

Practice note – Auckland Unitary Plan (Operative in Part): Volcanic Viewshafts and Height Sensitive Areas D14 Overlay

What you will find in this practice note

Guidance on:

- ✓ What is a viewshaft and why they are important
- ✓ How to tell if a proposal intrudes into a viewshaft
- ✓ Difference between Viewshafts and Height Sensitive Areas
- ✓ How to read the activity table D14.4.1
- ✓ Understanding the standards
- ✓ What information should be included in the AEE
- ✓ What objectives and policies to use in a s104 assessment
- ✓ Notification

This is the exhibit marked "B" referred to the affidavit of **TANIA EVELYN RICHMOND** sworn at Auckland this **12th** day of October 2018 before me:



A Solicitor of the High Court of New Zealand
Tania Evelyn Richmond
Solicitor
Auckland

1. Introduction - What is a viewshaft and why are they important?

The Auckland volcanic field covers approximately 100 square kilometres and originally contained 48 explosion craters which gave rise to the landmark scoria cones of urban Auckland. A number of these features are now lost through quarrying and development. Many of the remainder are of regional or national significance, while others are of local significance, or contribute cumulatively to the volcanic landscape and character of the region.

The protection of the views to these cones started over 40 years ago through the landmark decision in 1973 by the Planning Appeal Board (See Box). This decision concluded that Mt Eden was of such value that views to and from the mountain should be protected. The decision considered that the council was not carrying out its duties under the Town and Country Planning Act by not protecting the visual integrity of Mt Eden.

As a consequence of this decision councils have sought to impose view protection over multiple volcanic cones throughout the region. Once

1973 Town and Country Planning Appeal Board decision ARA v Mt Eden Borough Council

The Mt Eden Borough Council was required to change the height provided for in its District Scheme to protect views to and from Mt Eden to preserve this landmark from despoliation.



established at regional and local levels the viewshafts have been reviewed over time.

In addition to the viewshafts there are also Height Sensitive Areas (HSA) around the base of some of the cones which protect local public views to the mountains. These also protect the shape (contours) of the flanks of the maunga. The HSAs traditionally restricted built form to a maximum height of 7.3m, 9m, or 12m. This height had been grand-parented from the 1970s when it reflected the underlying zonal height in feet. It was considered 'reasonable' (s85 of the RMA) to allow development up to that height. These heights changed to 9m in the AUP(OP). With the exception of Devonport where permitted development is enabled up to 13m in some places (refer Figure D14.10.1), it is a permitted activity to build to 9m in the HSA but resource consent is required to build above that height.

Other views

The AUP(OP) also contains provisions that control other views. Chapter D16 and Schedule 11 deal with local views. Chapter D19 controls the Auckland War Memorial Museum viewshaft overlay. Chapter D15 controls the location and scale of buildings to ensure they do not protrude above or dominate the identified ridgelines when viewed from a public place. Chapter D20 controls a viewshafts from Dilworth Terrace.

Sky Tower decision

A key decision regarding viewshafts was made in 1992 and involved moving the Sky Tower from its original proposed position at the top of Symonds Street (within E10) to its current home on Victoria Street. Judge Bollard found that *"the planning documents governing both the region and Auckland City seek to protect the view within the viewshaft towards Mt Eden. Even if we were to accept...that the tower would assume a pleasing co-dominance with the mountain in the viewshaft, we could not conclude that that would suffice to protect the view of the natural landform."*



Purpose of the controls

The purpose of the viewshaft controls in D14 is to appropriately protect significant regional and local views of Auckland's volcanic cones through the use of viewshafts and height sensitive areas. The cones themselves are Outstanding Natural Features (D10). Many are also Outstanding Natural Landscapes (D10), areas of High or Outstanding Natural Character (D11) and Places of Significance to Mana Whenua (D21).

The coordinates of the viewshafts can be found in Schedule 9 of the AUP in order that potential developers can accurately survey their sites in relation to the viewshafts. Maps in the AUP(OP) GIS contain contour lines showing the height of the viewshaft **above ground level**, these are indicative only and applicants should rely on more accurate site specific survey data using Schedule 9 for the purposes of determining intrusions.

How the viewshafts work

The viewshafts are 3-dimensional planes in the sky. The viewshafts have an origin point or if they are linear they have an origin line (series of points), and a destination line (series of points). The views originate from major public viewpoints such as motorways and main roads through which many people travel. The

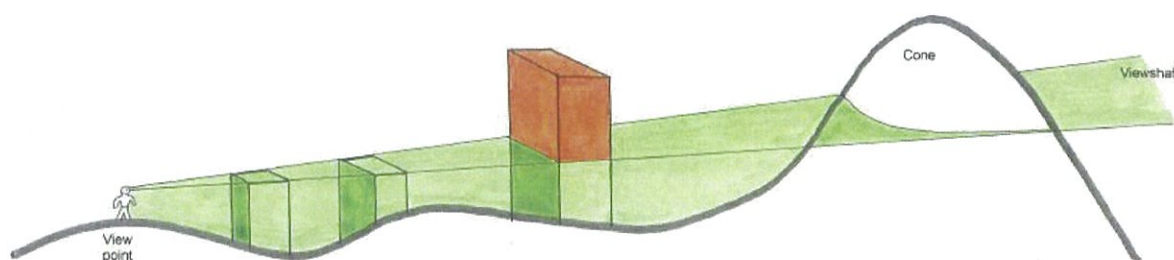
destination line (points) is across the maunga. In some cases the destination line frames the

whole maunga and may provide some context (e.g. the sea provides context for Rangitoto in T2), in other cases only parts (e.g. the top of Rangitoto in T8) of the maunga fall within the destination line (see maps in **Appendix 1**).

It is permitted to build up to the floor of the viewshaft but resource consent is required to build above that. Most of the viewshafts start at 1m above ground (person sitting in a car level), or at 1.5m above ground (person standing) at the view origin point and end in a line across the maunga (as described above and in the diagram below).

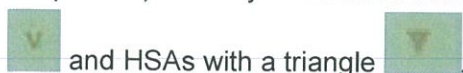
For development that intrudes into a viewshaft, but is not higher than 9m, a restricted discretionary activity resource consent is required. For development above 9m intruding into a viewshaft, a non-complying activity resource consent is required.

The purpose is to protect public views to the cones not private views. In this way we all benefit from the protection of the iconic landscape that Aucklanders and visitors love to see.



2. Does the proposal intrude into a viewshaft?

If you have received an application for a building or structure which appears to be higher than a viewshaft you can check this by using the AUP(OP) GIS Maps to zoom in to your application site. Turn on Unitary Plan Management Layers, Overlays and the **Natural Heritage Overlay** layer and tick the Volcanic Viewshafts (regional or local) layer. The viewshaft layer and the height sensitive areas layer are together at the moment and cannot be separately turned off. You can also tick on the viewshaft contours at 0.5m intervals (separate layer to tick). The contours show the height **above ground level** that the viewshaft sits. If the contour line says, for example, 15, the viewshafts sits approximately 15m above the ground at that point. Therefore any proposed building which is, for example, 9m in height, is below the viewshaft, is not intruding into the viewshaft and does not trigger the rules in D14. The contours may change across the site as land falls away or as the viewshaft changes angle in the air (they are not all flat planes!). The layer identifies volcanic viewshafts with a



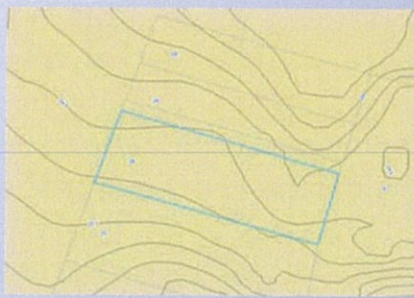
and HSAs with a triangle

The contours are indicative only. The legal location and height of the viewshafts is set out in the survey co-ordinates in Schedule 9 to the AUP(OP). If the proposed development is within 2m of the height shown on the contours then you should ask for a

GIS Viewshafts Height Contour

The contours on the AUP(OP) GIS show the viewshafts height above ground.

For this site at 28 Esplanade Road, Mt Eden, Auckland, the viewshafts are between 24m and 25.5m above the ground level. This means that any proposed building would need to be below that height to avoid the viewshaft.



professional survey plan to show exactly how close to the viewshaft the proposed development is going to be. Even eaves and guttering should avoid the viewshafts therefore you must ensure that all parts of the building or structure are below the height shown in the maps or the rules in the overlay will be triggered. Standard D14.6.1(3) explains that most of the exclusions set out in the plan's definition of height do not apply to the overlay.

If the development extends above the floor of the viewshaft, i.e. is higher than the number shown on the contour, then it is intruding into the viewshaft and we apply the rules in D14.4.1. If the development is below the floor of the viewshaft i.e. if the height of the development is lower than the numbers on the contour, then it is not intruding into the viewshaft and they are not breaching the viewshaft rules.

For buildings not intruding into views due to the presence of landform see section 5 below.

3. The difference between viewshafts and height sensitive areas

Viewshafts protect views to and from the volcanic cones (maunga). These are mostly long range views from public roads. As you navigate your way around Auckland you will be able to see the maunga as way finders and regional landmarks, the viewshafts help protect those functions and ensure that the maunga have mana as recognisable outstanding natural features.

The height sensitive areas were designed to protect the landform (natural contours) of the maunga. They ensure that development does not encroach further up the maunga. Through the rolling height method, they ensure that development follows the contours of the maunga so that even though the flanks of the maunga may be covered in houses you can still tell from a distance what the underlying landscape looks like. The height sensitive areas also protect local views to the maunga so that they are connected to their local communities.

Exception

Most of the height sensitive areas achieve the above functions, however, through the IHP hearing on the overlay, a height sensitive area was developed at Bucklands Beach in order to give reasonable development rights under s85 to the land owners affected by a low lying viewshaft in that area. This height sensitive area is not close to a maunga and therefore does not perform the same functions as the other height sensitive areas.

4. How to read the overlay activity table D14.4.1

The overlay activity table is potentially unclear. The principle established in the AUP(OP) Chapter C1.6(1) is that all activities in an activity table will apply and C1.6(2) states that the most restrictive rule becomes the overall activity status. This principle is subject to the caveat in C1.6(1) where a rule may create a relevant exception to other rules. This exception is illustrated in the D14 activity table.

Table D14.4.1 is split into two parts. The top part of the table relates to buildings in viewshafts and the bottom part of the table relates to buildings in height sensitive areas. Normally if a building was in both (i.e. a height sensitive area and also a viewshaft) both activities would apply and the more restrictive would be the overall activity status. However in this case, the rules in the bottom part of the table create an exception to the rules in the top part of the table. This results in a building in a height sensitive area being permitted up to 9m whether it is also in a viewshaft or not. Rule D14.4.1(A7) creates an exception to rule D14.4.1(A3).

Remember that Activity A1 pertains to the permitted standard at Rule D14.6.2. “Buildings and structures that do not intrude into a viewshaft scheduled in Schedule 9 Volcanic Viewshafts Schedule”. This is a situation where buildings breach the floor of the viewshaft but do not intrude into the view because they are blocked e.g. by a landform. This is addressed in detail at 5 below. If a building doesn’t breach the viewshaft or isn’t within a height sensitive area it is simply not covered by the overlay and the rules do not apply to it.

Reasonable use in height sensitive areas

As discussed above, buildings in height sensitive areas have traditionally always had a permitted height to which they could build to provide for reasonable use under s85 of the RMA. The AUP(OP) carries on this tradition and provides for up to 9m as a permitted activity (D14.4.1(A7)) (except in the case of Devonport where it is 13m (refer Figure D14.10.1)). This is reinforced by policies such as D14.3.4(c) which allow development located within an identified height sensitive area up to defined appropriate height limits and D14.3.5 which seeks to avoid new buildings and structures over 2 storeys in height sensitive areas. The overlay description D14.1 also discusses enabling reasonable height in height sensitive areas even where the viewshaft height is less than 9m. It is in the context of these words that we read the activity table to explain the exception discussed above.

Fences and walls

The exception created by C1.6 (1) does not apply to fences and walls. Where a fence or wall whose height does not exceed 2.5m is proposed to be located where it intrudes into a viewshaft it is controlled by rule D14.4.1(A4) regardless of whether it is also in the height sensitive area or not. Fences and walls in height sensitive areas which are not in viewshafts are not controlled by the overlay until they are above 2.5m, in which case they become buildings under the definition of buildings (see chapter J Definitions). Therefore fences and walls under 2.5m in a height sensitive area and which do not intrude into a viewshaft should be referred back to the underlying zone’s rules for consideration.

Where they intrude into a regional viewshaft, fences and walls under 2.5m are RDA (rule D14.4.1(A4)). Fences and walls over 2.5m are buildings are specifically exempt from being RDA under rule D14.4.1(A3) and therefore are NC (rule D14.4.1(A6)).

	Within a regional viewshaft and a HSA	Only in a regional viewshaft	Only in a HSA	Outside both viewshafts and HSAs
Fences and walls below the height of the viewshaft	N/A	N/A	N/A	See underlying zone
Fences and walls under 2.5m	RDA (A4)	RDA (A4)	See underlying zone	See underlying zone
Fences and walls between 2.5m and 9m	NC (A6)	NC (A6)	P (A7) ¹ (as a “building” but refer to underlying zone)	See underlying zone

¹ (except in figure D14.10.1 where they can be up to 13m)

	Within a regional viewshaft and a HSA	Only in a regional viewshaft	Only in a HSA	Outside both viewshafts and HSAs
			which may be more restrictive)	
Fences and walls over 9m	NC (A6) and NC (A11) ²	NC (A6)	NC (A11) ³	See underlying zone

Permitted standards affecting activity status and notification

D14.6 states that all activities listed as permitted and restricted discretionary in Table D14.4.1 must comply with the standards in D14.6.1-4. Non-compliance with the standards would result in a NC activity status under rules D14.4.1(A6) or D14.4.1(A11).

Non-compliance with the standards also results in a requirement under D14.5(1)(a) or (b) that an application for resource consent must be publicly notified.

5. Complying with the standards

There are four standards which all permitted and RDA activities must comply with to retain their initial activity status. These relate to assessing height (D14.6.1); surveying reports proving non-intrusion into a view due to landforms (D14.6.2); protecting against creep up the ONFs (D14.6.3); and removing temporary construction structures in a timely manner (D14.6.4).

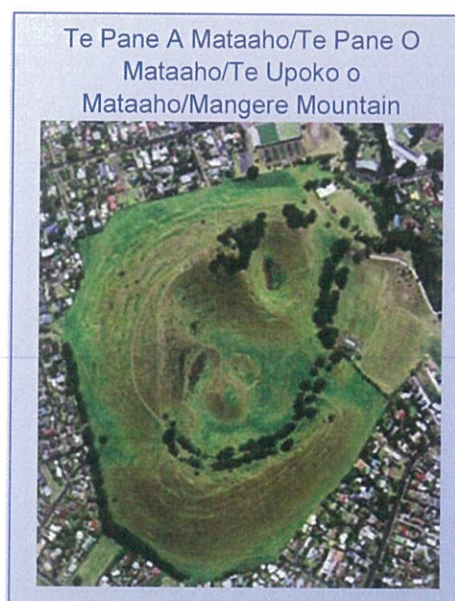
Height

Height is defined in Chapter J of the AUP. The definition includes a bunch of exclusions. Standard D14.6.1(3) requires that those exclusions in Chapter J do not apply to the overlay. Essentially this means that things like lift towers and roof water tanks have to be outside of the viewshafts. Obviously this is because any intrusion into the viewshaft can adversely affect the view and cause the viewshaft to be less effective [See blue box on page 10 where a whole viewshaft was destroyed by a minor intrusion]. Thus the standard discusses other kinds of open or transparent structures which can be excluded. Provision is made in D14.6.1(2) for slender structures to be able to be located in viewshafts as these have been deemed to have less of an effect on the view. This should not be extrapolated to wider structures or to multiple structures close together which cumulatively may erode the effectiveness of the viewshafts.

D14.6.1(1) requires that the rolling height method is used to measure height for the overlay. This is because the rolling height method provides for height on a site to be sympathetic to the site contour and therefore the contour of the maunga. Using an average height method

² (except in figure D14.10.1 where they can be up to 13m)

³ (except in figure D14.10.1 where they can be up to 13m)



(which is the alternative described in the definition chapter but not appropriate for the overlay) would result in stepped built form which would not protect the contour of the maunga when viewed from a distance or close up.

A potential exception to the rolling height assessment may exist for sites with a contiguous boundary with the maunga (D14.6.3). The Plan Change 4 text changes (see **Appendix 2**) also seek to change the words in D14.6.1 to ensure that rolling height only applies up to a point, on sites with a contiguous boundary with the volcanic feature.

Where an applicant is relying on the height of buildings on neighbouring sites to provide for height on their own site, you would expect that a defined height plane would be able to be established that then 'rolled' up the slope of the maunga to follow the contour and achieve the outcome of the rolling height method. This however causes a problem where that original height is derived from buildings further down the slope of the mountain than the proposed building. The resultant plane would allow a height set at the bottom of the slope to be achieved at the top of the slope, resulting in creep of actual built form up the mountain. The intent of the plan is to avoid this. Therefore a limit on the rolling height is applied in D14.6.3. See below for full explanation.

Surveying intrusion

Standard D14.6.2 requires that a report from a registered surveyor confirms compliance that a building does not intrude into a viewshaft due to the presence of landform. This standard is ambiguous because the proposed building will technically still intrude into the viewshaft (the 2D plane in the sky) but may not intrude into the view, the distinction between the technical viewshaft and the actual view is something that should have been made clearer in the wording of the standard.

The intention of the standard is to allow for buildings that would intrude into the floor of a viewshaft but are obscured from protruding into the view by landforms (such as a hill or rise in the land in front of the building), so that when the maunga is viewed from the viewshaft's origin point, the building cannot be seen. This is the case in parts of Bucklands Beach where viewshaft B6 looks towards Rangitoto Island from Macleans Road. Much of Bucklands Beach is covered by viewshaft B6 but some of the low lying land in the middle of the peninsular is protected from being in the view, even though it is in the viewshaft, due to the presence of landforms closer to the origin point of the view on Macleans Rd, e.g. part of Macleans Parks rises higher than the land behind it (closer to the sea) and therefore there may be situations where a dwelling proposed on the lower lying land may be protected from being in the view due to the higher land at Macleans Park when viewed from the origin point of B6. A surveyor's report would need to be provided to prove this.

Background information on surveying intrusion under D14.6.2

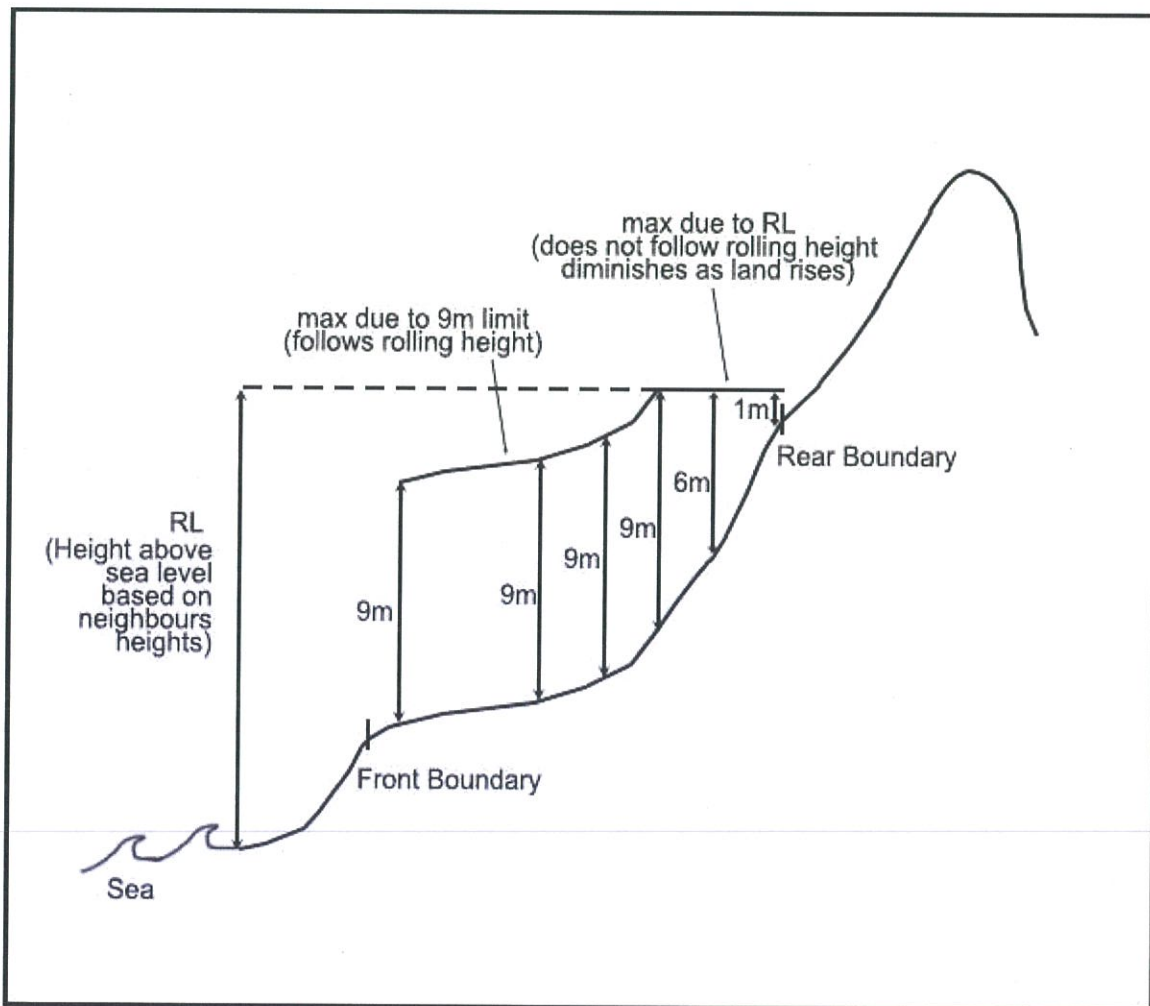
It should be noted that the IHP were very clear that only landforms were to be used in this way. The presence of other things such as trees or other buildings which might block the view of the proposed building when seen from an origin point were not considered acceptable to comply with the standard. The Panel recommended there should be no concession in the rules for such a situation as it has adopted a very long term planning horizon for viewshaft protection that extends beyond the 50 year lifespan of buildings provided for in the Building Act. (see paras 3.2.5 and 3.2.6 on pages 17-18 of the Independent Hearing Panel report to Auckland Council hearing topic 020 dated July 2016)

Contiguous boundary with an Outstanding Natural Feature

All the maunga protected by viewshafts or height sensitive areas are also classified as Outstanding Natural Features (ONF). Standard D14.6.3 aims to prevent development creep up the maunga. Where a building is proposed in a height sensitive area there may be situations where it is a permitted activity to build up to 9m which will result in an adverse effect on the maunga. This situation actually happened on Mt St John, where a subdivision created a title that allowed a proposed 7.3m high building to rise above the height of the maunga. The proposed height was going to be a permitted activity and the council eventually had to buy the site to stop the development from going ahead.

Essentially this standard aims to say that if a development site's back boundary is contiguous with an ONF, you can't build higher than the height of that back boundary, or if your neighbours already have built higher than their back boundaries, then you can build up to a similar height but no higher than your neighbours.

Plan Change 4 was promulgated to clarify the wording of this provision. The proposed plan change wording is set out in **Appendix 2** to this Practice Note. The aim of the change is to create a maximum height on the site which the proposed buildings cannot go above. This maximum height is set by reference to sea level and is determined by the average of the relative heights above sea level of the neighbouring sites' buildings. Once the maximum height for the site is set, then the site is further constrained by the 9m HSA height limit.



The applicant uses the lesser of 9m or the RL height derived from the neighbouring sites, which may be different on different parts of the site. The intent of this change is to ensure that buildings which are benefiting from the height of their neighbours' buildings, can only benefit to a level that results in actual built form being the same as the average of their neighbours, rather than using their neighbour's heights to create a plane which allows them to go higher. Relative Height from sea level (RL) diminishes the permissibility of built form as the site gets higher (from the sea). Rolling height does not diminish. Using a ground level height (measurement from neighbours' buildings built at the bottom of the slope) to form a height plane that rolls up to the rear higher boundary (on the applicant's site) would be inconsistent with the intention to reduce creep⁴. Therefore a cap must be put on the rolling height by an RL line (as opposed to a plane). This line will form the maximum cap of height on the site and will stay the same (RL) as you go higher up the mountain effectively reducing the permitted height of buildings.

Don't forget that an applicant can apply to breach these heights. The plan simply requires that an assessment is appropriate. Bear in mind that this application would be non-complying and must be publicly notified.

Temporary construction

Even construction structures such as cranes and scaffolding can have effects on the viewshafts. It is therefore important that these structures are not allowed to stay up indefinitely. This standard states that they must be removed in 30 days or upon completion of the construction works, whichever is the lesser. For example if a crane is needed to do certain works it should only stay on site for a maximum of 30 days to do that work then it should be removed. If the applicant wants a crane to remain on site for longer than 30 days, for example if construction of a tower building requires that crane to be on site for the duration of the build which may be 6 months or more, the application will need to be assessed and resource consent is required. It is appropriate to carry out this assessment and the council may restrict the time cranes, for example, are located in viewshafts and get the applicant to try to minimise their visual effects. This is not an overly onerous consideration given that the viewshafts protect maunga of national and possibly international⁵ significance.

Mistakes of Minor proportion: 73 Remuera Road

The building at 73 Remuera Road was considered to cause minor visual effects on the viewshaft A7 and was granted consent. Once the building was constructed it was clear that it had compromised the view to such an extent that the view was no longer significant. Subsequently landscape and planning evidence concluded that the viewshaft should be removed from protection by the AUP.



6. Mapping accuracy

The GIS mapping in the AUP(OP) aims to provide a level of accuracy to assist land owners to make decisions about development. The actual locations of the viewshafts are set out in

⁴ The decision version wording of the Plan can be read to allow this creep by using *average* height of neighbouring sites measured from *ground level*. The plan change text changes this by introducing measurement from *sea level*.

⁵ The council is discussing applying for World Heritage Status for the Auckland volcanic field.

Schedule 9 of the AUP(OP). The council has mapped all of the simple viewshafts (three point triangle viewshafts) in surveying programs (ASCII, CAD and ESRI) and intends to do the same with the complex (more than three points) viewshafts. If an applicant requires information about the surveyed location of the viewshafts they can contact the Unitary Plan team to get the data held by the council. Some of this data still requires further confirmation and the council is working on a program of cross referencing the GIS and Schedule data to ensure accuracy of information. This may result in bespoke information on a site being supplied to the applicant by the council's Lead Geospatial Analyst, Auckland Wide – Plans and Places.

If an applicant is trying to provide survey information to you and is having questions, or if the survey work supplied is inconsistent with what you think the viewshaft should look like, then please get in touch with the Lead Geospatial Analyst, Auckland Wide – Plans and Places (through your Principal Planner) to confirm the location of the viewshaft for surveying purposes.

Appendix 1 to this Practice Note sets out survey and visual information for some of the viewshafts. This information was collected prior to the AUP(OP) and therefore not all viewshafts are represented.

7. What information do you need to have?

In order to understand the effects of an infringement of a viewshaft and whether the activity meets the assessment criteria, the applicant should have provided sufficient information. You should ensure that the applicant provides a full assessment of the breach of the viewshaft including providing an accurate measurement of the extent of the infringement i.e. what height above the viewshaft for what length of distance. They may need to get a surveyor to help them with that. Firms like Harrison Grierson or Beca might have sufficient surveying capabilities to provide such a service to the applicant. If the applicant gets a suitably qualified person to do that then you may not need to get it peer reviewed however if they do not get a suitably qualified person to do the survey work (or you are not happy with the accuracy or readability of the results) then the council should get it reviewed by a surveyor. (This may have to be an external consultant as the resource consent department does not have any on-staff surveyors).

Once they have established the extent of the infringement the applicant will also need to provide an assessment of how their proposal effects the visual integrity of the view of the maunga from the identified viewing point or line.

That assessment should be done by a suitably qualified and experienced landscape architect. You might direct the applicant to the New Zealand Institute of Landscape Architects <http://www.nzila.co.nz/> to find someone suitable.

Please note that the landscape architect WILL NOT be able to help you assess the measurements of infringement, that is the applicant's job and we can get that reviewed by a surveyor if necessary.

The AEE should contain:

- ✓ Survey Plan showing the infringement
- ✓ Volume and height of infringement
- ✓ An assessment against the objectives and policies [and RD assessment criteria for RD activities]
- ✓ An assessment by a suitably qualified and experienced landscape architect which:

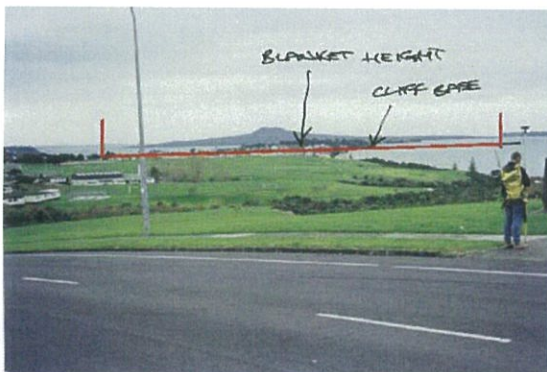
- ✓ Identifies the specific viewshaft which is being infringed
- ✓ Describes the identified origin point of the viewshaft
- ✓ Discusses the extent to which the viewshaft is breached
- ✓ Discusses the effects of the breach on the viewshaft and the maunga
- ✓ Concludes whether the visual intrusion has an effect on the integrity of the viewshaft

Can you review the landscape report?

Are you a qualified and experienced landscape architect? No – then no you cannot review the expert evidence of someone who is. This should be done by a professional. The maunga are of local, regional, national and arguably international importance, it is ok to outsource an expert to review the evidence in front of you. We are dealing with a very limited resource and it is appropriate to tread cautiously. Many of these cases may end up in the Environment Court so make sure you have a credible and Court-ready witness. Melean Absolum (Melean Absolum Ltd (melean@maltd.co.nz)) or Stephen Brown (<http://www.brownltd.co.nz>) are external consultants with enough Environment Court experience to handle such a case for the council.

8. Visual Intrusion - Non-complying v Prohibited?

Unfortunately for resource consent planners, under the AUP(OP) there is a dichotomy between the Regional Policy Statement and the District Plan. This is caused by the RPS requiring development to avoid being located in viewshafts, while the DP provides for this as a Non-complying activity. If the RPS wanted to ensure that all development in viewshafts was avoided, surely it should have been a Prohibited activity in the District Plan?



While every effort was taken to ensure that viewshafts were free from development when they were first identified in the RPS, there were some viewshafts where existing buildings and structures did sit within the views, this is particularly the case in Buckland's Beach and Devonport where the viewshafts look across these land masses to Rangitoto Island in the Hauraki Gulf. In these cases the viewshafts cut below ground level as their destination points are below sea level providing context to Rangitoto Island which they aim to protect.

B6, for example, results in Musik Point and various residential areas of Buckland's Beach being within the viewshaft. T1 includes all of North Head within the viewshaft.

It is for these reasons that development in viewshafts is a non-complying activity rather than a prohibited activity.

9. What objectives and policies to use in a s104 assessment

District Plan Chapter D14

The objectives and policies in the AUP(OP) regarding the viewshafts are very clear. The regionally significant views are to be **protected**. Future encroachment into views which would erode the visibility of their profile and open space values is to be **prevented** by imposing height limits. The contribution that the maunga make to the landscape of Auckland is to be maintained and where possible enhanced by **protecting** the physical and visual connections to, and views between, the volcanic maunga.

Policies D14.3.4 and D14.3.5 are very strong. They use the word **avoid**. New buildings or structures that intrude into volcanic viewshafts should be **AVOIDED**. There are some exceptions but it is important to note the limited use of the exceptions.

Two storey development in a viewshaft may be acceptable where any adverse effect of the development can be avoided or mitigated. This policy recognises that small scale development may be acceptable where the effects have been avoided or mitigated (such as where landforms protect the view). Any development proposed above 2 storeys and not located in a height sensitive area must have **no** adverse effect on the visual integrity of the volcanic maunga as seen from the identified viewing point or line. This is a very hard test to pass. It is not 'less than minor' or 'insignificant' or 'de-minimus' but 'no' adverse effect. Read any landscape and visual effects evidence very carefully to determine if the applicant's experts are in fact saying that there will be no effect. If the landscape expert says there will be less than minor or insignificant effects this is still an adverse effect and therefore contrary to this policy.

Policy D14.3.4(c) allows development in viewshafts where it is also in a height sensitive area (this goes back to the discussion above regarding the activity table), however Policy D14.3.5 ensures that any buildings or structures over the 9m height limit set for HSAs must again have **no** adverse effect on the visual integrity in order to be considered compliant with this policy. Any adverse effects will mean the proposal is contrary to policy under the s104D(1)(b) gateway test.

The views to these Outstanding Natural Features have been protected for over 40 years and the community has agreed to this protection (and indeed fought for it). The AUP(OP) continues this tradition by already weighing up the pros and cons of providing for development in Auckland against the need to protect certain features. Policy D14.3.6 reiterates that this weighting has already been done and does not need to occur again at a resource consent level. The Plan makes clear that urban intensification is required to be consistent with the protection of volcanic features and viewshafts, not to be used as an argument to defy the protectionist policies.

The Auckland Council Regional Policy Statement Chapter B4 (ACRPS)

All resource consent reports that discuss volcanic viewshafts and height sensitive areas should include a section on the RPS. Chapter B4 contains the high level objectives and policies that set out the council's views on Outstanding Natural Features (the maunga) and volcanic viewshafts and HSAs specifically. As discussed above with regard to the District Plan, the wording of these objectives and policies is deliberately strong. B4.3.1.1 states that views are to be protected. The policies set up a hierarchy so that significant modification, destruction or significant detracting must be avoided (B4.3.2.3(a)). All modification or detracting should be avoided where practicable. If not practicable (would need evidence for this) then any adverse effects should be mitigated or

remedied (B4.3.2.3(b)). This hierarchy supports the district level policies which aim to allow no (i.e. avoid) adverse effects.

Applications for non-complying activities in height sensitive areas should look at policy B4.3.2.4 which aims to protect the visual character, identity and form of the maunga.

These objectives and policies should be considered in any s104D(1)(b) assessment.

Further objectives and policies

The maunga themselves are Outstanding Natural Features (D10). Many are also Outstanding Natural Landscapes (D10), areas of High or Outstanding Natural Character (D11) and Places of Significance to Mana Whenua (D21). Your report should consider the objectives and policies that go with these overlays also. In addition to any chapter level objectives and policies you will find further high level objectives and policies in the RPS on these overlay values also (see B4, B6 and B7).

10. Notification

Clause D14.5(1) requires public notification for buildings not otherwise provided for in the activity table or for applications that do not comply with the standards. The Consents Procedures Manual discusses the process for public notification in the chapter titled Administration processes for notified consents.

Even if you have publicly notified an application it is good practice to personally notify parties who may be directly affected. For anything to do with the Maunga, this will include iwi.

Iwi

Where development is proposed on the maunga reserves, adjacent to reserves or infringing the viewshafts associated with the 15 maunga that are subject of the Tamaki Collective agreement, potentially affected 'persons' may include the Maunga Authority as the administering body for the reserve, the Iwi Trust as 'owners' of the reserve⁶ and the individual iwi having a customary association with the particular maunga (the iwi for each maunga are set out in the Nga Mana Whenua Collective Redress Deed Schedule, part 3)

The Consents Procedures Manual sets out in the chapter titled Iwi Engagement how to go about contacting the Maunga Authority and other iwi on Page 21.

⁶ Pursuant to the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 (the Collective Redress Act), the fee simple estate in the Maunga is vested in the Tūpuna Taonga o Tāmaki Makaurau Trust Limited. The Maunga Authority is the administering body of the Maunga for the purposes of the Reserves Act 1977 (the Reserves Act). The Authority is charged with decision-making powers, including the administration, management and control of the Maunga.

Both the Trust (in its capacity as land owner) and the Authority (in its capacity as an administering body of the Maunga) meet the definition of an "affected person" for the purposes of the RMA.

For the purpose of providing land owner approval, the Authority, as the administering body of the reserves, can make decisions on behalf of the Trust as land owner. In exercising its decision-making functions, the Authority should be informed by the views of the Trust.

Auckland Volcanic Cones Society Incorporated

The Auckland Volcanic Cones Society Incorporated is a community group that has had long standing interest in the protection of Auckland Volcanic Cones and can be considered an interested party to be notified. The address for service for the Society is c/o 29 Mt St John Ave, Epsom, Auckland and they can be contacted on 09 524 5443.

Appendix 1: Maps of the Schedule 9 Viewshafts (Excluding O10)

Please note that the height sensitive areas shown on these maps are not accurate for the AUP(OP).