p> <ol style="list-style-type: none"> 1. <i>provide free, secure and covered parking for bicycles and end-of-trip facilities such as secure lockers, showers and changing facilities; and</i> 2. <i>allocate parking for mobility devices, scooters, motorcycles, hybrid vehicles and car share or car pool vehicles and to provide charging points for electric vehicles</i> <p>TRAN-P13 - <i>Require that activities provide for the safe and efficient movement of vehicles on-site, onto and along the road transport network by:</i></p> <ol style="list-style-type: none"> 1. <i>providing appropriately designed and/or located vehicle access points, on-site parking including bicycle parking, loading and standing spaces, driveways, manoeuvring space and queuing space to reduce disruption to traffic flow, driver distraction and road congestion;</i> ... <p>TRAN-P14 - <i>Ensure that activities do not constrain or compromise the safe and efficient operation of the road transport network by:</i></p> <ol style="list-style-type: none"> 2. <i>minimising conflict between vehicles, pedestrians and cyclists;</i> 3. <i>managing the width of vehicle access points so that on-street parking is not reduced; and</i> 4. <i>managing adverse cumulative effects.</i> 	<p>Department and Development Engineers and based on my assessment of effects I consider that the proposal is consistent with the relevant objectives and policies identified.</p> <p>The applicant may in future wish to investigate opportunities which might promote TRAN-P11 following the refurbishment of the GQ building and eventual future use again for commercial activities.</p>
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Historic and Cultural Values	
<p>Viewshafts</p> <p>VIEWS-O1 - <i>Viewshafts from public places to Mount Taranaki, the sea, Nga Motu/Sugar Loaf Islands and significant landmarks that provide a strong sense of place and identity are recognised and maintained.</i></p> <p>VIEWS-P3 - <i>Ensure that any structure that exceeds permitted height limits within a viewshaft is appropriately located and does not result in inappropriate adverse visual effects on the viewshaft, having regard to:</i></p> <ol style="list-style-type: none"> 1. <i>the extent to which the additional height of the structure will encroach upon the core part of the view and/or compromise the visual coherence or integrity of the viewshaft and its view;</i> 2. <i>the focal elements that will be affected and the ability to interpret the view;</i> 3. <i>the reduction or loss of amenity, vegetation and/or landscaping values;</i> 4. <i>the particular cultural, spiritual and/or historical values, interests or associations of importance to tangata whenua that are associated with the viewshaft which may be affected by the over-height structure;</i> 5. <i>the outcomes of any consultation with tangata whenua, in particular with respect to mitigation measures and/or opportunities to incorporate mātauranga Māori principles into the overall scale, form, composition and design of the structure, to:</i> <ol style="list-style-type: none"> a. <i>minimise adverse visual effects on any cultural, spiritual and/or historical values, interests or associations of importance to tangata whenua that are associated with the viewshaft; and</i> b. <i>acknowledge and reflect the importance of the viewshaft to tangata whenua.</i> 6. <i>the view's sensitivity to change or capacity to accommodate change;</i> 7. <i>whether the additional height of the structure will enhance the quality of the view through its design; and/or</i> 8. <i>whether the proposed structure and/or additional height of the structure has a functional or operational need to be located within the viewshaft, any alternative locations for the structure on the site and the permanency of the structure.</i> 	<p>The view shafts effected by the proposal protect views of the sea. Based on the detail provided within my AEE, the applicant's AEE, Mr. Bain's LVIA and Miss Griffiths peer reviews I consider that the proposals effect on the Marsden Hill / Pukaka Pa viewshaft and Cameron Street viewshaft is acceptable and therefore consistent with the objectives and policies identified.</p>
General District Wide Matters	

<p>Coastal Environment</p> <p><i>CE-01 - The natural character, landscape, historic, cultural and ecological values of the coastal environment are recognised and preserved, and where appropriate enhanced and restored.</i></p> <p><i>CE-02 - The adverse effects of activities on natural processes and the natural character, landscape, historic, cultural and ecological values of the coastal environment are avoided, remedied or mitigated.</i></p> <p><i>CE-03 - Tangata whenua values, mātauranga and tikanga are recognised and reflected in resource management processes concerning the coastal environment.</i></p> <p><i>CE-04 - The risks to people and property from coastal hazards and climate change are avoided, remedied or mitigated.</i></p> <p><i>CE-P2 - Protect natural character in the Coastal Environment by ensuring:</i></p> <ol style="list-style-type: none"> <i>1) any adverse effects on the natural characteristics, processes and values which contribute to Areas of Outstanding Natural Character are avoided;</i> <i>2) any significant adverse effects on the natural characteristics, processes and values which contribute to other coastal natural character are avoided; and</i> <i>3) any other adverse effects on the natural characteristics, processes and values which contribute to coastal natural character are avoided, remedied or mitigated.</i> <p><i>CE-P3 - Allow activities within the Coastal Environment which:</i></p> <ol style="list-style-type: none"> <i>1) appropriately avoid, remedy or mitigate adverse effects on natural processes, coastal natural character, landscape, amenity, historic, cultural and/or ecological values;</i> <p><i>CE-P4 - Manage the scale, location and design of activities within the Coastal Environment that have the potential to adversely affect coastal natural character, landscape, amenity, historic, cultural and ecological values and/or that have the potential to increase or be vulnerable to coastal hazards</i></p>	<p>I have considered the proposal against the existing natural character of the area and how this relates to the coastal environment and NZCPS.</p> <p>Based on the conclusions made throughout this report I consider that the proposal is consistent with the relevant objectives and policies identified.</p>
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<p>CE-P7 - <i>Ensure activities are not located inappropriately within the Coastal Environment, having regard to:</i></p> <ol style="list-style-type: none"> 1) <i>the effects of the activity and its impact on the particular natural character, landscape, amenity, historic and ecological values and/or recreational values of the area;</i> 2) <i>the outcomes of any consultation with and/or cultural advice provided by tangata whenua, including the extent to which the activity may compromise tangata whenua's relationship with their ancestral lands, water, sites, wāhi tapu, and other taonga, and/or tangata whenua's responsibilities as kaitiaki and mana whenua in the coastal environment;</i> 3) <i>the extent to which the values of the area are sensitive or vulnerable to change and/or any whether any adverse effects can be avoided, or where avoidance is not possible, appropriately remedied or mitigated;</i> 4) <i>opportunities to enhance, restore or rehabilitate the particular values of the coastal environment of the area;</i> <p>...</p> <p>CE-P8 - <i>Require activities within the Coastal Environment to minimise any adverse landscape, biodiversity, visual and amenity effects by:</i></p> <ol style="list-style-type: none"> 1) <i>ensuring the scale, location and design of any built form or land modification is appropriate in the location;</i> 2) <i>integrating natural processes, landform and topography into the design of the activity, including the use of naturally occurring building platforms;</i> 3) <i>limiting the prominence or visibility of built form from public places and the coast;</i> <p>...</p>	
<p>MUZ-O1 - <i>The Mixed Use Zone is predominantly used for and characterised by commercial service, sport and recreation and community activities.</i></p> <p>MUZ-O2 - <i>The type and frequency of business service and retail activities is limited in the Mixed Use Zone to ensure the viability and vibrancy of the city centre, town centres and local centres is not compromised.</i></p>	<p>As can be seen under the objectives and policies for the Mixed Use Zone (MUZ), the zone is for activities which are entirely out of character with the existing fabric of the site and surrounding sites including all of the properties bound by Regina Place, Dawson Street and St Aubyn Street. This is also the case with respect to the sites fronting St Aubyn Street to the</p>

<p>MUZ-03 - <i>Mixed use areas provide a safe, accessible and functional working and residential environment with a reasonable level of amenity.</i></p>	<p>south including the Devonport Apartments.</p>
<p>MUZ-04 - <i>The adverse environmental effects generated by activities are managed, particularly at zone interfaces.</i></p>	<p>The PDP is still undergoing hearings including broad submissions on matters relating to zoning. For this reason I give little weight to these objectives and policies as the existing character itself is inherently in-consistent with the objectives and policies for the MUZ zone.</p>
<p>MUZ-P1, P2, P3, P4, P5, P6 and P7</p>	

126. The Proposed New Plymouth District Plan is required to be considered under section 104(1)(b) but the weight that it is given should be limited as submissions have been received seeking changes to the provisions of that plan as they apply to the subject site, the proposal, rules, objectives and policies and those submissions are yet to be heard and closed off. At this point the further submissions period has closed and Council's officers are currently drafting reports and progressively appearing at hearings. Hearings have only recently started and will continue until the end of 2021.
127. Acknowledging the limited weight that can be afforded to the provisions of the Proposed Plan as hearings have not yet been held nor have decisions been made, I consider that the proposal would be inconsistent with objectives and policies within the MUZ Zone. This conclusion is because in my view this zoning is actually inappropriate for the location. However the outcome of which is out of my hands.
128. I consider that the proposal would be able to achieve consistency with most of the other Proposed Plan objectives listed in above.

Operative and Proposed District Plan Integrity

Operative District Plan

129. The consistent administration of the District Plan is necessary for maintaining the integrity of the District Plan and the purposes it serves under the RMA. Concerns particularly arise when a consent for a Restricted Discretionary, Discretionary or Non-Complying activity is granted. This may lead to what is described as a precedent effect where an expectation is created that consent will and should be granted for activities of a similar scale and/or triggering the same or similar rules or having the same activity status.
130. In this case, I consider that overall consistency with the objectives and policies of the District Plan is dependent on balancing the adverse effects anticipated against the matters which council have restricted their discretion to, the permitted baseline and the overall outcomes anticipated by the development. Consideration to any positive effects should also contribute to the assessment. If it is able to be demonstrated that the proposal has the ability to suitably address any actual and potential adverse effects through achieving an outcome which is consistent with the wider overarching purpose

of the plan, and particularly the business and overlay chapter's objectives and policies, consent may be granted without setting significant adverse precedent effects.

131. If the Hearing Commissioner finds that consent can be granted, I do not consider that significant district plan integrity or precedent effects would arise. This is because every application decision made by council should be on its merits, both with respect to design but also location. The building is over height, at a maximum 5.4 metres over height, however in other places by no more than 1.2 metres. In my view the height intrusion of 5.4 metres is certainly notable but not excessive when compared to the existing environment which includes 2, 3, 4 and even an 8 storey building in the area. Consideration when reaching this conclusion has also been made against the matters of restricted discretion and the defining nature of this site as the transition from a residential to a business zone whilst approaching the central city area further to the east.
132. When compared to similar over height applications in the area, which were refused, including the application by Dawson Developments to construct a 25 metre tall (seven storey) building at 124 St Aubyn Street, I believe the scale of that development to be incomparable to that currently being considered.
133. In summary, the Business Zone will always have a heavily modified urban form and will site will ultimately be subject to foreseeable change in the near future. It is not considered that the proposal would have a cumulative impact on the relevant viewshafts, the coastal environment and the amenity and character of the area when compared to a permitted activity which could be reasonably expected in the location. In my opinion if the Commissioner was to grant resource consent, district plan integrity or precedent effects would be unlikely to arise for the reasons discussed.

Regional Policy Statement

134. Regional Policy Statements are prepared by Regional Council's to achieve the purpose of the Act by providing an overview of the resource management issues of the region and identify suitable objectives, policies and methods to achieve integrated management. The objectives, policies and rules of a District Plan should not be contrary to Regional Policy Statement.
135. Section 5.3 of the applicants AEE addresses the Regional Policy Statement for Taranaki 2010 (RPS). I concur with the applicant's assessment that Chapter 15 (the Built Environment) is relevant, however I also believe chapter 8 (Coastal Environment) and 10 (Natural Features and Landscapes, historic heritage and amenity values) to be relevant. In my view I believe that the application is not contrary to the relevant objectives of the RPS under the chapters identified. The RPS includes a strong focus on sustainable management, of which requires the balancing of environmental, economic, social and cultural effects. I believe that the proposal is consistent with the concept of sustainable management given the buildings appropriate location within the Business Zone.

New Zealand Coastal Policy Statement 2010 (NZCPS)

136. The NZCPS establishes a set of objectives and policies to achieve the purpose of the Act in relation to New Zealand's coastal environment. Under the NZCPS territorial authorities are required to define and map areas considered to be part of the coastal environment. Under the ODP this is identified as the "Coastal Policy Area". The NZCPS also directs district plans to set specific rules and assessment criteria for activities located within the coastal environment. The application is not within the ODP coastal policy area, however this does not in my view mean that the site is not within the coastal environment. Given the sites proximity to the CMA and Coastal Policy Area, and in regard to the intentions of the NZCPS, the site is located in a coastal environment and an assessment of the NZCPS is relevant. I also note that the sites is in what is defined as the coastal environment in the PDP.

137. In reading the NZCPS it is clear that the coastal environment may have differing degree of natural character and effects from development are likely to be relative to the surrounding natural character attributed to the coastal environment. The following considerations under the NZCPS are made with the mindset that the area is heavily modified including various buildings, 100% hardstand site, roading networks and the coastal walkway.

138. The Objectives and policies I consider relevant to the application at hand include the following;

Objective 2 - To preserve the natural character of the coastal environment and protect natural features and landscape values.

Objective 3 - To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment.

Objective 6 - To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development.

Policy 1 - Extent and characteristics of the coastal environment;

Policy 2 - The Treaty of Waitangi, tangata whenua and Māori heritage;

Policy 4 - Integration;

Policy 6 - Activities in the coastal environment;

Policy 13 - Preservation of natural character;

Policy 17 - Historic heritage identification and protection;

139. I believe Objectives 2 and 6 and Policies 6 and 13 of the NZCPS to be particularly relevant to the proposal.

140. In my opinion the proposal is consistent with the NZCPS as the NZCPs identifies that the coastal environment is often modified and development should be restricted in areas with a high degree of naturalness to preserve natural character (objective 2). Under objective 6 the NZCPs details that there is a requirement to enable appropriate land use development. Similarly under Policy 6(f) it is specified that development which maintains character of the existing built environment should be encouraged and development resulting in a change in character would be acceptable. As discussed in earlier sections it is my view that the proposal is not out of character when one considers the existing built form in the area and the underlying zoning. The proposal does however result in change, and this has not been ignored, but in accordance with Policy 6(f) I consider that this change is acceptable.
141. Policy 13(1) discusses the requirement to protect natural character of the coastal environment from inappropriate development. However and as described under Policy 1(i) the NZCPS clearly and continually outlines that natural character is different to the coastal environment and that the coastal environment inherently includes physical resources/infrastructure which has modified the coastal environment over time.

National Policy Statement for Urban Development Capacity 2020

142. The National Policy Statement for Urban Development Capacity 2020 came into effect in August 2020 (NPS-UDC). NPS-UDC seeks to promote that Councils provide a sufficient supply of residential and business land to facilitate continued urban growth and the demands of the community to provide for their social, economic and cultural wellbeing. The NPS sets specific objectives and policies relevant to the decision making process under the heading 'Outcomes for Planning Decisions', these objectives and policies are relevant to the proposal at hand. The relevant objectives, OA1 – OA3, seek to provide for urban environments with sufficient opportunity for the development of housing and business land to meet demand and provide choices for dwelling types and places to locate businesses. Including responsiveness to changing needs.
143. The objectives I consider relevant to the proposal include Objectives 1, 3, 4, 5 and 6. The policies relevant to the proposal include policies 1, 2, 5 and 6. When reading the objectives and policies the New Plymouth District is identified as a "Tier 2" local authority. In assessing the relevant objectives and policies I believe it is also helpful to keep the definition of urban capacity at the front of mind.

Development capacity means the capacity of land to be developed for housing or for business use, based on:

- a) the zoning, objectives, policies, rules, and overlays that apply in the relevant proposed and operative RMA planning documents; and*
- b) the provision of adequate development infrastructure to support the development of land for housing or business use*

144. The policies most relevant to the proposal includes Policies 1, 5 and 6 these are quoted in the text below

Policy 1: *Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:*

- a) *have or enable a variety of homes that:*
 - i. *meet the needs, in terms of type, price, and location, of different households; and*
 - ii. *enable Māori to express their cultural traditions and norms; and National Policy Statement on Urban Development 2020 11*
- b) *have or enable a variety of sites that are suitable for different business sectors in terms of location and site size;*
- c) *and have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and*
- d) *support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and*
- e) *support reductions in greenhouse gas emissions; and are resilient to the likely current and future effects of climate change.*

Policy 5: *Regional policy statements and district plans applying to tier 2 and 3 urban environments enable heights and density of urban form commensurate with the greater of:*

- a) *the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or*
- b) *relative demand for housing and business use in that location.*

Policy 6: *When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:*

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

145. In my opinion the proposal generally aligns with the NPS-UD 2020 through the provision of residential living. In saying this the apartment is large and extravagant and only for single owner. In this sense I don't believe that the development promotes the NPS-UD 2020, however at the same time it is not specifically contrary to it. The eventual refurbishment of the commercial tenancy will contribute to promoting the NPS-UD however this does not specifically form part of the application as it is already a lawfully established activity.

146. Policy 6 provides wording which identifies that planned urban development may detract from amenity values appreciated by some but improve values appreciated by others and provides for future generations. The proposal does result in adverse amenity effects on surrounding areas. However I do not believe that these result in effects of a scale and significance which would make the proposal inconsistent with Policy 6. Particularly when one considers the purpose of the NPS-

UD, existing environment, matters of restricted discretion and the permitted baseline argument put forward by the applicant.

147. Overall, and in balancing the matters I have identified above, I believe that the proposal is consistent with the NPS-UD 2020. The NPS-UD places protection on amenity but overall is document which promotes development and recognises the economic and social benefits of which a high-quality built environment provides. Particularly by creating a thriving and vibrant City Centre, something that is currently lacking at this inner-city location and has been for a number of years.

148. Given the above, I consider the proposal is consistent with the NPS-UDC.

Tai Whenua, Tai Tangata, Tai Ao – Te Kotahitanga o Atiawa Taranaki Environmental Management Plan

149. Tai Whenua, Tai Tangata, Tai Ao (“Te Atiawa EMP”) was released in February 2020. The applicants AEE has not made an assessment against the Te Atiawa EMP. To ensure the proposal’s consistency with the intent of the relevant objectives and policies of the Te Atiawa EMP and assessment is made in the following paragraphs.

150. The following objectives and policies have been identified as relevant to the proposal:

- *TTHA3.1 - Te Atiawa members who hold mātauranga or knowledge that has been passed down through generations are recognised as experts on resource management issues in our rohe.*
- *TTHA3.2 - Engagement with Te Atiawa, as tangata whenua, on resource management issues meets our expectations.*
- *TTHA4.1 - Te Atiawa are recognised as kaitiaki over natural and physical and cultural resources within our respective rohe boundaries.*
- *TTHA4.2 - Te Atiawa exercise our duties as kaitiaki within our respective rohe boundaries.*
- *TTHA4.3 - Protect, maintain and enhance the mauri of natural resources which in turn sustains the social, economic, and cultural wellbeing of our people.*
- *TTHA5.1 - Te Atiawa are active participants in all resource management decision-making processes of central government agencies, regional and district councils and any other consenting authority.*
- *TTHA5.2 - The tikanga, values and principles of Te Atiawa are considered and appropriate weight is given to these values during the decision-making process.*
- *TTAN3.2 - Acknowledge and provide for Te Atiawa values and the expressions of our narrative in the built form and landscaping or urban environments.*
- *TTAN4.2 - Acknowledge and provide for Te Atiawa values and the expressions of our narrative in the built form and landscaping*
- *TTAN4.4 - Acknowledge and provide for Te Atiawa cultural landscapes in the built design to connect and deepen our ‘sense of place’.*

151. The site is not subject to statutory acknowledgment, not within the coastal policy areas nor is it effected by any identified sites of significance to Maori in either the ODP or PDP. Based on this the applicant has not sought to undertake specific

consultation with Te Atiawa Iwi. From my perspective there is also not requirement as set out under the relevant matters of restricted. Overall I do not believe that the proposal is contrary to the Te Atiawa EMP.

Part 2 Assessment

R J Davidson Trust v Marlborough District Council - CA97/2017 (2018)

152. The Court of Appeal decision on RJ Davidson Family Trust v Marlborough District Council influenced the way in which Part 2 should be applied and determined that:

"If a plan that has been competently prepared under the Act it may be that in many cases the consent authority will feel assured in taking the view that there is no need to refer to pt 2 because doing so would not add anything to the evaluative exercise. Absent such assurance, or if in doubt, it will be appropriate and necessary to do so. That is the implication of the words "subject to Part 2" in s 104(1), the statement of the Act's purpose in s 5, and the mandatory, albeit general, language of ss 6, 7 and 8."

153. The RJ Davidson Family Trust decision confirmed that it is appropriate to consider Part 2 of the RMA when assessing a resource consent application but only in specific circumstances. Otherwise, an assessment against Part 2 will not necessarily add to the overall assessment process. I consider that, and particularly being that the operative plan has been in place for over 15 years and there is a Proposed Plan currently subject to a future hearings process with a different zoning framework for the site, that it is necessary to have regard to Part 2 of the RMA. There are also matters of national importance under section 6(a) relevant to the proposal. Therefore, consideration of the resource consent application under Section 104 of the RMA is subject to Part 2 of which identifies the purpose and principles of the Act.

Purpose of the Act – Section 5

154. The purpose of the RMA is defined under Section 5 of the RMA;

"Section 5 – Purpose of the Act

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*
 - (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment."*

155. The applicant has described in their AEE that they believe the conclusions resulting from the RJ Davidson decision are relevant to the proposal and that "*an assessment of this application against Part 2 would not necessarily add anything to the evaluative exercise required*". This conclusion was reached by the applicant in stating that the ODP, PDP and other relevant planning documents have been prepared with a coherent set of policies designed to achieve clear environmental outcomes and therefore an assessment not necessary.
156. However, and given my conclusions on the effects outlined throughout this report, I consider overall that the proposal will enable the sustainable management of the Business B Environment Area land resource.
157. The remaining relevant Part 2 provisions including Sections 7 and 8 are considered as follows.

Other Matters – Section 7

158. I consider the following other matters to be relevant to the proposal.
159. *(b) the efficient use and sustainable development of natural and physical resources, (c) the maintenance and enhancement of amenity values and (f) maintenance and enhancement of the quality of the environment.*
160. With regard to Section 7(b)(c) and (f) the proposal clearly has adverse effects, particularly on 122 St Aubyn Street and the Richmond Estate. However the level of effects have been considered in relation to the matters of restricted discretion and permitted baseline for activities in the Business B Zone. Consideration has also been made toward the coastal environment and more general amenity and quality of the environment. The area is heavily modified and the site is in a Business B Zone (Mixed Use under the PDP) of which permits bulky building and commercial activities. In this context, it is my opinion the proposal is an efficient use of the Business B Environment Area land resource.
161. Section 8 requires NPDC to consider the principles of the Treaty of Waitangi. This recognises Māori interests in the use, management, and development of resources. In the context existing character of the area and the activity status it is considered that the proposal is acceptable.

Part 2 Summary

162. In conclusion of the Part 2 matters the proposal is anticipated to achieve sustainable management. As described above, the proposal would also achieve matters of national importance where relevant. To achieve sustainable management the activity should not have an adverse effect of which is so significant where it would outweigh the positive effects identified throughout this report and by the applicant within their AEE.

163. I am therefore of the opinion that in an overall sense, and in taking a balancing approach, that the proposed land use development would promote sustainable management.

Decisions on Applications Sections 104C – RD Activities

164. For a Restricted Discretionary Activity, Section 104C of the RMA provides that Council may grant or refuse the application. If Council grants consent, under Section 104(3) it may impose conditions under Section 108 for those matters over which it has restricted their discretion to.
165. Effects of the proposed activity have been considered against the relevant objectives and policies of the Operative and Proposed District Plans.

Conclusions

166. As discussed throughout the report there is a requirement to assess the effects of the proposal with specific regard to the restricted discretionary activity status, existing environment and the permitted baseline when making an overall recommendation.
167. The applicant's AEE, including the supporting plans from BOONs and Bluemarle's LVIA concludes that there are potentially adverse shading and amenity effects on surrounding properties. Particularly on properties toward the east. However, the proposal must be considered against the permitted baseline and existing environment. In this light the scope of assessment of effects is restricted to those effects over and above the permitted baseline. Adverse effects considered on neighbouring properties included those associated with the bulk and dominance of the building, effects on the amenity and character of the area, shading effects and actual and potential effects on the coastal environment. In summary the assessment of effects found these to be minor and acceptable. But only due to the permitted baseline argument presented by the applicant and manner in which the assessment of effects has been restricted due to the restricted discretionary activity status.
168. The building is of a modern and architecturally pleasing design and includes features such as large glass facades and cladding of a neutral palette. The building is also sited at a location which has been underutilised since the GQ offices moving to another site, therefore the site currently contributes little in the way of business amenity and/or function. A degree of positives effects can therefore be attributed to the proposal when applying broad judgement.
169. I believe that any actual and potential adverse effects associated with transport, parking, earthworks or construction matters can be suitably addressed through appropriate consent conditions.

170. On that basis, and on balance, I consider that it would be appropriate to under sections 104 and 104C of the RMA, to grant consent to the application subject to the imposition of suitable consent conditions.

Recommendation

171. In accordance with Sections 104 and 104C of the Resource Management Act 1991, that consent is granted to the application made by Regina Properties Limited for Land Use Consent to:

Undertake alterations and extensions/additions to an existing commercial building to construct a new residential apartment with a rooftop component.

172. As a recommendation to grant consent has been reached I have included the suggested conditions which I believe will need refinement in consultation with the applicant to ensure they suitably address any matters relied upon for mitigation.

Report by: Luke Balchin
Senior Environmental Planner



Reviewed by: Rowan Williams
Planning Lead



Date: 28/07/2021