

UNITARY PLAN UPDATE REQUEST MEMORANDUM

TO Warren Maclennan – Manager Regional, North, West and Islands Planning

FROM Sarah El Karamany, Planning Technician


DATE 01/08/2022






SUBJECT **Plan Modification to Chapter H6, H13 and AUP(OIP) GIS Viewer of the Auckland Unitary Plan(AUP) Operative in part (15 November 2016)**



This memorandum requests an update to Auckland Unitary Plan Operative in part

Reason for update – To implement a High Court decision (CIV-2019-404-2810 Franco Belgiorno-Nettis v Auckland Council)	
Chapter	H and AUP(OIP) GIS viewer
Section	H6, H13 and AUP(OIP) GIS viewer
Designation only	
Designation #	N/A
Locations:	N/A
Lapse Date	N/A
Purpose	N/A
Changes to text (shown in underline and strikethrough)	<p>Remove all appeal annotations relating to the following appeal:</p> <ul style="list-style-type: none"> • CIV-2016-404-002333 <p>H6. Residential – Terrace Housing and Apartment Buildings Zone [CIV-2016-404-002333: Franco Belgiorno-Nettis] Note: The properties affected by this appeal are identified on the Auckland Unitary Plan viewer. H6.1. Zone Description</p> <p>H13. Business – Mixed Use Zone [CIV-2016-404-002333: Franco Belgiorno-Nettis] Note: The properties affected by this appeal are identified on the Auckland Unitary Plan viewer. H13.1 Zone description</p> <p>Refer to Attachment 2.</p>
Changes to diagrams	N/A
Changes to spatial data	<p>The following changes are to be made:</p> <ul style="list-style-type: none"> - Rezone The Promenade Block from Residential – Terrace Housing and Apartment Building Zone to Residential - Mixed Housing Urban. - Rezone the below properties from Residential - Mixed Housing Urban Zone to Residential - Mixed Housing Suburban.

	 <p>- <u>Lake Road Block</u> Business Mixed Use (East - with 13metres Height Variation Control West - no Height Variation Control)</p> <p>Refer to Attachment 3.</p>
Attachments	<p>Attachment 1: High Court decision [CIV 2019-404-2810 Attachment 2: Updated AUP(OIP) text Attachment 3: Updated GIS viewer</p>

<p>Prepared by: Sarah El Karamany Planning Technician</p>	<p>Text Entered by: Sarah El Karamany Planning Technician</p>
<p>Signature:</p> 	<p>Signature:</p> 
<p>Maps prepared by: Natalia Liana Geospatial Specialist</p>	<p>Reviewed by: Peter Vari Team Leader - Regional, North, West and Islands Planning</p>
<p>Signature:</p> 	<p>Signature:</p> 
<p>Signed off by: Warren MacLennan Manager Regional, North, West and Islands Planning</p>	
<p>Signature:</p> 	

**Attachment 1: High Court decision [CIV
2019-404-2810**

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2019-404-2810
[2022] NZHC 1621**

BETWEEN FRANCO BELGIORNO-NETTIS
Plaintiff

AND AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL
First Defendant

AUCKLAND COUNCIL
Second Defendant

Hearing: On the papers

Counsel: R Enright and T Goulding for Plaintiff
V McCall for First Defendant
M C Allan for Second Defendant
C Kirman, Intervener (Kāinga Ora – Homes and Communities)
R Bartlett QC, Intervener (Emerald Group Limited)

Judgment: 8 July 2022

**JUDGMENT OF WHATA J
[recall and consent orders]**

*This judgment was delivered by me on 8 July 2022 at 4.30 pm,
pursuant to Rule 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

Date:

Solicitors: Brookfields Lawyers
Crown Law Office

Introduction

[1] Franco Belgiorno-Nettis and the Auckland Council jointly apply:

- (a) for recall of my judgment *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* dated 27 November 2020¹; and
- (b) consent orders to give effect to a proposed settlement of proceedings, set out at [31].

[2] Kāinga Ora supports the applications and Emerald Group Ltd (EGL) abides.² The Auckland Unitary Plan Independent Hearings Panel (the Panel) did not seek to be heard.³

[3] I have resolved to grant the applications. My reasons follow.

Background

[4] The background to the present applications is traversed in detail in two judgments of the High Court and a judgment of the Court of Appeal.⁴ It is not necessary to repeat that detail here. The following is a relevant summary for the purposes of the applications now before me.

Failure to give reasons

[5] Mr Belgiorno-Nettis made various submissions on the Proposed Auckland Unitary Plan (PAUP) in respect of land comprised between “The Promenade”, “Alison Ave”, “Earnoch Ave” and “Hurstmere Road” (the Promenade Block) and in respect of land located adjacent to Lake Road (the Lake Road Block). He sought height controls

¹ *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2020] NZHC 6. [*Belgiorno-Nettis HC 2*].

² See joint memorandum of 1 June 2022.

³ The Attorney General was invited to make submissions if they considered it was necessary to do so. They did not make submissions.

⁴ *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2017] NZHC 2387 [*Belgiorno-Nettis HC 1*]; *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2019] NZCA 175 [*Belgiorno-Nettis CA*]; and *Belgiorno-Nettis HC 2* above n 1, at [65].

in these areas. The Panel delivered the Overview Report on 22 July 2016.⁵ Mr Belgiorno-Nettis' submissions were largely rejected by the Panel.

[6] Mr Belgiorno-Nettis then challenged the Panel's recommendations in the High Court, claiming among other things, failure to give reasons. The High Court dismissed this challenge⁶, but Mr Belgiorno-Nettis was successful before the Court of Appeal. The Court of Appeal found that:⁷

[65] We accept the Judge's observation that it would be sufficient for the Panel to group submissions by reference to "matters" if particular features arising from submissions were stated and submissions on those topics grouped, and reasons on each topic given. Accepting this, there is still a duty to give reasons for accepting or rejecting submissions on a topic even if those submissions are grouped, and the reasons be of a summary nature. If the Judge is indicating otherwise, we respectfully disagree with him. While grouped and summarised reasons could be sufficient in the context of the particular process, some articulation of the Panel's thinking was required. A reader should understand why a decision such as the zoning and height levels for a significant block of land has been made. This can be in short form, and depending on the circumstances a few paragraphs or even a few sentences may be enough. But the "why" should be stated.

[7] The Court also said:⁸

[76] We agree that the Overview Report sets out a general approach to zoning and height controls which would enable intensification of development in and around metropolitan and town centres and transport corridors. The reason for that approach, evident from the Overview Report, is that the Proposed Plan envisaged the need for approximately 400,000 additional dwellings in the Auckland region by 2041 to accommodate between 700,000 and 1,000,000 more residents over that period.

[77] We do not see these general statements as providing any sort of a reason for the acceptance or rejection of a specific submission or group of submissions when they are competing. It is no more than a statement of principle or approach. We are unable to agree with the submission that this was a reason for the rejection of Mr Belgiorno-Nettis' submission. The competing evidential positions on the Promenade and Lake Road Blocks are not mentioned at all. There is not sufficient material to be able to say why the Panel made its recommendations concerning those Blocks. It is not self-evident.

[78] We cannot agree with the assumption of the Judge that by making various overview statements of policy, the Panel was providing reasons for the

⁵ Auckland Unitary Plan Independent Hearings Panel *Report to Auckland Council: Overview of Recommendations on the Proposed Auckland Unitary Plan* (22 July 2016).

⁶ *Belgiorno-Nettis HC I*, above n 4, at [134]–[135].

⁷ *Belgiorno-Nettis CA*, above n 4, at [65].

⁸ At [76]–[78].

acceptance or rejection of submissions or groups of submissions. The Panel did explain in the Overview Report that site-specific topics were included in its re-zoning and precincts reports. There were reasons given for Precinct recommendations. They were reasons given directly relating to specific zoning areas or maximum heights or groups of or individual submissions. But there were no reasons either grouped or otherwise, that could explain the Promenade Block and Lake Road Block decisions.

(footnotes omitted)

[8] In terms of relief, the Court declined to quash or set aside the Panel's recommendations but directed the Panel — in respect of the zoning and height decisions relating to the Promenade Block and the Lake Road Block — to set out the reasons which led to its recommendations. The Court said that, when responding, the Panel could address Mr Belgiorno-Nettis' submission specifically or could group his submission with others.⁹ It also said that the Panel, consisting as it does of a Judge and a number of senior professional persons, would need to confer before it summarised its reasons for reaching the two decisions.¹⁰

Mr Belgiorno-Nettis returns to the High Court

[9] On 14 October 2019, the Chairperson of the Panel, Judge David Kirkpatrick, delivered the Panel's reasons for its recommendations to the Council relating to the zoning and height requirements for the Promenade Block and the Lake Road Block. On 21 October 2019, Judge Kirkpatrick issued further reasons in response to an apparent oversight.

[10] Mr Belgiorno-Nettis then applied for judicial review to the High Court to test the adequacy of those reasons. The relevant issues were:¹¹

- (a) **Issue one:** Did the Panel err in law in finding that prior strategic decision-making meant the submissions running counter to the intensification strategy in the Regional Policy Statement (RPS) necessitated the rejection of individual submissions, including the submissions and further submissions of the plaintiff? A subsidiary question is:
 - (i) Did the obligation to give effect to the RPS necessitate rejection of the submissions and further submissions of the plaintiff?

⁹ *Belgiorno-Nettis CA*, above n 4, at [110].

¹⁰ At [106].

¹¹ *Belgiorno-Nettis HC 2*, above n 1, at [55].

- (b) **Issue two:** Did the Panel make a mistake of fact by holding that the submissions and further submissions of the plaintiff ran counter to the intensification strategy in the RPS?
- (c) **Issue three:** By stating that it considered and weighed the evidence, did the Panel err in law and not provide reasons by reference to the common law and s 144(a) of the LGATPA for rejecting or accepting the zoning and additional height submissions by failing to identify which lay or expert evidence was preferred?
- (d) **Issue four:** Do the new reasons fail to have regard to relevant mandatory considerations, as to the effect of the height and zoning regime on the environment, including the environment as it exists?
- (e) **Issue five:** Did the appropriate Panel confer as directed by the Court of Appeal in all the circumstances? A subsidiary question is:
 - (i) Whether there is an error of law or breach of natural justice in that it is not evidence that the North Panel, who heard the site-specific submissions and evidence of the plaintiff, accurately reported to the whole Panel, and when the North Panel did not hear all the evidence.

[11] The review was dismissed by me.¹² For present purposes it is necessary only to refer to my findings in respect of Issues 3 and 5. I addressed Issue 3 as follows:¹³

[74] The third issue corresponds to Mr Belgiorno-Nettis' claim that the Panel failed to give adequate reasons for dismissing his case. It is said that the Panel has failed to address the problems identified by the Court of Appeal, namely, how the submissions and the evidence worked to achieve the result is still left unstated and the reader is still left to speculate. Counsel further submit that the requirement to give a basic explanation of why evidence was rejected is required by the common law, and is consistent with the requirements of s 22(1) of the Local Government Official Information and Meetings Act 1987 which requires a written statement of reasons, including the findings on the material issues of fact; a reference to the information on which the findings were based, and the reasons for the decision or recommendation.

[75] More specifically, it is submitted that the Panel does not:

- (a) refer to or explain why certain expert evidence is preferred over other evidence;
- (b) engage with Mr Belgiorno-Nettis' submissions and the evidence, including as they relate to alternative opportunities;
- (c) identify whether The Promenade Terraces represented a feasible opportunity for intensification;

¹² *Belgiorno-Nettis HC 2*, above n 1, at [120].

¹³ At [74]–[75].

- (d) identify or address the conflicts on the Council case for The Promenade Block;
- (e) refer to or explain why the evidence of Mr Belgiorno-Nettis and Ms Ogden-Cook is rejected;
- (f) refer to evidence on the Lake Road Block, including the evidence on behalf of the Auckland 2040; and
- (g) refer to the evidence heard before the Panels other than the North Panel.

(footnotes omitted)

[12] I noted that the Panel’s reasons do not contain a detailed discussion of individual submissions or supporting evidence.¹⁴ But I did not consider the omission to describe the evidence or to explain which evidence was preferred, reveals a reviewable and/or material error.¹⁵ In particular I said:¹⁶

[78] ... Firstly, the Panel confirms that the North Panel heard the submissions and evidence on the zoning, precinct and heights of buildings in Takapuna, including the submissions and evidence presented by Mr Belgiorno-Nettis. There is no reason to doubt the truthfulness or accuracy of this statement. It also noted other relevant submissions considered included those seeking to rezone the Promenade Block in Takapuna from THAB to MHU or to otherwise reduce the development levels of that Block. It notes also that a submission seeking to retain the development potential was received from Emerald.

[13] I also considered that the reasons for preferring the case to retain the development potential of the Promenade are clearly explained.¹⁷ I found that “it is clear from the reasons given that the Panel has rejected, in part, Mr Belgiorno-Nettis and Ms Ogden-Cork’s views about the different mix of controls, for example Ms Ogden’s-Cork’s evidence” in support of a particular planning outcome.¹⁸ I found that the reasons provided clearly addressed key matters and I expressed confidence that the Panel would have taken into account relevant submissions and evidence and it can be assumed that the Panel “had regard to the major urban form issues” raised by them.¹⁹

¹⁴ *Belgiorno-Nettis HC 2*, above n 1, at [76].

¹⁵ At [78].

¹⁶ At [78].

¹⁷ See [81]–[85].

¹⁸ At [86].

¹⁹ At [93]–[94].

[14] Turning to Issue five, I noted the following:²⁰

[107] Issue five corresponds to the following pleading:

The new reasons breach natural justice ... on the ground that the persons giving the decision on the new reasons had not listened to and heard the evidence or all of the evidence provided or relied on by the plaintiff.

Particulars:

- (a) Those members of the IHP who heard and listened to the evidence concerning the prior strategic recommendations for the RPS topics did not hear and listen to all of the evidence provided or relied on by the plaintiff;
- (b) A majority of the panel members of the Red or North Panel (comprising Des Morrison (Chair), Les Simmons, and Alan Watson) who actually heard and listened to the evidence and expert evidence of the plaintiff (and other submitters) in relation to the Promenade Block and the Lake Road Block did not hear and listen to the evidence concerning the prior strategic recommendations for the RPS;
- (c) The new reasons do not indicate any process by which the appropriate members of the IHP who heard and listened to the evidence in relation to the Sites actually conferred and provided the new reasons as directed by the Court of Appeal.
- (d) As a consequence of the misdescription of the plaintiff's position, it is not apparent that the members of the IHP who actually heard and listened to the evidence and expert evidence of the plaintiff accurately reported the position of the plaintiff to members of the IHP who made decisions;
- (e) Holding that the prior decision-making on the RPS strategic direction necessarily led to the rejection of individual submissions without this policy or approach being disclosed to submitters was in breach of the rules of natural justice.

[108] Counsel for Mr Belgiorno-Nettis submits that the Panel does not identify or explain how it conferred on his submissions. In particular, Counsel submit the Panel does not explain:

- (a) how, if at all, the evidence and submissions provided at the hearings before the North Panel (comprised of only three Panel members), informed the deliberations of the Full Panel;
or
- (b) how the evidence and submissions heard by the South Panel informed the deliberations of the Full Panel.

[109] However, during the hearing, Counsel for Mr Belgiorno-Nettis withdrew the claims in relation to [107] (a) and (b) above, and conceded that any allegation that Judge Kirkpatrick signed the new reasons for the Panel unilaterally was withdrawn. Counsel maintains, however, that the pleaded errors [107] (c)-(e) are still engaged.

²⁰ *Belgiorno-Nettis HC 2*, above n 1, at [107]–[112].

[110] Central to this claim is the following passage of the judgment of the Court of Appeal:

[106] Given the nature of this quasi-judicial process chaired as it is by a Judge of the Environment Court, the danger of new reasons being composed to support the decision does not in our view arise. The indications in the material before us are that the decision of the Panel was thorough, and that it did consider individual submissions (although no conclusion can be reached on this until reasons are given). There is no suggestion that the appropriate Panel cannot be brought together again to report on the reasons. *The Panel, consisting as it does of a judge and a number of senior professional persons, will need to confer before it summarises its reasons for reaching the two decisions.*

(emphasis added)

[111] Counsel for Mr Belgiorno-Nettis submits that the reasons provided do not demonstrate that the appropriate Panel conferred. It is further submitted that the Panel's new reasons indicate that the Panel was "unwilling to shift from the idea of making broad policy decisions about intensification", with the implication that they automatically flowed down to decisions at an individual property or area level. It is also said that the Panel did not engage with the key points made by Mr Belgiorno-Nettis, reinforcing the view that due consideration was never given to them.

[112] It is further submitted that in the absence of any transparent record of who conferred, Mr Belgiorno-Nettis cannot be sure that his submissions were in fact considered individually or in the round. This is then said to engage the type of breach of natural justice identified by the Privy Council in *Jeffs v Nevil Zealand Dairy Production Marketing Board*. In that case, the decision-making Board delegated responsibility to a Committee to receive the evidence and to report to the Board. In so doing, the Privy Council held that, by not hearing the evidence directly, it breached its duty to act judicially.

(footnotes omitted)

[15] In rejecting these claims, I noted that the "Hearings Panel" is a statutorily defined body responsible for the making of recommendations. I also explained the process followed in these terms:²¹

[114] As can be seen, the Hearings Panel refers to the body responsible for making the recommendations, while a hearing may be comprised of some (but no less than 2) or all of the members of the Hearings Panel. The scheme therefore contemplates that the members present at the hearing will report to the Hearings Panel, and that the Hearings Panel will then make its recommendations. That is what in fact transpired here. The Panel resolved to adopt a split panel process which was explained in its Hearing Procedure for Site Specific Topics. As noted the "North Panel" heard submissions and evidence in relation to topic 81. That process is not subject to challenge in this case. Furthermore, on the face of the reasons, the North Panel reported to the Hearings Panel and that Panel has provided its reasons for its recommendations in relation to the Promenade and Lake Road Blocks.

²¹ *Belgiorno-Nettis HC 2*, above n 1, at [114].

[16] I then found:²²

[115] ... I reject any submission that the Panel was not properly assembled and/or for that purpose, did not reach a decision based on all of the information available to the Panel members. The answer lies in the first paragraph of the reasons, which is repeated here for ease of reference:

Pursuant to the order made by the Court of Appeal in its decision dated 22 May 2019 in *Belgiorno-Nettis v AUPIHP & Auckland Council* [2019] NZCA 175 at paragraph [117], and following the decision dated 10 October 2019 of the Supreme Court in *Belgiorno-Nettis v AUPIHP & Auckland Council* [2019] NZSC 112, the **Panel** gives its reasons for its recommendations to the Auckland Council relating to the zoning and height requirements for The Promenade and Lake Road Blocks in Takapuna.

...

[117] I also see nothing in the point that the reasons refer only to the North Panel when addressing “Local Reasons”. As noted, unlike *Jeffs*, no issue of improper delegation or failure to hear the evidence has been raised or arises.

[118] Furthermore, it can be assumed from the face of the reasons that they are the product of the combined inputs of the members of the Hearings Panel, including Panel members who heard the more generalised evidence relating to urban form and in light of the evidence placed before the North Panel. Moreover, the critical importance of the reasons is to understand and to be sure that ‘the Panel’ satisfactorily addressed the key issues in light of the submissions and evidence. ... I am satisfied that the full Panel has done just that.

[17] Overall, I held:²³

[120] I am satisfied that the Panel gave due and careful consideration to the matters raised by Mr Belgiorno-Nettis and that the conclusions reached by the Panel in respect of both the Promenade and Lake Road Blocks were available to it. No error of law or substantive unfairness arises. The application for review is therefore dismissed.

Appeal to the Court of Appeal

[18] On 23 December 2020, Mr Belgiorno-Nettis filed an appeal against my decision to the Court of Appeal. A hearing was set down for 6 April 2022 but was adjourned because of new information that has come to light since my decision.

²² *Belgiorno-Nettis HC 2*, above n 1, at [115], [117]–[118].

²³ At [120].

New information

[19] In support of his appeal, Mr Belgiorno-Nettis made a request to Crown Law for a report from the Panel about its process of conferring. He stated that the new reasons provided by the Panel did not disclose any process by which the Panel's members reconvened, if it was the "full" Panel or a Panel of "appropriate" members, and how they conferred.

[20] Mr Belgiorno-Nettis was supplied with a report from Judge Kirkpatrick to the Court of Appeal dated 17 February 2022 (the Report). Crown Law also disclosed email correspondence between members of the Panel between 27 May 2019 and 21 October 2019. The correspondence is over 700 pages.

[21] In respect of the Report, Judge Kirkpatrick says "[t]he process was done by e-mail correspondence. By 2019 members of the Panel were engaged in a range of other things and convening a meeting of all of us would have been at least very difficult."

[22] Judge Kirkpatrick also said:

By way of summary, reviewing the e-mails reminds me that on 27 May 2019 I advised all the members of the Panel of the task that the Court of Appeal had set us. I then went through an iterative process with all of them to draft our reasons. Some members, having been on the division of the Panel that heard the submission, were more involved than others. All members, however, had been involved in the final evaluation and decision for the purposes of preparing our recommendations to the Auckland Council and were accordingly involved in finalising these reasons.

Problems identified

[23] The parties jointly submit that newly released emails cast doubt on the assumption recorded in my judgment that the Panel members had considered the relevant evidence and submissions. They submit:

- (a) The Panel rejected engaging with the evidence on the basis that the Panel members were not confident that they could recall what the North Panel thought of "every piece of evidence";

- (b) There is nothing to indicate that the evidence was considered by the Panel when formulating its reasons in response to the direction of the Court of Appeal in 2019 and it appears that some if not all the Panel members chose not consider the evidence prior to formulating reasons, to avoid any risk of constructing reasons for the Panel's recommendations after the fact.
- (c) The emails also reveal that the Panel could not recall the evidence that was presented at the hearings, and that it was either unable to locate any deliberative notes made at the time of the hearings (in the case of the Lake Road Block) or any deliberative notes were inconclusive and potentially inconsistent (in the case of the Promenade Block) – noting that available deliberative spreadsheets refer to both supporting the position of the Council and agreeing with submitters.
- (d) While the emails do not suggest that the Panel did not consider the evidence in 2016, no reasons were given for its recommendations on the Sites at that time.
- (e) Overall, in the absence of clear deliberative notes contemporaneous to the recommendations, and the lack of any engagement with the evidence (or indeed any sign that the Panel considered the evidence when giving its reasons) the parties are agreed that there is now good cause to doubt whether the Panel did consider all the relevant evidence and properly understood the competing evidential positions.

[24] I have reviewed the emails said to support the above submissions. I agree that it is an available inference from that material that some of the members did not specifically consider or engage with the evidence in support of Mr Belgiorno-Nettis' submissions. Rather, the members deferred to the members of the Panel who had considered that evidence. Furthermore, it also appears that members of the North Panel who had heard Mr Belgiorno-Nettis could not offer much assistance given the passage of time and the absence of contemporaneous notes. In the result, contrary to the assumption made by me in my judgment, I accept that some members of Panel

may not have specifically considered the evidence in support of Mr Belgiorno-Nettis' submissions when formulating their reasons.

Recall

[25] Rule 11.9 of the Rules states that a Judge may recall a judgment given orally or in writing at any time before a formal record of it is drawn up and sealed.²⁴ As the second High Court judgment has not been sealed, recall remains available to me. It is also common ground that the discovery of new facts subsequent to the judgment being given may be a special reason justifying recall.²⁵

[26] In the present case, evidence about the Panel's deliberations was not available to the parties or this Court at the time of argument or the delivery of the decision. That is entirely orthodox as the written reasons of a decision should speak for themselves. It transpires, however, that the evidence now available about the Panel's deliberations suggests that, contrary to the assumption made by me in my judgment, some members of the Panel may not have considered the evidence supporting Mr Belgiorno-Nettis' submissions when formulating the reasons given by the Panel for preferring the Council's position in respect of the Promenade Block and Lake Road Block. It also suggests that the members of the North Panel most likely to have considered that evidence, could not offer much assistance to the remaining members of the Panel as to the cogency of that evidence or about the contemporaneous reasons for rejecting it at the time of the original decisions. The available contemporary record also reveals a somewhat unclear position as to what the North Panel had in fact resolved.

[27] Given this, and in the absence of any contrary argument, I am satisfied that my judgment must be recalled. While the reasons given by the Panel are, for the reasons set out in my judgment, cogent on their face and were available to the Panel on the totality of the evidence, Mr Belgiorno-Nettis' primary complaint that the Panel did not directly or adequately engage with his case has now been made out. In a context where Mr Belgiorno-Nettis has throughout this litigation sought clarity and confirmation that

²⁴ High Court Rules 2016, r 11.9.

²⁵ *Unison Networks Ltd v Commerce Commission* [2007] NZCA 49 at [32].

his submissions and evidence had been given careful consideration, a finding of reviewable procedural error must follow.

[28] In these circumstances, my judgment is recalled.

Proposed settlement

[29] The parties also agree that the present proceedings should be resolved by consent based on orders set out at [31]. It is common ground that the framework for the resolution by consent in the context of the Auckland Unitary Plan (AUP) matters is set out in *Ancona Properties Ltd.*²⁶ I see no reason to depart from this framework.

[30] Consent orders may be granted where:

- (a) the consent orders reflect the proper resolution of issues of law raised by the appellants;
- (b) the proposed amendments and the resolution of the appeals is consistent with the purpose and principles of the Resource Management Act 1991 (RMA) including in particular Part 2;
- (c) approval of the proposed consent orders would also be consistent with the purpose and intent of the Local Government (Auckland Transitional Provisions) Act 2010 (the LGATPA), namely Part 4, which provides a streamlined process designed to enable the Unitary Plan to become operative within a short period of time;
- (d) the orders may be granted pursuant to r 20.19 of the High Court Rules 2016, ss 300-307 of the RMA and s 158 of the LGATPA; and
- (e) the consent orders are within the scope of the appeals;
- (f) Subject to futility, the effect of an amendment is to reject the IHP recommendation, so a statutory right of appeal to the Environment

²⁶ *Ancona Properties Ltd v Auckland Council* [2017] NZHC 594.

Court under section 156(1) of the Local Government (Auckland Transitional Provisions) Act 2010 is activated for affected submitters.

The proposed orders

[31] The parties seek orders that:

- (a) The Promenade Block be rezoned to Residential – Mixed Housing Urban (MHU);
- (b) The Height Variation Control (HVC) over the Promenade Block be removed;
- (c) The HVC over the area of Business – Mixed Use (MU) zone on the Western side of Lake Road be removed;
- (d) A HVC be placed over the area of MU zone on the eastern side of Lake Road with a height of 13 metres (comprising 11m occupiable Building height with 2m for roof form, being three storeys);
- (e) The area of MHU zoning within the Lake Road Block be rezoned to Residential – Mixed Housing Suburban (MHS);
- (f) The Council notify any affected submitters of the Court’s orders and of their rights of appeal under section 156(1) of the Local Government (Auckland Transitional Provisions) Act 2010; and
- (g) The interim relief orders granted by me on 8 February 2021 be cancelled.

[32] For the reasons largely raised by the parties in their joint submissions, I am satisfied the orders should be made, namely:

- (a) the proposed orders are within the scope of the matters challenged by these proceedings;

- (b) the proposed orders reflect the relief that had been sought by the Plaintiff in his submissions in respect of the Sites, and are supported by the expert evidence submitted by the Plaintiff and other submitters (for example, the evidence submitted by Auckland 2040 in respect to land within the Lake Road Block, and Ms Ogden-Cork, for the Promenade Block – this evidence is addressed in detail in my judgment at [84]–[94]);
- (c) submitters who are not involved in these proceedings will not be prejudiced as a result of the orders thought because the orders will generate substantive appeal rights under s 156(1) of the LGATPA;
- (d) submitters and other interested parties who do not have s 156(1) appeal rights will have the opportunity to be heard on the appropriate level of intensification for Takapuna due to the Council commencing its intensification planning instrument (IPI) process in August 2022. Therefore, the consent orders would not prejudice interested persons who did not submit on these Sites as part of the PAUP process and did not become involved in these proceedings;
- (e) granting the proposed orders would be consistent with the purpose of Part 4 of the LGATPA because it would finally pave the way for Auckland Unitary Plan height and zoning provisions for the Sites to be made operative;
- (f) the Council acknowledges the relief sought does not reflect the outcomes that it considered to be most appropriate for the Sites. Council intends to give effect to the NPS-UD in respect of the Sites as part of the IPI process. It considers the IPI is the more appropriate forum to consider how to give effect to these requires because it would enable integrated decision-making which is consistent with decision-making in respect of the surrounding environment; and

- (g) the granting of substantive relief is not unprecedented. That factor, in light of the consensus of the parties, the length of time that has elapsed since the Panel's recommendations, the delay that has occurred in making the PAUP operative and the availability of both appeal rights as an alternative process for persons to have their say on provisions affecting the Sites, alleviate any risk of prejudice to submitters or other affected persons.

[33] For completeness, I have considered the consent orders in light of my understanding of the evidence relating to urban intensification together with the reasons given by the Panel. As I said in my judgment, it was available to the Panel to find as they did, particularly in light of the Regional Policy Statement (RPS) as it relates to intensification issues, objectives and policies.²⁷ But as I also noted in my judgment, the RPS does not mandate intensification at all costs and is not a pre-eminent consideration, and I am satisfied that the orders sought are sufficiently consistent with the general policy direction of the RPS as it relates to intensification.²⁸ Furthermore, given the full background to this case, making the orders sought to bring some finality to these proceedings is just.

[34] Therefore, I make the orders sought.

Costs

[35] The parties to the joint memorandum do not seek orders as to costs. However, Mr Belgiorno-Nettis has indicated he may seek costs against the Panel. Ms McCall, for the Panel, seeks leave to be heard in respect of any application for costs in this regard. Therefore:

- (a) I reserve leave to Mr Belgiorno-Nettis to make an application for costs within 10 working days;

²⁷ See *Belgiorno-Nettis HC 2*, above n 1, at [32]–[41].

²⁸ At [61].

- (b) I grant leave for submissions to be filed on behalf of the Panel in the event that such costs application is made and are be filed within five working days thereafter.

Attachment 2: Updated AUP(OIP) text

H6. Residential – Terrace Housing and Apartment Buildings Zone

H6.1. Zone Description

The Residential – Terrace Housing and Apartment Buildings Zone is a high-intensity zone enabling a greater intensity of development than previously provided for. This zone provides for urban residential living in the form of terrace housing and apartments. The zone is predominantly located around metropolitan, town and local centres and the public transport network to support the highest levels of intensification.

The purpose of the zone is to make efficient use of land and infrastructure, increase the capacity of housing and ensure that residents have convenient access to services, employment, education facilities, retail and entertainment opportunities, public open space and public transport. This will promote walkable neighbourhoods and increase the vitality of centres.

The zone provides for the greatest density, height and scale of development of all the residential zones. Buildings are enabled up to five, six or seven storeys in identified Height Variation Control areas, depending on the scale of the adjoining centre, to achieve a transition in height from the centre to lower scale residential zones. This form of development will, over time, result in a change from a suburban to urban built character with a high degree of visual change.

Standards are applied to all buildings and resource consent is required for all dwellings and for other specified buildings and activities in order to:

- achieve the planned urban built character of the zone;
- achieve attractive and safe streets and public open spaces;
- manage the effects of development on adjoining sites, including visual amenity, privacy and access to daylight and sunlight; and
- achieve high quality on-site living environments.

The resource consent requirements enable the design and layout of the development to be assessed; recognising that the need to achieve a quality design is increasingly important as the scale of development increases.

This zone also provides for a range of non-residential activities so that residents have convenient access to these activities and services while maintaining the urban residential character of these areas.

H6.2. Objectives

- (1) Land adjacent to centres and near the public transport network is efficiently used to provide high-density urban living that increases housing capacity and choice and access to centres and public transport.
- (2) Development is in keeping with the areas planned urban built character of predominantly five, six or seven storey buildings in identified areas, in a variety of forms.

- (3) Development provides quality on-site residential amenity for residents and the street.
- (4) Non-residential activities provide for the community's social, economic and cultural well-being, while being compatible with the scale and intensity of development anticipated by the zone so as to contribute to the amenity of the neighbourhood.

H6.3. Policies

- (1) Enable a variety of housing types at high densities including terrace housing and apartments and integrated residential development such as retirement villages.
- (2) Require the height, bulk, form and appearance of development and the provision of setbacks and landscaped areas to achieve a high-density urban built character of predominantly five, six or seven storey buildings in identified areas, in a variety of forms.
- (3) Encourage development to achieve attractive and safe streets and public open spaces including by:
 - (a) providing for passive surveillance
 - (b) optimising front yard landscaping
 - (c) minimising visual dominance of garage doors.
- (4) In identified locations adjacent to centres, enable greater building height through the application of the Height Variation Control where the additional development potential enabled:
 - (a) provides an appropriate transition in building scale from the adjoining higher density business zone to neighbouring lower intensity residential zones, and;
 - (b) supports public transport, social infrastructure and the vitality of the adjoining centre.
- (5) Manage the height and bulk of development to maintain daylight access and a reasonable standard of privacy, and to minimise visual dominance effects to adjoining sites and developments.
- (6) Require accommodation to be designed to meet the day to day needs of residents by:
 - (a) providing privacy and outlook; and
 - (b) providing access to daylight and sunlight, and providing the amenities necessary for those residents.
- (10) Recognise the functional and operational requirements of activities and development.

- (7) Encourage accommodation to have useable and accessible outdoor living space.
- (8) Restrict the maximum impervious area on a site in order to manage the amount of stormwater runoff generated by a development and ensure that adverse effects on water quality, quantity and amenity values are avoided or mitigated.
- (9) Provide for non-residential activities that:
- (a) support the social and economic well-being of the community;
 - (b) are in keeping with the with the scale and intensity of development anticipated within the zone;
 - (c) avoid, remedy or mitigate adverse effects on residential amenity; and
 - (d) will not detract from the vitality of the Business – City Centre Zone, Business – Metropolitan Centre Zone and Business – Town Centre Zone.

H6.4. Activity table

Table H6.4.1 Activity table specifies the activity status of land use and development activities in the Residential – Terrace Housing and Apartment Buildings Zone pursuant to section 9(3) of the Resource Management Act 1991).

Table H6.4.1 Activity table

Activity		Activity status	Standards to be complied with
Use			
(A1)	Activities not provided for	NC	
Residential			
(A2)	Camping grounds	NC	
(A3)	Dwellings	RD	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.7 Alternative height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards
(A4)	The conversion of a principal dwelling existing as at 30 September 2013 into a maximum of two dwellings	P	Standard H6.6.3 The conversion of a principal dwelling into a maximum of two dwellings
(A5)	Home occupations	P	Standard H6.6.2 Home occupations
(A6)	Home occupations that do not meet Standard H6.6.2	D	
(A7)	Integrated residential development	RD	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.7 Alternative height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones;

H6 Residential – Terrace Housing and Apartment Buildings Zone

			Standard H6.6.9 Yards
(A8)	Supported residential care accommodating up to 10 people per site inclusive of staff and residents	P	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.7 Alternative height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards; Standard H6.6.10 Maximum impervious areas; Standard H6.6.11 Building coverage; Standard H6.6.12 Landscaped area; Standard H6.6.13 Outlook space; Standard H6.6.14 Daylight; Standard H6.6.15 Outdoor living space; Standard H6.6.16 Front, side and rear fences and walls
(A9)	Supported residential care accommodating greater than 10 people per site inclusive of staff and residents	RD	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.7 Alternative height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards
(A10)	Boarding houses accommodating up to 10 people per site inclusive of staff and residents	P	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards; Standard H6.6.10 Maximum impervious areas; Standard H6.6.11 Building coverage; Standard H6.6.12 Landscaped area; Standard H6.6.13 Outlook space; Standard H6.6.14 Daylight; Standard H6.6.15 Outdoor living space; Standard H6.6.16 Front, side and rear fences and walls
(A11)	Boarding houses accommodating greater than 10 people per site inclusive of staff and residents	RD	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.7 Alternative height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards
(A12)	Visitor accommodation accommodating up to 10 people per site inclusive of staff and visitors	P	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards; Standard H6.6.10 Maximum impervious areas; Standard H6.6.11 Building coverage; Standard H6.6.12 Landscaped area; Standard H6.6.16 Front, side and rear fences and walls
(A13)	Visitor accommodation accommodating greater than 10 people per site inclusive of staff and visitors	RD	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.7 Alternative height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards
Commerce			
(A14)	Dairies up to 100m ² gross floor area per	RD	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard

H6 Residential – Terrace Housing and Apartment Buildings Zone

	site		H6.6.7 Alternative height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards; Standard H6.6.10 Maximum impervious areas; Standard H6.6.11 Building coverage; and Standard H6.6.16 Front, side and rear fences and walls
(A15)	Restaurants and cafes up to 100m ² gross floor area per site	RD	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.7 Alternative height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards; Standard H6.6.10 Maximum impervious areas; Standard H6.6.11 Building coverage; and Standard H6.6.16 Front, side and rear fences and walls
(A16)	Service stations on arterial roads	D	
(A17)	Offices within the Centre Fringe Office Control as identified on the planning maps	P	Standard H6.6.4 Offices within the Centre Fringe Office Control as identified on the planning maps
(A18)	Offices within the Centre Fringe Office Control as identified on the planning maps that do not comply with Standard H6.6.4	D	
Community			
(A19)	Care centres accommodating up to 10 people per site excluding staff	P	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards; Standard H6.6.10 Maximum impervious areas; Standard H6.6.11 Building coverage; Standard H6.6.12 Landscaped area; Standard H6.6.16 Front, side and rear fences and walls
(A20)	Care centres accommodating greater than 10 people per site excluding staff	RD	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.7 Alternative height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards; Standard H6.6.10 Maximum impervious areas; Standard H6.6.11 Building coverage; Standard H6.6.12 Landscaped area; Standard H6.6.16 Front, side and rear fences and walls
(A21)	Community facilities	RD	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.7 Alternative height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards; Standard H6.6.10 Maximum impervious areas; Standard H6.6.11

H6 Residential – Terrace Housing and Apartment Buildings Zone

			Building coverage; Standard H6.6.12 Landscaped area; Standard H6.6.16 Front, side and rear fences and walls
(A22)	Education facilities	D	
(A23)	Tertiary education facilities	D	
(A24)	Emergency services adjoining an arterial road	D	
(A25)	Healthcare facilities up to 200m ² gross floor area per site	RD	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.7 Alternative height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards; Standard H6.6.10 Maximum impervious areas; Standard H6.6.11 Building coverage; Standard H6.6.12 Landscaped area; Standard H6.6.16 Front, side and rear fences and walls
(A26)	Healthcare facilities greater than 200m ² gross floor area per site	D	
(A27)	Veterinary clinics	D	
Rural			
(A28)	Grazing of livestock on sites greater than 2,000m ² net site area	P	
Mana Whenua			
(A29)	Marae complex	D	
Development			
(A30)	Demolition of buildings	P	
(A31)	Internal and external alterations to buildings	P	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards; Standard H6.6.10 Maximum impervious areas; Standard H6.6.11 Building coverage; Standard H6.6.12 Landscaped area; Standard H6.6.13 Outlook space; Standard H6.6.14 Daylight; Standard H6.6.15 Outdoor living space; Standard H6.6.16 Front, side and rear fences and walls, H6.6.17 Minimum dwelling size
(A32)	Accessory buildings	P	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards; Standard H6.6.10 Maximum impervious areas; Standard H6.6.11 Building coverage
(A33)	Additions to an existing dwelling	P	Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards;

			Standard H6.6.10 Maximum impervious areas; Standard H6.6.11 Building coverage; Standard H6.6.12 Landscaped area; Standard H6.6.13 Outlook space; Standard H6.6.14 Daylight; Standard H6.6.15 Outdoor living space; Standard H6.6.16 Front, side and rear fences and walls, H6.6.17 Minimum dwelling size.
(A34)	New buildings and additions to buildings which do not comply with H6.6.6 Height in relation to boundary but comply with H6.6.7 Alternative height in relation to boundary	RD	H6.6.7 Alternative height in relation to boundary Note: Compliance with standard H6.6.6 Height in relation to boundary is not required.
(A35)	New buildings and additions to buildings	The same activity status and standards as applies to the land use activity that the new building or addition to a building is designed to accommodate	
(A36)	Rainwater Tank	P	Standard H6.6.18

H6.5. Notification

- (1) Any application for resource consent for the following activities will be considered without public or limited notification or the need to obtain the written approval from affected parties unless the Council decides that special circumstances exist under section 95A(9) of the Resource Management Act 1991:
- (a) dwellings that comply with all of the standards listed in Table H6.4.1 Activity table;
 - (b) an integrated residential development that complies with all of the standards listed in Table H6.4.1 Activity table;
 - (c) New buildings and additions to buildings which do not comply with H6.6.6 Height in relation to boundary, but comply with Rule 6.6.7 Alternative height in relation to boundary;
 - (d) development which does not comply with H6.6.16 (1a) Front, side and rear fences and walls; or
 - (e) development which does not comply with H6.6.17 Minimum dwelling size.
- (2) Any application for resource consent for an activity listed in Table H6.4.1 Activity table and which is not listed in H6.5(1) above will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (3) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule [C1.13\(4\)](#).

H6.6. Standards

H6.6.1. Activities listed in Table H6.4.1 Activity table

- (1) Activities and buildings containing activities listed in Table H6.4.1 Activity table must comply with the standards listed in the column in Table H6.4.1 Activity table called Standards to be complied with.

H6.6.2. Home occupations

Purpose: to enable people to work from home at a scale that the residential character and amenity is maintained.

- (1) A home occupation must comply with all the following standards:
- (a) at least one person engaged in the home occupation must use the dwelling on the site as their principal place of residence;
 - (b) no more than two people who do not use the dwelling as their principal place of residence may work in the home occupation;
 - (c) no more than four people in total may work in the home occupation;
 - (d) the sale of goods or services from the home occupation that requires customers to come to the site and the delivery of goods to and from the site may not occur before 7am or after 7pm;
 - (e) car trips to and from the home occupation activity must not exceed 20 per day;
 - (f) heavy vehicle trips must not exceed two per week;
 - (g) no more than one commercial vehicle associated with the home occupation may be on site at any one time;
 - (h) storage for rubbish and recycling associated with the home occupation must be provided on site and screened from public view;
 - (i) materials or goods manufactured, serviced or repaired in the home occupation must be stored and worked on within a building on the same site; and
 - (j) goods sold from the home occupation must be:
 - (i) goods produced on site; or
 - (ii) goods that are primarily ordered by mail or electronic transaction and redistributed by post or courier; or
 - (iii) goods ancillary and related to a service provided by the home occupation.

H6.6.3. The conversion of a principal dwelling existing as at 30 September 2013 into a maximum of two dwellings

Purpose: to enable a dwelling existing as at 30 September 2013 to be converted into a maximum of two dwellings and to provide for sufficient outdoor living space for each of the dwellings.

- (1) Where a principal dwelling existing as at 30 September 2013 is proposed to be converted into a maximum of two dwellings each dwelling must have an outdoor living space that is:
 - (a) at least 5m² for a studio or one-bedroom dwelling and 8m² for a two or more bedroom dwelling; and
 - (b) at least 1.8m in depth; and
 - (c) directly accessible from the dwelling.

H6.6.4. Offices within the Centre Fringe Office Control as identified on the planning maps

Purpose: enable offices in existing buildings in the Centre Fringe Office Control area.

- (1) Offices must be located in existing buildings.

H6.6.5. Building height

Purpose: to manage the height of buildings to provide for terrace housing and apartments and achieve an urban built character of predominantly five storeys or six or seven storeys in identified locations adjacent to centres.

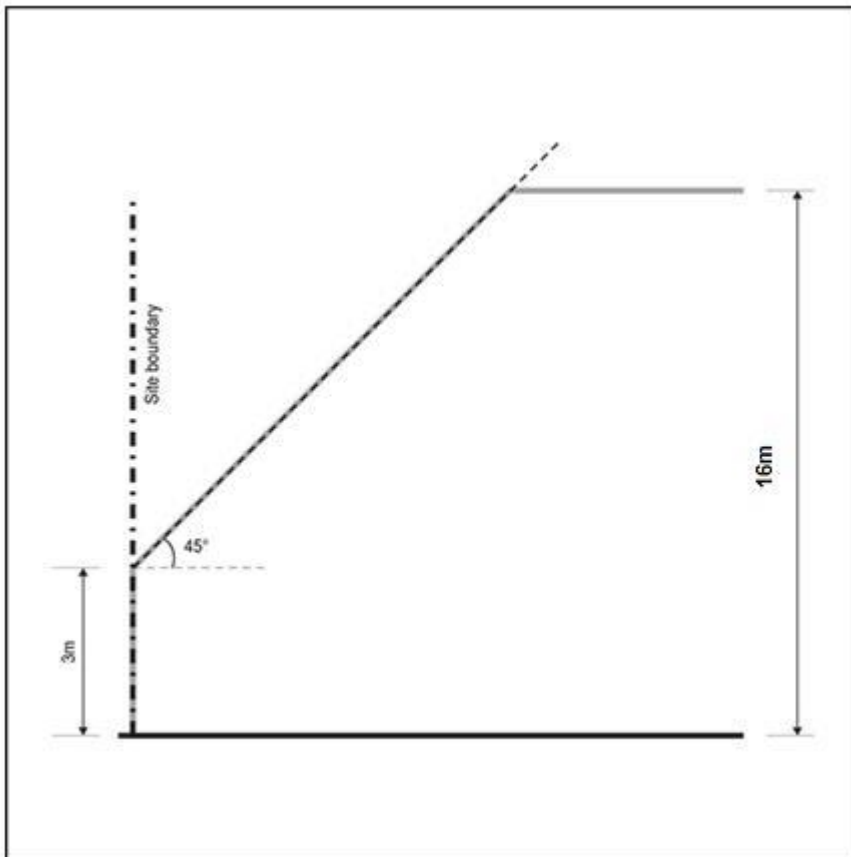
- (1) Buildings must not exceed 16m in height.
- (2) If the site is subject to the Height Variation Control, buildings must not exceed the height in metres shown for the site on the planning maps.
- (3) Standard H5.6.4 Building height applies to the site at 16 Spring Street, Freemans Bay (Lot 1 DP 85829) within a 10m setback area along Spring Street, England Street and adjoining the reserve at 10 England Street (Lot 1 DP 85953) as indicated on the planning maps. Outside of the setback area Buildings must not exceed 16m in height.

H6.6.6. Height in relation to boundary

Purpose: to minimise the adverse effects of building height on neighbours (i.e. dominance and shading) and reduce the overall visual dominance of buildings at upper levels.

- (1) Buildings must not project beyond a 45-degree recession plane measured from a point 3m vertically above ground level along the side and rear boundaries, as shown in Figure H6.6.6.1 Height in relation to boundary below.

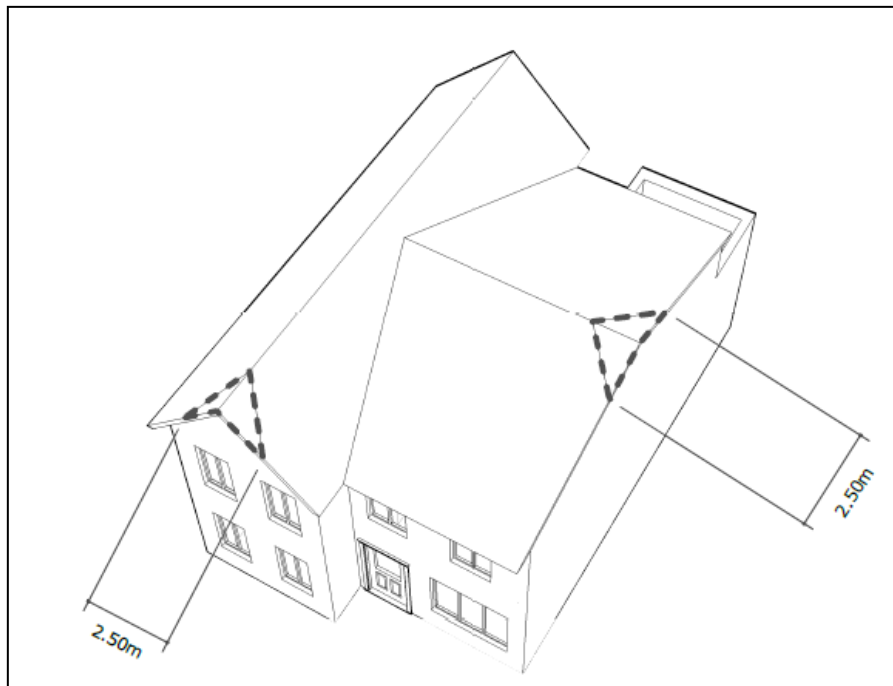
Figure H6.6.6.1 Height in relation to boundary



- (2) Standard H6.6.6(1) does not apply to a boundary, or part of a boundary, adjoining any of the following:
- (a) Business – City Centre Zone; Business – Metropolitan Centre Zone; Business – Town Centre Zone; Business – Local Centre Zone; Business – Neighbourhood Centre Zone; Business – Mixed Use Zone; Business – General Business Zone; Business – Business Park Zone; Business – Light Industry Zone and Business – Heavy Industry Zone; or
 - (b) sites within the Open Space – Conservation Zone; Open Space – Informal Recreation Zone; Open Space – Sports and Active Recreation Zone; Open Space – Civic Spaces Zone; or the Open Space – Community Zone:
 - (i) that are greater than 2000m²;
 - (ii) where that part of the site in (i) is greater than 20 metres in width, when measured perpendicular to the shared boundary; and
 - (iii) where an open space comprises multiple sites but has a common open space zoning, the entire zone will be treated as a single site for the purpose of applying the standards listed below.

- (3) Standard H6.6.6(1) does not apply to site boundaries where there is an existing common wall between two buildings on adjacent sites or where a common wall is proposed.
- (4) Where the boundary forms part of a legal right of way, entrance strip, access site or pedestrian access way, the control in Standard H6.6.6(1) applies from the farthest boundary of that legal right of way, entrance strip, access site or pedestrian access way.
- (5) A gable end, dormer or roof may project beyond the recession plane where that portion beyond the recession plane is:
 - (a) no greater than 1.5m² in area and no greater than 1m in height; and
 - (b) no greater than 2.5m cumulatively in length measured along the edge of the roof as shown in Figure H6.6.6.2 Exceptions for gable ends and dormers and roof projections below.

Figure H6.6.6.2 Exceptions for gable ends and dormers and roof projections



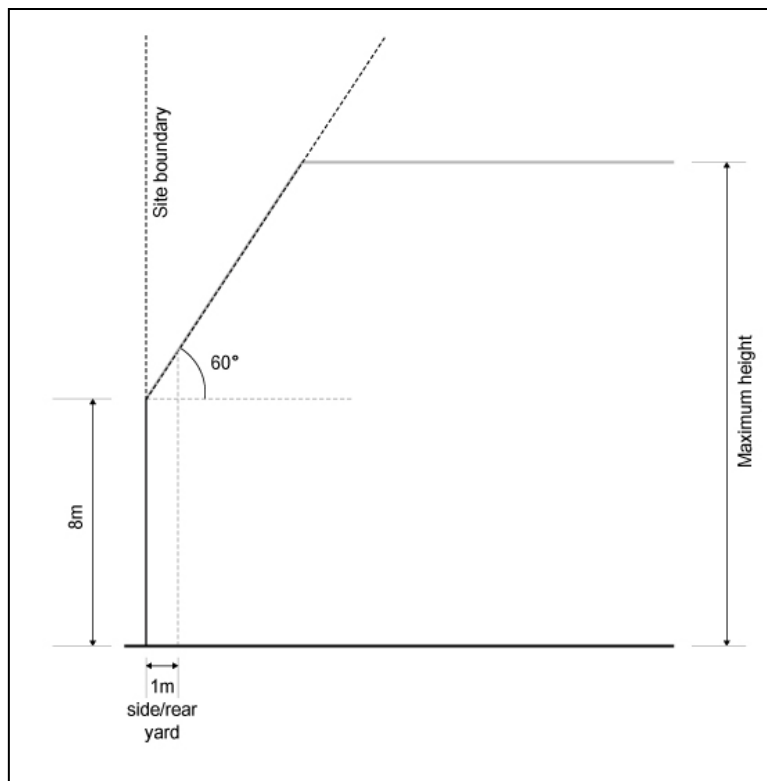
- (6) No more than two gable end, dormer or roof projections are allowed for every 6m length of site boundary.
- (7) The height in relation to boundary standard does not apply to existing or proposed internal boundaries within a site.

H6.6.7. Alternative height in relation to boundary within the Residential – Terrace Housing and Apartment Buildings Zone

Purpose: to enable the efficient use of the site by providing design flexibility at the upper floors of a building, while maintaining a reasonable level of daylight access and reducing visual dominance effects to immediate neighbours.

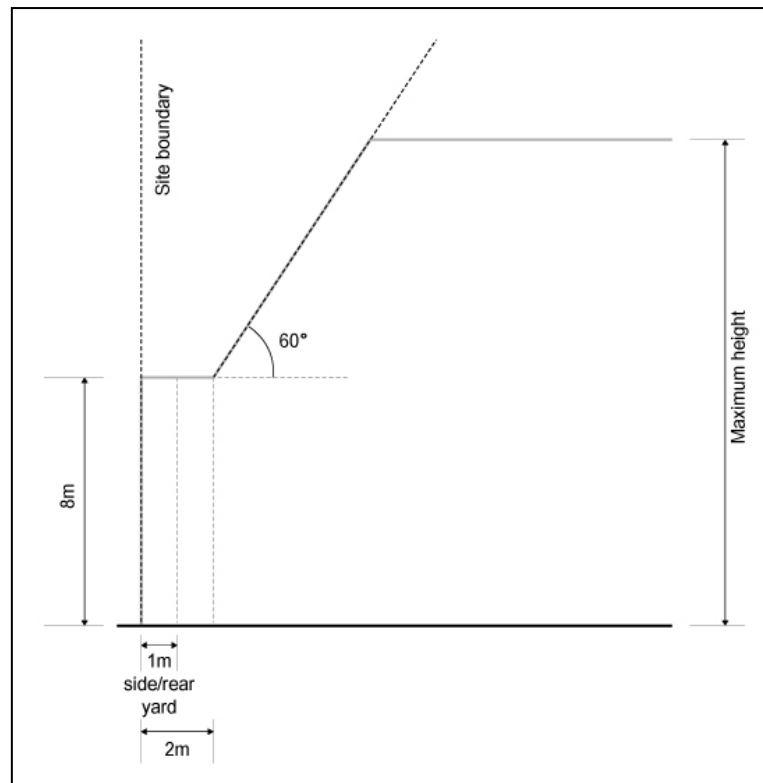
- (1) This standard is an alternative to the permitted Standard H6.6.6 Height in relation to boundary and applies to sites in the Terrace Housing and Apartment Buildings Zone that adjoin another site in the same zone or any other zone not specified in Standard H6.6.8 Height in relation to boundary adjoining lower intensity zones.
- (2) Buildings or any parts of buildings must not project beyond a 60 degree recession plane measured from a point 8m vertically above ground level along side and rear boundaries within 20m of the site frontage, as shown in Figure H6.6.7.1 Alternative height in relation to boundary within 20m of the site frontage below.

Figure H6.6.7.1 Alternative height in relation to boundary within 20m of the site frontage



- (3) Buildings or any parts of buildings further than 20m from the site frontage must not project beyond a 60 degree recession plane measured from a point 8m vertically above ground level, and 2m perpendicular to side and rear boundaries, as shown in Figure H6.6.7.2 Alternative height in relation to boundary further than 20m from the site frontage below.

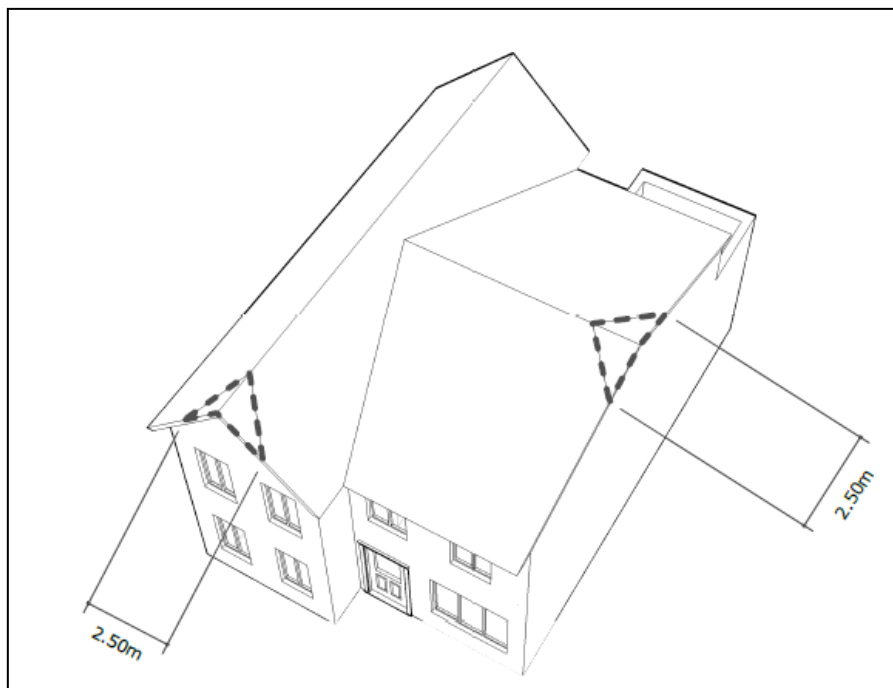
Figure H6.6.7.2 Alternative height in relation to boundary further than 20m from the site frontage



- (4) Standard H6.6.7(2) and (3) above do not apply to a boundary, or part of a boundary, adjoining any of the following:
- (a) a Business – City Centre Zone; Business – Metropolitan Centre Zone; Business – Town Centre Zone; Business – Local Centre Zone; Business – Neighbourhood Centre Zone; Business – Mixed Use Zone; Business – General Business Zone; Business – Business Park Zone; Business – Light Industry Zone and Business – Heavy Industry Zone; or
 - (b) sites within the Open Space – Conservation Zone; Open Space – Informal Recreation Zone; Open Space – Sports and Active Recreation Zone; Open Space – Civic Spaces Zone; or the Open Space – Community Zone:
 - (i) that are greater than 2000m²;
 - (ii) where that part of the site in (i) is greater than 20 metres in width, when measured perpendicular to the shared boundary; and
 - (iii) Where an open space comprises multiple sites but has a common open space zoning, the entire zone will be treated as a single site for the purpose of applying the standards listed below.
- (5) Standard H6.6.7(2) and (3) above do not apply to site boundaries where there is an existing common wall between two buildings on adjacent sites or where a common wall is proposed.

- (6) Where the boundary forms part of a legal right of way, entrance strip, access site or pedestrian access way, the control in Standard H6.6.7(2) applies from the farthest boundary of that legal right of way, entrance strip, access site or pedestrian access way.
- (7) A gable end, dormer or roof may project beyond the recession plane where that portion beyond the recession plane is:
 - (a) no greater than 1.5m² in area and no greater than 1m in height; and
 - (b) no greater than 2.5m cumulatively in length measured along the edge of the roof, as shown in Figure H6.6.7.3 Exceptions for gable ends, dormers and roof projections below.

Figure H6.6.7.3 Exceptions for gable ends, dormers and roof projections



- (8) No more than two gable end, dormer or roof projections are allowed for every 6m length of site boundary.
- (9) The building setback must be a stepped profile and must not be a literal regression of the recession plane.
- (10) This alternative height in relation to boundary standard does not apply to existing or proposed internal boundaries within a site.

H6.6.8. Height in relation to boundary adjoining lower intensity zones

Purpose: to manage the height and bulk of buildings at boundaries to maintain a reasonable level of sunlight access and minimise visual dominance effects to immediate neighbours within lower intensity zones and small public open spaces.

- (1) Where sites in the Residential – Terrace Housing and Apartment Buildings Zone adjoin:

H6 Residential – Terrace Housing and Apartment Buildings Zone

- (a) a site in the Residential – Single House Zone; or
- (b) a site in the Residential – Mixed Housing Suburban Zone; or
- (c) sites less than 2000m² in the Open Space – Conservation Zone; Open Space – Informal Recreation Zone; Open Space – Sports and Active Recreation Zone; Open Space – Civic Spaces Zone; or the Open Space – Community Zone except Standard H6.6.8(1)(c) does not apply to the site at 16 Spring Street, Freemans Bay (Lot DP 58529);

then buildings must not project beyond a 45 degree recession plane measured from a point 2.5m vertically above ground level along the boundary of the site in the Residential – Terrace Housing and Apartment Buildings Zone with the zone listed in Standard H6.6.8(1)(a) – (c) above.

- (2) Where sites in the Residential – Terrace Housing and Apartment Buildings Zone adjoin sites in the Residential – Mixed Housing Urban Zone then Standard H5.6.5 Height in relation to boundary in the Residential – Mixed Housing Urban Zone or Standard H5.6.6 Alternative height in relation to boundary in the Residential – Mixed Housing Urban Zone applies to the boundary of the site in the Residential – Terrace Housing and Apartment Buildings Zone that adjoins the Residential – Mixed Housing Urban Zone.
- (3) The building setback must be a stepped profile and must not be a literal regression of the recession plane.
- (4) Where the boundary forms part of a legal right of way, entrance strip or access site or pedestrian access way, the control in Standard H6.6.8(1) applies from the farthest boundary of that legal right of way, entrance strip, access site or pedestrian access way.
- (5) A gable end, dormer or roof may project beyond the recession plane where that portion beyond the recession plan is:
 - (a) no greater than 1.5m² in area and no greater than 1m in height; and
 - (b) no greater than 2.5m cumulatively in length measured along the edge of the roof.

H6.6.9. Yards

Purpose:

- to create an urban streetscape character and provide sufficient space for landscaping within the front yard;
- to maintain a reasonable standard of residential amenity for adjoining sites;
- to ensure buildings are adequately set back from lakes, streams and the coastal edge to maintain water quality and provide protection from natural hazards; and

- to enable buildings and services on the site or adjoining sites to be adequately maintained.
- (1) A building or parts of a building must be set back from the relevant boundary by the minimum depth listed in Table H6.6.9.1 Yards below.

Table H6.6.9.1 Yards

Yard	Minimum depth
Front	1.5m
Side	1m
Rear	1m
Riparian	10m from the edge of all other permanent and intermittent streams
Lakeside	30m
Coastal protection yard	10m, or as otherwise specified in Appendix 6 Coastal protection yard

- (2) Standard H6.6.9(1) does not apply to site boundaries where there is an existing common wall between two buildings on adjacent sites or where a common wall is proposed.

H6.6.10. Maximum impervious area

Purpose:

- to manage the amount of stormwater runoff generated by a development, particularly in relation to the capacity of the stormwater network and potential flood risks;
- to support the functioning of riparian yards, lakeside yards and coastal yards and water quality and ecology;
- to reinforce the building coverage and landscaped area standards; and
- to limit paved areas on a site to improve the site's appearance and cumulatively maintain amenity values in a neighbourhood.

(1) The maximum impervious area must not exceed 70 per cent of site area.

(2) The maximum impervious area within a riparian yard, a lakeside yard or a coastal protection yard must not exceed 10 per cent of the riparian yard, the lakeside yard or the coastal protection yard area.

H6.6.11. Building coverage

Purpose: to manage the extent of buildings on a site to achieve the planned urban character of buildings surrounded by open space.

(1) The maximum building coverage must not exceed 50 per cent of the net site area.

H6.6.12. Landscaped area

Purpose:

- to provide for quality living environments consistent with the planned urban built character of buildings surrounded by open space; and
- to create a landscaped urban streetscape character within the zone.

(1) The minimum landscaped area must be at least 30 per cent of the net site area.

H6.6.13. Outlook space

Purpose:

- to ensure a reasonable standard of visual privacy between habitable rooms of different buildings, on the same or adjacent sites;
- in combination with the daylight control, manage visual dominance effects within a site by ensuring that habitable rooms have an outlook and sense of space.

(1) An outlook space must be provided from the face of a building containing windows to a habitable room. Where the room has two or more external faces with windows the outlook space must be provided from the face with the largest area of glazing.

(2) The minimum dimensions for a required outlook space are as follows:

(a) a principal living room of a dwelling or main living and dining area within a boarding house or supported residential care must have a outlook space with a minimum dimension of 6m in depth and 4m in width; and

(b) a principal bedroom of a dwelling or a bedroom within a boarding house or supported residential care unit must have an outlook space with a minimum dimension of 3m in depth and 3m in width; and

(c) all other habitable rooms must have an outlook space with a minimum dimension of 1m in depth and 1m in width.

(3) The depth of the outlook space is measured at right angles to and horizontal from the window to which it applies.

(4) The width of the outlook space is measured from the centre point of the largest window on the building face to which it applies.

(5) The height of the outlook space is the same as the floor height, measured from floor to ceiling, of the building face to which the standard applies.

(6) Outlook spaces may be within the site, over a public street, or other public open space.

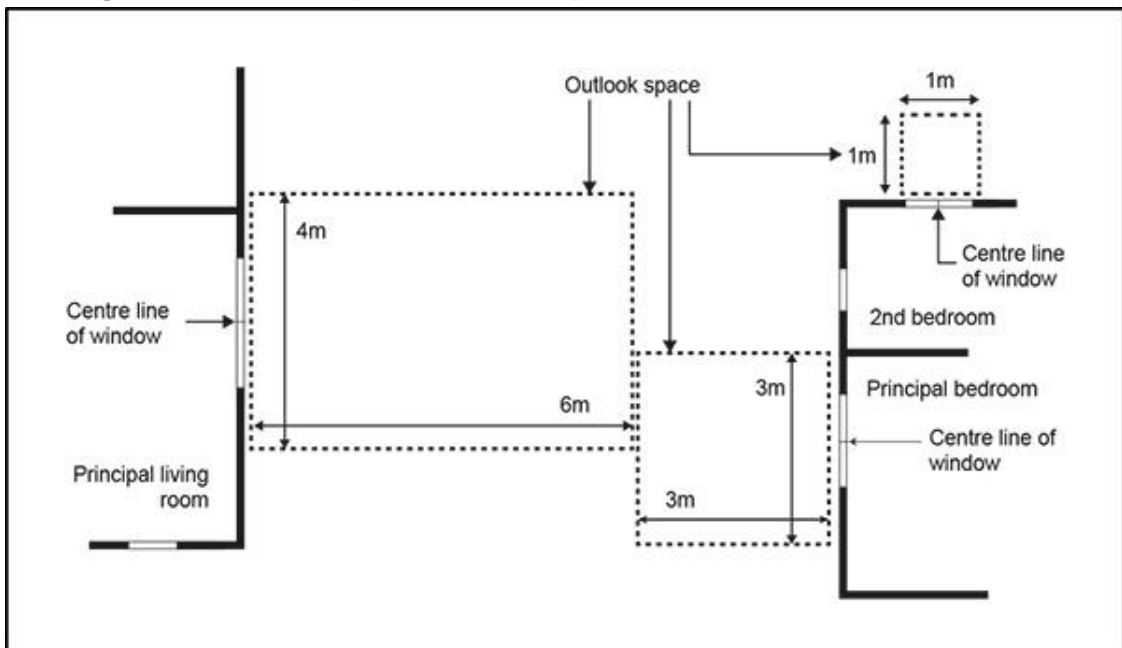
(7) Outlook spaces required from different rooms within the same building may overlap.

(8) Outlook spaces may overlap where they are on the same wall plane.

(9) Outlook spaces must:

- (a) be clear and unobstructed by buildings;
- (b) not extend over adjacent sites, except for where the outlook space is over a public street or public open space as outlined in H6.6.13(6) above; and
- (c) not extend over an outlook spaces or outdoor living space required by another dwelling.

Figure H6.6.13.1 Required outlook space



H6.6.14. Daylight

Purpose:

- to ensure adequate daylight for living areas and bedrooms in dwellings, supported residential care and boarding houses; and
- in combination with the outlook control, manage visual dominance effects within a site by ensuring that habitable rooms have an outlook and sense of space, particularly at upper building levels.

(1) Where the proposed building and/or opposite building contains principal living room or bedroom windows in a dwelling, or main living/dining area or bedroom windows in supported residential care and boarding houses, then:

- a) that part of a building higher than 3m opposite buildings within the same site is limited in height to twice the horizontal distance between the two buildings for a length defined by a 55 degree arc from the centre of the window. The arc may be swung to within 35 degrees of the plane of the wall containing the window as shown in Figure H6.6.14.2 Required setbacks for daylight below.

Refer to Table H6.6.14.1 Maximum height of the part of a building within a site facing a principal living room or bedroom window within the same site; Figure H6.6.14.1 Required setbacks for daylight and Figure H6.6.14.2 Required setbacks for daylight below.

- (2) Where the principal living room, main living/dining area or bedroom has two or more external faces with windows, Standard H6.6.14(1) above will apply to the largest window.
- (3) Where the window is above ground level, the height restriction is calculated from the floor level of the room containing the window.
- (4) Standard H6.6.14(1), (2) and (3) do not apply to development opposite the first 5m of a building which faces the street, measured from the front corner of the building.

Table H6.6.14.1 Maximum height of that part of a building within a site facing a principal living room or bedroom window within the same site

Distance of the building from the largest principal living room, living/dining room or bedroom window (x)	Maximum height of the defined portion of wall opposite an identified window	Length of wall restricted if 55 degree arc is perpendicular to window (y) (rounded)
1.0m	2.0m	1.0m
1.5m	3.0m	1.5m
2.0m	4.0m	2.0m
2.5m	5.0m	2.5m
2.7m	5.4m	2.7m
3.0m	6.0m	3.0m
3.5m	7.0m	3.5m
4.0m	8.0m	4.0m
4.5m	9.0m	4.5m
5.0m	10.0m	5.0m
5.5m	11.0m	5.5m
6.0m	12.0m	6.0m
7.0m	14.0m	7.0m
7.5m	15.0m	7.5m
8.0m	16.0m	8.0m
8.5m	17.0m	8.5m
9.0m	18.0m	9.0m
9.5m	19.0m	9.5m
10.0m	20.0m	10.0m
10.5m	21.0m	10.5m
11.0m	22.0m	11.0m

Distance of the building from the largest principal living room, living/dining room or bedroom window (x)	Maximum height of the defined portion of wall opposite an identified window	Length of wall restricted if 55 degree arc is perpendicular to window (y) (rounded)
11.25m	22.5m	11.25m

Figure H6.6.14.1 Required setbacks for daylight

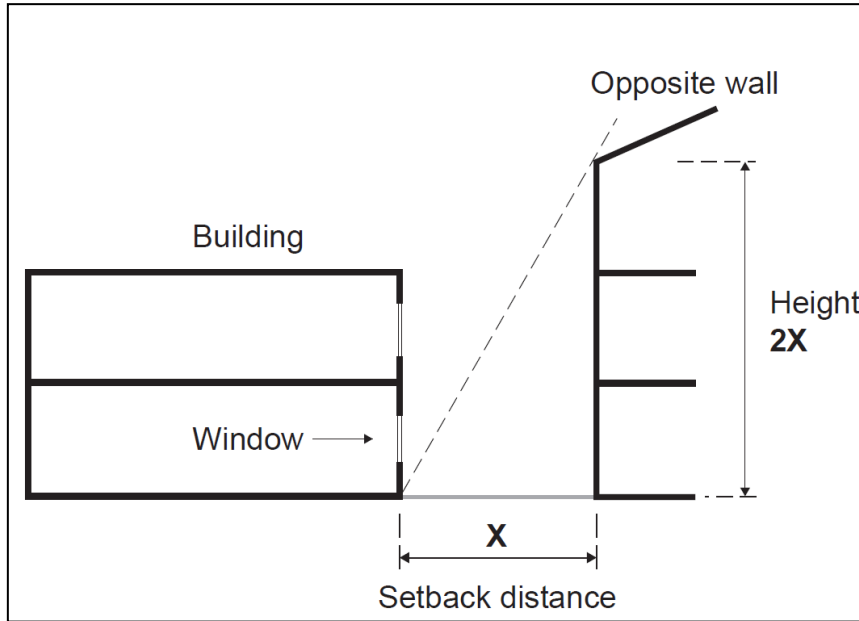
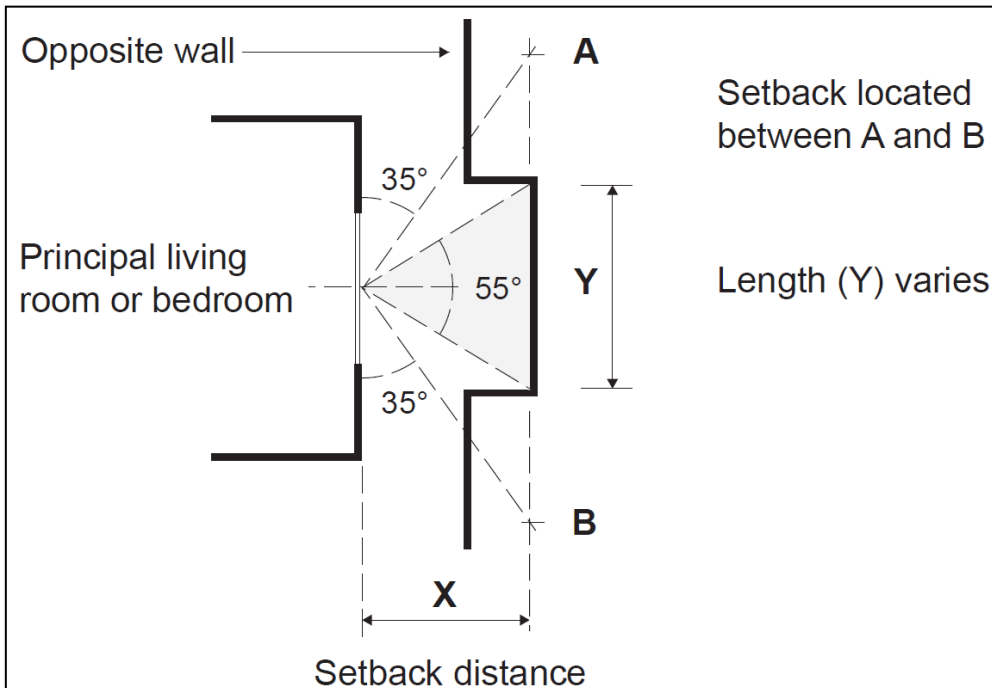


Figure H6.6.14.2 Required setbacks for daylight

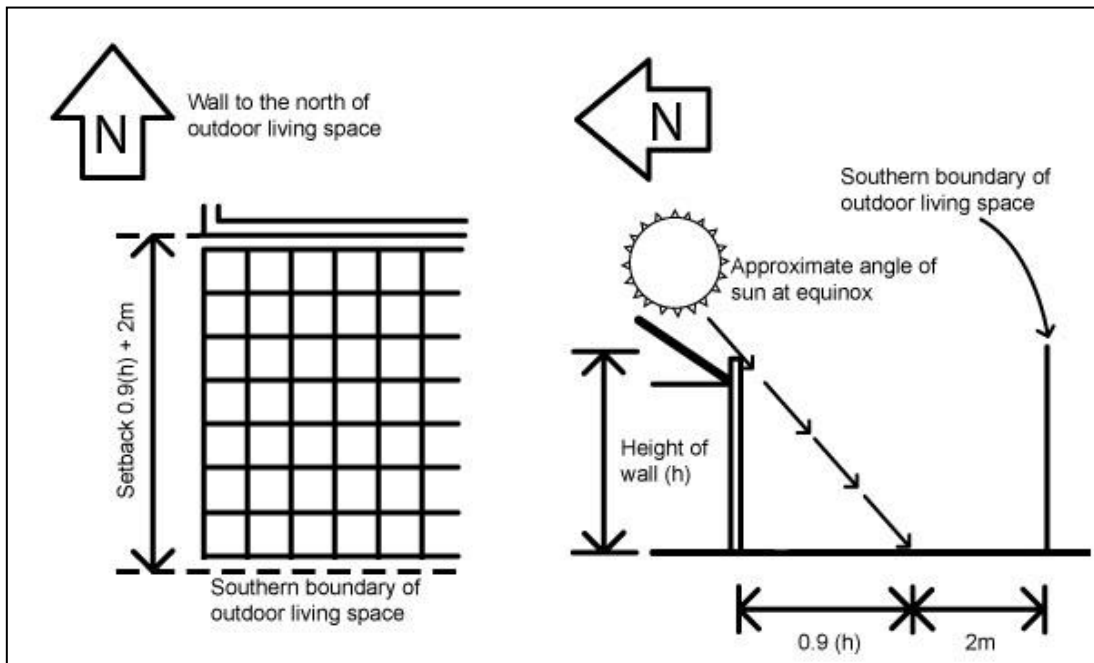


H6.6.15. Outdoor living space

Purpose: to provide dwellings, supported residential care and boarding houses with outdoor living space that is of a functional size and dimension, has access to sunlight, and is directly accessible from the principal living room, dining room or kitchen and is separated from vehicle access and manoeuvring areas.

- (1) A dwelling, supported residential care or boarding house at ground floor level, must have an outdoor living space that is at least 20m² that comprises ground floor and/or balcony/roof terrace space that:
 - (a) where located at ground level has no dimension less than 4m and has a gradient not exceeding 1 in 20; and/or
 - (b) where provided in the form of balcony, patio or roof terrace is at least 5m² and has a minimum dimension of 1.8m; and
 - (c) is directly accessible from the dwelling, supported residential care unit or boarding house; and
 - (d) is free of buildings, parking spaces, servicing and manoeuvring areas.
- (2) A dwelling, supported residential care or boarding house located above ground floor level must have an outdoor living space in the form of a balcony, patio or roof terrace that:
 - (a) is at least 5m² for studio and one-bedroom dwellings and has a minimum dimension of 1.8m; or
 - (b) is at least 8m² for two or more bedroom dwellings and has a minimum dimension of 1.8m; and
 - (c) is directly accessible from the dwelling, supported residential care unit or boarding house; and
 - (d) except that, a balcony or roof terrace is not required where the net internal floor area of a dwelling is at least 35m² for a studio and 50m² for a dwelling with one or more bedrooms.
- (3) Where outdoor living space required by Standard H6.6.15(1) or Standard H6.6.15(2) above is provided at ground level, and is located south of any building located on the same site, the southern boundary of that space must be separated from any wall or building by at least 2m + 0.9(h), where (h) is the height of the wall or building as shown in the Figure H6.6.15.1 Location of outdoor living space below. For the purpose of this standard south is defined as between 135 and 225 degrees.

Figure H6.6.15.1 Location of outdoor living space



H6.6.16. Front, side and rear fences and walls

Purpose: to enable fences and walls to be constructed on a Front, side or rear boundary or within a front, side, rear, riparian, coastal protection or lakeside yard to a height sufficient to:

- provide privacy for dwellings while enabling opportunities for passive surveillance of the street or adjoining public place;
- minimise visual dominance effects to immediate neighbours and the street or adjoining public place.

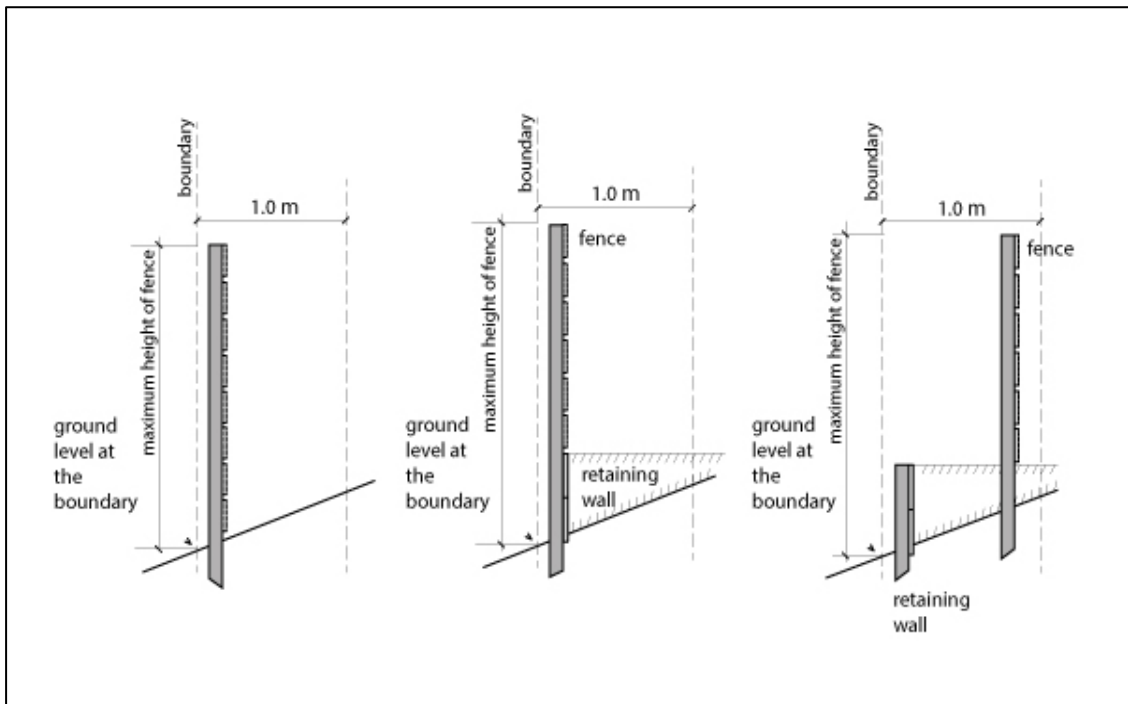
(1) Fences or walls or a combination of these structures (whether separate or joined together) must not exceed the height specified below, measured from the ground level at the boundary:

(a) Within the front yard, either:

- (i) 1.4m in height, or
- (ii) 1.8m in height for no more than 50 per cent of the site frontage and 1.4m for the remainder, or
- (iii) 1.8m in height if the fence is at least 50 per cent visually open as viewed perpendicular to the front boundary.

(b) Within side, rear, coastal protection, lakeside or riparian yards: 2m.

Figure H.6.6.16.1 Measurement of fence height



H6.6.17. Minimum dwelling size

Purpose: to ensure dwellings are functional and of a sufficient size to provide for the day to day needs of residents, based on the number of occupants the dwelling is designed to accommodate.

- (1) Dwellings must have a minimum net internal floor area as follows:
 - (a) 30m² for studio dwellings.
 - (b) 45m² for one or more bedroom dwellings.

H6.6.18. Rainwater tanks

Purpose: To enable rainwater tank installation while maintaining amenity values.

- (1) Rainwater tanks must not be located:
 - (a) in a riparian, lakeside or coastal protection yard unless less than 1m in height or wholly below ground level;
 - (b) in a front yard or forward of any street facing or private vehicle access facing building façade, unless they are at least 1.5m from the front boundary and are a maximum height of 1 m.
- (2) Clause b) shall not apply to a rear service lane where the dwellings have frontage to a public street.
- (3) Rainwater tanks located within a required outlook space area must be no higher than 1m.

- (4) Rainwater tanks located within the required minimum 20m² outdoor living space with minimum dimensions of 4m must be installed wholly underground.
- (5) Any overflow from the rainwater tank must discharge to the existing authorised stormwater system for the site.

Note: If there is a new stormwater discharge or diversion created Chapter E8.6.2.1 and Building Act requirements must be complied with.

Note: Building Act regulations apply. A building consent may be required under the Building Act.

H6.7. Assessment – controlled activities

There are no controlled activities in this zone.

H6.8. Assessment – restricted discretionary activities

H6.8.1. Matters of discretion

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

- (1) for supported residential care accommodating greater than 10 people per site inclusive of staff and residents; boarding houses accommodating greater than 10 people per site inclusive of staff and residents; visitor accommodation accommodating greater than 10 people per site inclusive of staff and visitors; dairies up to 100m² gross floor area per site; restaurants and cafes up to 100m² gross floor area per site; care centres accommodating greater than 10 people per site excluding staff; community facilities; and healthcare facilities up to 200m² gross floor area per site:
 - (a) infrastructure and servicing;
 - (b) the effects on the neighbourhood character, residential amenity and the surrounding residential area from all of the following:
 - (i) building intensity, scale, location, form and appearance;
 - (ii) traffic;
 - (iii) location and design of parking and access; and
 - (iv) noise, lighting and hours of operation.
- (2) for dwellings:
 - (a) the effects on the neighbourhood character, residential amenity, safety and the surrounding residential area from all of the following:
 - (i) building intensity, scale, location, form and appearance;
 - (ii) traffic; and
 - (iii) location and design of parking and access.

(b) all of the following standards:

- (i) Standard H6.6.10 Maximum impervious areas;
- (ii) Standard H6.6.11 Building coverage;
- (iii) Standard H6.6.12 Landscaped area;
- (iv) Standard H6.6.13 Outlook space;
- (v) Standard H6.6.14 Daylight;
- (vi) Standard H6.6.15 Outdoor living space;
- (vii) Standard H6.6.16 Front, side and rear fences and walls; and
- (viii) Standard H6.6.17 Minimum dwelling size

(c) Infrastructure and servicing

(3) for integrated residential development:

(a) the effects on the neighbourhood character, residential amenity, safety, and the surrounding residential area from all of the following:

- (i) building intensity, scale, location, form and appearance;
- (ii) traffic;
- (iii) location and design of parking and access; and
- (iv) noise, lighting and hours of operation.

(b) all of the following standards:

- (i) Standard H6.6.10 Maximum impervious areas;
- (ii) Standard H6.6.11 Building coverage;
- (iii) Standard H6.6.12 Landscaped area;
- (iv) Standard H6.6.13 Outlook space;
- (v) Standard H6.6.14 Daylight;
- (vi) Standard H6.6.15 Outdoor living space;
- (vii) Standard H6.6.16 Front, side and rear fences and walls; and
- (viii) Standard H6.6.17 Minimum dwelling size

(c) Infrastructure and servicing.

(4) for buildings that do not comply with Standard H6.6.5 Building height; Standard H6.6.6 Height in relation to boundary; Standard H6.6.7 Alternative height in relation to boundary; Standard H6.6.8 Height in relation to boundary adjoining lower density zones; Standard H6.6.9 Yards; Standard H6.6.10 Maximum impervious areas; Standard H6.6.11 Building coverage; Standard H6.6.12 Landscaped area; Standard H6.6.13 Outlook space; Standard H6.6.14 Daylight; Standard H6.6.15 Outdoor living space; Standard H6.6.16

Front, side and rear fences and walls; Standard H6.6.17 Minimum dwelling size:

- (a) any policy which is relevant to the standard;
 - (b) the purpose of the standard;
 - (c) the effects of the infringement of the standard;
 - (d) the effects on the urban built character of the zone;
 - (e) the effects on the amenity of neighbouring sites;
 - (f) the effects of any special or unusual characteristic of the site which is relevant to the standard;
 - (g) the characteristics of the development;
 - (h) any other matters specifically listed for the standard; and
 - (i) where more than one standard will be infringed, the effects of all infringements.
- (5) For new buildings and additions to buildings which do not comply with H6.6.6 Height in relation to boundary but comply with H6.6.7 Alternative height in relation to boundary:
- (a) Visual dominance effects;
 - (b) Attractiveness and safety of the street; and
 - (c) Overlooking and privacy.

H6.8.2. Assessment criteria

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

- (1) for supported residential care accommodating greater than 10 people per site inclusive of staff and residents; boarding houses accommodating greater than 10 people per site inclusive of staff and residents; visitor accommodation accommodating greater than 10 people per site inclusive of staff and visitors; dairies up to 100m² gross floor area per site; restaurants and cafes up to 100m² gross floor area per site; care centres accommodating greater than 10 people per site excluding staff; community facilities; and healthcare facilities up to 200m² gross floor area per site:
 - (a) infrastructure and servicing:
 - (i) Whether there is adequate capacity in the existing stormwater and public reticulated water supply and wastewater network to service the proposed development.

- (ii) Where adequate network capacity is not available, whether adequate mitigation is proposed.

(b) building intensity, scale, location, form and appearance:

- (i) whether the intensity and scale of the activity, the building location, form and appearance is compatible with the character and residential amenity provided for within the zone and compatible with the surrounding residential area.

(c) traffic:

- (i) whether the activity avoids or mitigates high levels of additional non-residential traffic on local roads.

(d) location and design of parking and access:

- (i) whether adequate parking and access is provided or required.

(e) noise, lighting and hours of operation:

- (i) whether noise and lighting and the hours of operation of the activity avoids, remedies or mitigates adverse effects on the residential amenity of surrounding properties, by:
 - locating noisy activities away from neighbouring residential boundaries; and
 - screening or other design features; and
 - controlling the hours of operation and operational measures.

(2) for dwellings:

- (a) the extent to which or whether the development achieves the purpose outlined in the following standards or what alternatives are provided that result in the same or a better outcome:

- (i) Standard H6.6.10 Maximum impervious areas;
- (ii) Standard H6.6.11 Building coverage;
- (iii) Standard H6.6.12 Landscaped area;
- (iv) Standard H6.6.13 Outlook space;
- (v) Standard H6.6.14 Daylight;
- (vi) Standard H6.6.15 Outdoor living space; and
- (vii) Standard H6.6.16 Front, side and rear fences and walls; and
- (viii) Standard H6.6.17 Minimum dwelling size

- (b) refer to Policy H6.3(1);

- (c) refer to Policy H6.3(2);

- (d) refer to Policy H6.3(3);
- (e) refer to Policy H6.3(4);
- (f) refer to Policy H6.3(5);
- (g) refer to Policy H6.3(6);
- (h) refer to Policy H6.3(7); and
- (i) refer to Policy H6.3(8).
- (j) infrastructure and servicing:
 - (i) Whether there is adequate capacity in the existing stormwater and public reticulated water supply and wastewater network to service the proposed development.
 - (ii) Where adequate network capacity is not available, whether adequate mitigation is proposed.
- (k) the extent to which the necessary storage and waste collection and recycling facilities is provided in locations conveniently accessible and screened from streets and public open spaces.
- (l) traffic:
 - (i) the extent to which the activity avoids or mitigates adverse effects on the safe and efficient operation of the immediate transport network.
 - (ii) H6.8.2 (2)(l)(i) is not considered where the development is located adjacent to a Business – City Centre Zone, Business – Metropolitan Centre Zone or Business – Town Centre Zone.
- (3) for integrated residential development:
 - (a) the extent to which or whether the development achieves the purpose outlined in the following standards or what alternatives are provided that result in the same or a better outcome:
 - (i) Standard H6.6.10 Maximum impervious areas;
 - (ii) Standard H6.6.11 Building coverage;
 - (iii) Standard H6.6.12 Landscaped area;
 - (iv) Standard H6.6.13 Outlook space;
 - (v) Standard H6.6.14 Daylight;
 - (vi) Standard H6.6.15 Outdoor living space;
 - (vii) Standard H6.6.16 Front, side and rear fences and walls; and
 - (viii) Standard H6.6.17 Minimum dwelling size (excluding retirement villages).

- (b) refer to Policy H6.3(1);
 - (c) refer to Policy H6.3(2);
 - (d) refer to Policy H6.3(3);
 - (e) refer to Policy H6.3(4);
 - (f) refer to Policy H6.3(5);
 - (g) refer to Policy H6.3(6);
 - (h) refer to Policy H6.3(7);
 - (i) refer to Policy H6.3(8); and
 - (j) infrastructure and servicing:
 - (i) Whether there is adequate capacity in the existing stormwater and public reticulated water supply and wastewater network to service the proposed development.
 - (ii) Where adequate network capacity is not available, whether adequate mitigation is proposed.
 - (k) traffic:
 - (i) the extent to which the activity avoids or mitigates adverse effects on the safe and efficient operation of the immediate transport network.
 - (ii) H6.8.2 (3)(k)(i) is not considered where the development is located adjacent to a Business – City Centre Zone, Business – Metropolitan Centre Zone or Business – Town Centre Zone.
- (4) For new buildings and additions to buildings which do not comply with H6.6.6 Height in relation to boundary but comply with H6.6.7 Alternative height in relation to boundary:

Visual dominance

- (a) The extent to which buildings as viewed from the side or rear boundaries of adjoining residential sites or developments are designed to reduce visual dominance effects, taking into account:
 - (i) the planned urban built character of the zone;
 - (ii) the location, orientation and design of development; and
 - (iii) the physical characteristics of the site and the neighbouring site.

Attractiveness and safety of the street

- (b) The extent to which those parts of buildings located closest to the front boundary achieve attractive and safe streets by:
 - (i) providing doors, windows and balconies facing the street;

- (ii) optimising front yard landscaping;
- (iii) providing safe pedestrian access to buildings from the street; and
- (iv) minimising the visual dominance of garage doors as viewed from the street.

Overlooking and privacy

- (c) The extent to which direct overlooking of a neighbour’s habitable room windows and outdoor living space is minimised to maintain a reasonable standard of privacy, including through the design and location of habitable room windows, balconies or terraces, setbacks, or screening.

(5) for building height:

- (a) refer to Policy H6.3(1);
- (b) refer to Policy H6.3(2);
- (c) refer to Policy H6.3(4); and
- (d) refer to Policy H6.3(5).

(6) for height in relation to boundary infringements:

- (a) refer to Policy H6.3(1);
- (b) refer to Policy H6.3(2);
- (c) refer to Policy H6.3(4);
- (d) refer to Policy H6.3(5); and
- (e) refer to Policy H6.3(6).

(7) for alternative height in relation to boundary infringements:

- (a) refer to Policy H6.3(1);
- (b) refer to Policy H6.3(2);
- (c) refer to Policy H6.3(3);
- (d) refer to Policy H6.3(4);
- (e) refer to Policy H6.3(5); and
- (f) refer to Policy H6.3(6).

(8) for height in relation to boundary adjoining lower density zones:

- (a) refer to Policy H6.3(1);
- (b) refer to Policy H6.3(2);
- (c) refer to Policy H6.3(4);

(d) refer to Policy H6.3(5); and

(e) refer to Policy H6.3(6).

(9) for yards:

(a) refer to Policy H6.3(1);

(b) refer to Policy H6.3(2);

(c) refer to Policy H6.3(4); and

(d) refer to Policy H6.3(5).

(10) for maximum impervious areas:

(a) refer to Policy H6.3(8).

(11) for building coverage:

(a) refer to Policy H6.3(1);

(b) refer to Policy H6.3(2);

(c) refer to Policy H6.3(4);

(d) refer to Policy H6.3(5); and

(e) refer to Policy H6.3(6).

(12) for landscaped area:

(a) refer to Policy H6.3(1);

(b) refer to Policy H6.3(2);

(c) refer to Policy H6.3(4); and

(d) refer to Policy H6.3(5).

(13) for outlook space:

(a) refer to Policy H6.3(1);

(b) refer to Policy H6.3(2);

(c) refer to Policy H6.3(4);

(d) refer to Policy H6.3(5); and

(e) refer to Policy H6.3(6).

(14) for daylight:

(a) refer to Policy H6.3(2);

(b) refer to Policy H6.3(4);

(c) refer to Policy H6.3(5); and

(d) refer to Policy H6.3(6).

(15) for outdoor living space:

(a) refer to Policy H6.3(1);

(b) refer to Policy H6.3(2);

(c) refer to Policy H6.3(5);

(d) refer to Policy H6.3(6); and

(e) refer to Policy H6.3(7).

(16) For front, side and rear fences and walls:

(a) refer to Policy H6.3(2);

(b) refer to Policy H6.3(3);

(c) refer to Policy H6.3(5); and

(d) refer to Policy H6.3(6).

(17) For minimum dwelling size:

(a) Policy H6.3(6)

H6.9. Special information requirements

There are no special information requirements in this zone.

H13. Business – Mixed Use Zone

H13.1. Zone description

The Business – Mixed Use Zone is typically located around centres and along corridors served by public transport. It acts as a transition area, in terms of scale and activity, between residential areas and the Business – City Centre Zone, Business – Metropolitan Centre Zone and Business – Town Centre Zone. It also applies to areas where there is a need for a compatible mix of residential and employment activities.

The zone provides for residential activity as well as predominantly smaller scale commercial activity that does not cumulatively affect the function, role and amenity of centres. The zone does not specifically require a mix of uses on individual sites or within areas.

There is a range of possible building heights depending on the context. Provisions typically enable heights up to four storeys. Greater height may be enabled in areas close to the city centre, metropolitan centres and larger town centres.

Some street frontages within the zone are subject to a General Commercial Frontage Control.

New development within the zone requires resource consent in order to ensure that it is designed to a high standard which enhances the quality of streets within the area and public open spaces.

H13.2. Objectives

General objectives for all centres, Business – Mixed Use Zone, Business – General Business Zone and Business – Business Park Zone

- (1) A strong network of centres that are attractive environments and attract ongoing investment, promote commercial activity, and provide employment, housing and goods and services, all at a variety of scales.
- (2) Development is of a form, scale and design quality so that centres are reinforced as focal points for the community.
- (3) Development positively contributes towards planned future form and quality, creating a sense of place.
- (4) Business activity is distributed in locations, and is of a scale and form, that:
 - (a) provides for the community's social and economic needs;
 - (b) improves community access to goods, services, community facilities and opportunities for social interaction; and
 - (c) manages adverse effects on the environment, including effects on infrastructure and residential amenity.
- (5) A network of centres that provides:

H13 Business – Mixed Use Zone

- (a) a framework and context to the functioning of the urban area and its transport network, recognising:
 - (i) the regional role and function of the city centre, metropolitan centres and town centres as commercial, cultural and social focal points for the region, sub-regions and local areas; and
 - (ii) local centres and neighbourhood centres in their role to provide for a range of convenience activities to support and serve as focal points for their local communities.
- (b) a clear framework within which public and private investment can be prioritised and made; and
- (c) a basis for regeneration and intensification initiatives.

Business – Mixed Use Zone objectives

- (6) Moderate to high intensity residential activities and employment opportunities are provided for, in areas in close proximity to, or which can support the City Centre Zone, Business – Metropolitan Centre Zone, Business – Town Centre Zone and the public transport network.
- (7) Activities within the zone do not compromise the function, role and amenity of the City Centre Zone, Business – Metropolitan Centre Zone, Business – Town Centre Zone and Business – Local Centre Zone.
- (8) A mix of compatible residential and non-residential activities is encouraged.
- (9) Business – Mixed Use Zone zoned areas have a high level of amenity.

H13.3. Policies

General policies for all centres, Business – Mixed Use Zone, Business – General Business Zone and Business – Business Park Zone

- (1) Reinforce the function of the city centre, metropolitan centres and town centres as the primary location for commercial activity, according to their role in the hierarchy of centres.
- (2) Enable an increase in the density, diversity and quality of housing in the centre zones and Business – Mixed Use Zone while managing any reverse sensitivity effects including from the higher levels of ambient noise and reduced privacy that may result from non-residential activities.
- (3) Require development to be of a quality and design that positively contributes to:
 - (a) planning and design outcomes identified in this Plan for the relevant zone;
 - (b) the visual quality and interest of streets and other public open spaces; and

- (c) pedestrian amenity, movement, safety and convenience for people of all ages and abilities.
- (4) Encourage universal access for all development, particularly medium to large scale development.
 - (5) Require large-scale development to be of a design quality that is commensurate with the prominence and visual effects of the development.
 - (6) Encourage buildings at the ground floor to be adaptable to a range of uses to allow activities to change over time.
 - (7) Require at grade parking to be located and designed in such a manner as to avoid or mitigate adverse effects on pedestrian amenity and the streetscape.
 - (8) Require development adjacent to residential zones and the Special Purpose – School Zone and Special Purpose – Māori Purpose Zone to maintain the amenity values of those areas, having specific regard to dominance, overlooking and shadowing.
 - (9) Discourage activities, which have noxious, offensive, or undesirable qualities from locating within the centres and mixed use zones, while recognising the need to retain employment opportunities.
 - (10) Discourage dwellings at ground floor in centre zones and enable dwellings above ground floor in centre zones.
 - (11) Require development to avoid, remedy or mitigate adverse wind and glare effects on public open spaces, including streets, and shading effects on open space zoned land.
 - (12) Recognise the functional and operational requirements of activities and development.
 - (13) In identified locations within the centres zones, Business – Mixed Use Zone, Business – General Business Zone and Business – Business Park Zone enable greater building height than the standard zone height, having regard to whether the greater height:
 - (a) is an efficient use of land;
 - (b) supports public transport, community infrastructure and contributes to centre vitality and vibrancy;
 - (c) considering the size and depth of the area, can be accommodated without significant adverse effects on adjacent residential zones; and
 - (d) is supported by the status of the centre in the centres hierarchy, or is adjacent to such a centre.

- (14) In identified locations within the centre zones, Business – Mixed Use Zone, Business – General Business Zone and Business – Business Park Zone, reduce building height below the standard zone height, where the standard zone height would have significant adverse effects on identified special character, identified landscape features, or amenity.
- (15) In areas surrounding the city centre, recognising their proximity and accessibility to the Business – City Centre Zone and Business – Metropolitan Centre Zone at Newmarket, provide opportunities for substantial office activities in the Business – Local Centre Zone and Business – Mixed Use Zone.

Business – Mixed Use Zone policies

- (16) Locate the Business – Mixed Use Zone in suitable locations within a close walk of the City Centre Zone, Business – Metropolitan Centre Zone and Business – Town Centre Zone or the public transport network.
- (17) Provide for a range of commercial activities that will not compromise the function, role and amenity of the City Centre Zone, Business – Metropolitan Centre Zone, Business – Town Centre Zone and Business – Local Centre Zone, beyond those effects ordinarily associated with trade effects on trade competitors.
- (18) Enable the development of intensive residential activities.
- (19) Require those parts of buildings with frontages subject to the General Commercial Frontage Control to achieve a reasonable level of street activation, building continuity along the frontage, pedestrian amenity and safety and visual quality.
- (20) Promote and manage development to a standard that:
 - (a) recognises the moderate scale, intensity and diversity of business, social and cultural activities provided in the zone;
 - (b) recognises the increases in residential densities provided in the zone; and
 - (c) avoids significant adverse effects on residents.
- (21) Require activities adjacent to residential zones to avoid, remedy or mitigate adverse effects on amenity values of those areas.
- (22) Restrict maximum impervious area within a riparian yard in order to ensure that adverse effects on water quality, water quantity and amenity values are avoided or mitigated.

H13.4. Activity table

Table H13.4.1 Activity table specifies the activity status of land use and development activities in the Business – Mixed Use Zone pursuant to section 9(3) of the Resource Management Act 1991.

Table H13.4.1 Activity table

Activity		Activity status
General		
(A1)	Activities not provided for	NC
Use		
Accommodation		
(A2)	Dwellings	P
(A3)	Conversion of a building or part of a building to dwellings, residential development, visitor accommodation or boarding houses	RD
(A4)	Integrated residential development	P
(A5)	Supported residential care	P
(A6)	Visitor accommodation and boarding houses	P
Commerce		
(A7)	Commercial services	P
(A8)	Conference facilities	D
(A9)	Department stores	D
(A10)	Drive-through restaurants	P
(A11)	Entertainment facilities	P
(A12)	Cinemas	NC
(A13)	Food and beverage	P
(A14)	Garden centres	D
(A15)	Marine retail	D
(A16)	Motor vehicle sales	D
(A17)	Offices within the Centre Fringe Office Control as shown on the planning maps	P
(A18)	Offices up to 500m ² gross floor area per site	P
(A19)	Offices greater than 500m ² gross floor area per site	D
(A20)	Retail up to 200m ² gross floor area per tenancy	P
(A21)	Retail greater than 200m ² gross floor area per tenancy	D
(A22)	Service stations	RD
(A23)	Supermarkets up to 450m ² gross floor area per tenancy	P
(A24)	Supermarkets exceeding 450m ² and up to 2000m ² gross floor area per tenancy	RD
(A25)	Supermarkets greater than 2000m ² gross floor area per tenancy	D

H13 Business – Mixed Use Zone

Activity		Activity status
(A26)	Trade suppliers	D
Community		
(A27)	Artworks	P
(A28)	Care centres	P
(A29)	Community facilities	P
(A30)	Education facilities	P
(A31)	Emergency services	RD
(A32)	Healthcare facilities	P
(A33)	Hospitals	D
(A34)	Justice facilities	D
(A35)	Recreation facility	P
(A36)	Tertiary education facilities	P
Industry		
(A37)	Industrial activities	NC
(A38)	Industrial laboratories	P
(A39)	Light manufacturing and servicing	P
(A40)	Repair and maintenance services	P
(A41)	Storage and lock-up facilities	D
(A42)	Waste management facilities	NC
(A43)	Warehousing and storage	P
Mana Whenua		
(A44)	Marae complex	P
Development		
(A45)	New buildings	RD
(A46)	Demolition of buildings	P
(A47)	Alterations to building facades that are less than 25m ²	P
(A48)	Additions to buildings that are less than: (a) 25 per cent of the existing gross floor area of the building; or (b) 250m ² whichever is the lesser	P
(A49)	Internal alterations to buildings	P
(A50)	Additions and alterations to buildings not otherwise provided for	RD

H13.5. Notification

- (1) Any application for resource consent for an activity listed in Table H13.4.1 Activity table above will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.

- (2) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule [C1.13\(4\)](#).
- (3) Any application for resource consent for the following activity will be considered without public or limited notification or the need to obtain the written approval of affected parties unless the Council decides that special circumstances exist under section 95A(9) of the Resource Management Act 1991:
 - (a) Development which does not comply with Standard H13.6.10 Minimum dwelling size.

H13.6. Standards

All permitted and restricted discretionary activities in Table H13.4.1 Activity table must comply with the following standards.

H13.6.0 Activities within 30m of a residential zone

- (1) The following activities are restricted discretionary activities where they are located within 30m of a residential zone and are listed as a permitted activity in the activity table:
 - (a) bars and taverns;
 - (b) drive-through restaurants;
 - (c) outdoor eating areas accessory to restaurants;
 - (d) entertainment facilities;
 - (e) child care centres; and
 - (f) animal breeding and boarding.

This standard only applies to those parts of the activities subject to the application that are within 30m of the residential zone.

H13.6.1. Building height

Purpose:

- manage the effects of building height;
- manage shadowing effects of building height on public open space, excluding streets;
- manage visual dominance effects;
- allow an occupiable height component to the height limit, and an additional height for roof forms that enables design flexibility, to provide variation and interest in building form when viewed from the street;
- enable greater height in areas identified for intensification; and

- provide for variations to the standard zone height through the Height Variation Control, to recognise the character and amenity of particular areas and provide a transition in building scale to lower density zones.

(1) Buildings must not exceed the height in metres specified in Table H13.6.1.1 below, unless otherwise specified in the Height Variation Control on the planning maps.

Table H13.6.1.1 Building height

Occupiable building height	Height for roof form	Total building height
16m	2m	18m

(2) If the site is subject to the Height Variation Control, buildings must not exceed the height in metres, as shown in Table H13.6.1.2 below and for the site on the planning maps.

(3) Any part of a building greater than the occupiable building height is to be used only for roof form, roof terraces, plant and other mechanical and electrical equipment.

Table H13.6.1.2 Total building height shown in the Height Variation Control on the planning maps

Occupiable building height	Height for roof form	Total building height shown on Height Variation Control on the planning maps
Same as on the planning maps	NA	Less than or equal to 11m
11m	2m	13m
16m	2m	18m
19m	2m	21m
25m	2m	27m
Same as on the planning maps	NA	Exceeding 27m

H13.6.2. Height in relation to boundary

Purpose:

- manage the effects of building height;
- allow reasonable sunlight and daylight access to public open space excluding streets, and to nearby sites;
- manage visual dominance effects on neighbouring zones where lower height limits apply.

- (1) Buildings must not project beyond a recession plane that begins vertically above ground level along the zone boundary. The angle of the recession plane and the height above ground level from which it is measured is specified in Table H13.6.2.1 and Figure H13.6.2.1 or Figure H13.6.2.2 below.
- (2) Where the boundary forms part of an entrance strip, access site or pedestrian access-way, the control applies from the farthest boundary of that entrance strip or access site. However, if an entrance strip, access site or pedestrian access-way is greater than 2.5m in width, the control will be measured from a parallel line 2.5m out from the site boundary.
- (3) Figure H13.6.2.3 will be used to define what is a north, south, east or west boundary, where this is referred to in Table H13.6.2.1 The recession plane angle is calculated by orientating both site plan and Figure H13.6.2.3 to true north. Figure H13.6.2.3 is placed over the site plan with the outside of the circle touching the inside of the site boundary under consideration. At the point where Figure H13.6.2.3 touches the site boundary, the recession plane angle and height at which it begins, will be indicated by Table H13.6.2.1

Table H13.6.2.1 Height in relation to boundary

Location	Zoning of adjacent site	Angle of recession plane (identified as x in Figure H13.6.2.1 or Figure H13.6.2.2)	Height above ground level which the recession plane will be measured from (identified as y in Figure H13.6.2.1 or Figure H13.6.2.2)
NA	Residential – Single House Zone; or Residential – Mixed Housing Suburban Zone	45°	2.5m
	Residential – Mixed Housing Urban Zone	45°	3m
	Residential – Terrace Housing and Apartment Buildings Zone	60°	8m
	Special Purpose – Māori Purpose Zone; or Special Purpose School Zone	45°	6m
	Open Space – Conservation Zone; Open Space – Informal Recreation Zone;	45°	8.5m

H13 Business – Mixed Use Zone

	Open Space -Sport and Active Recreation Zone; Open Space – Civic Spaces Zone; or Open Space – Community Zone		
Buildings located on the southern boundary of the adjacent site	Open Space – Conservation Zone; Open Space – Informal Recreation Zone; Open Space – Sport and Active Recreation Zone; Open Space – Civic Spaces Zone; or Open Space – Community Zone	45°	16.5m

Figure H13.6.2.1 Height in relation to boundary

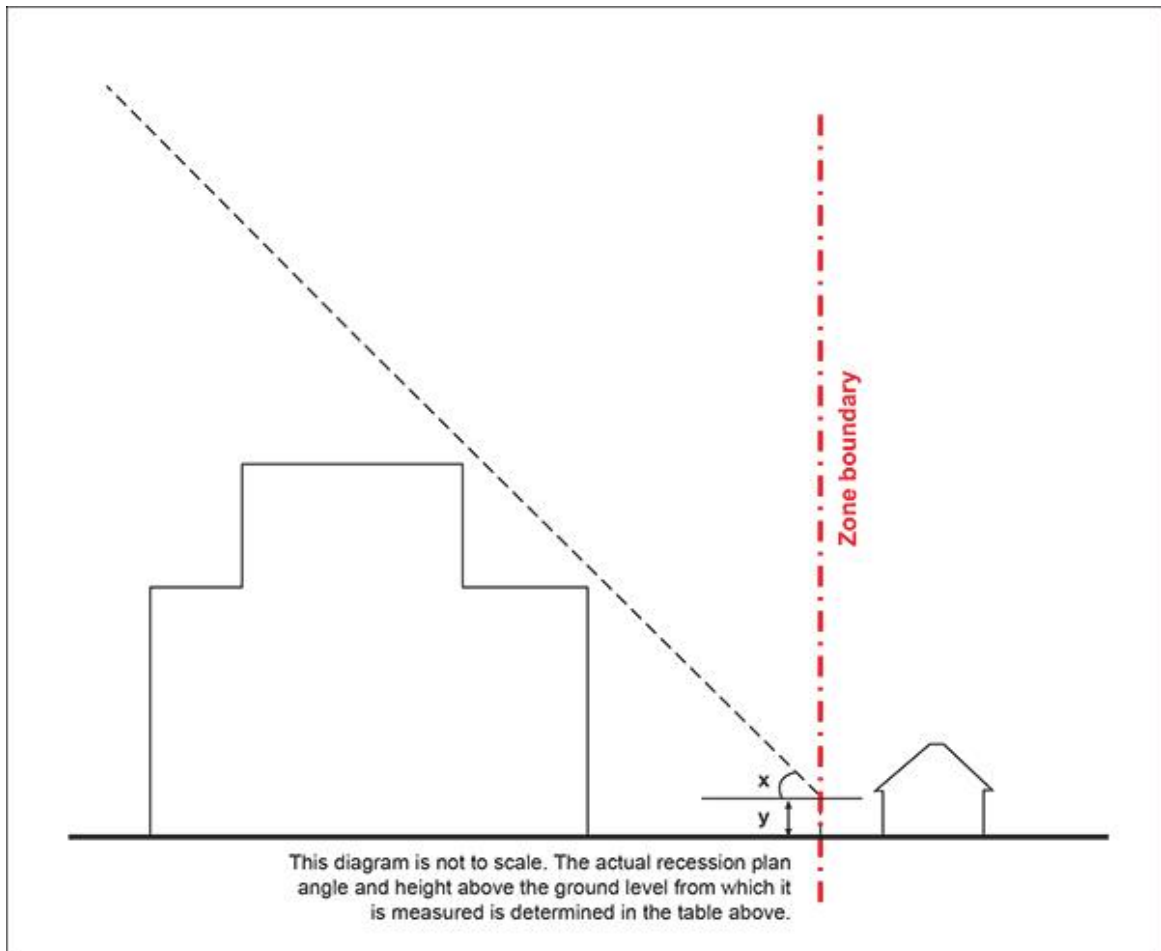


Figure H13.6.2.2 Height in relation to boundary opposite a road

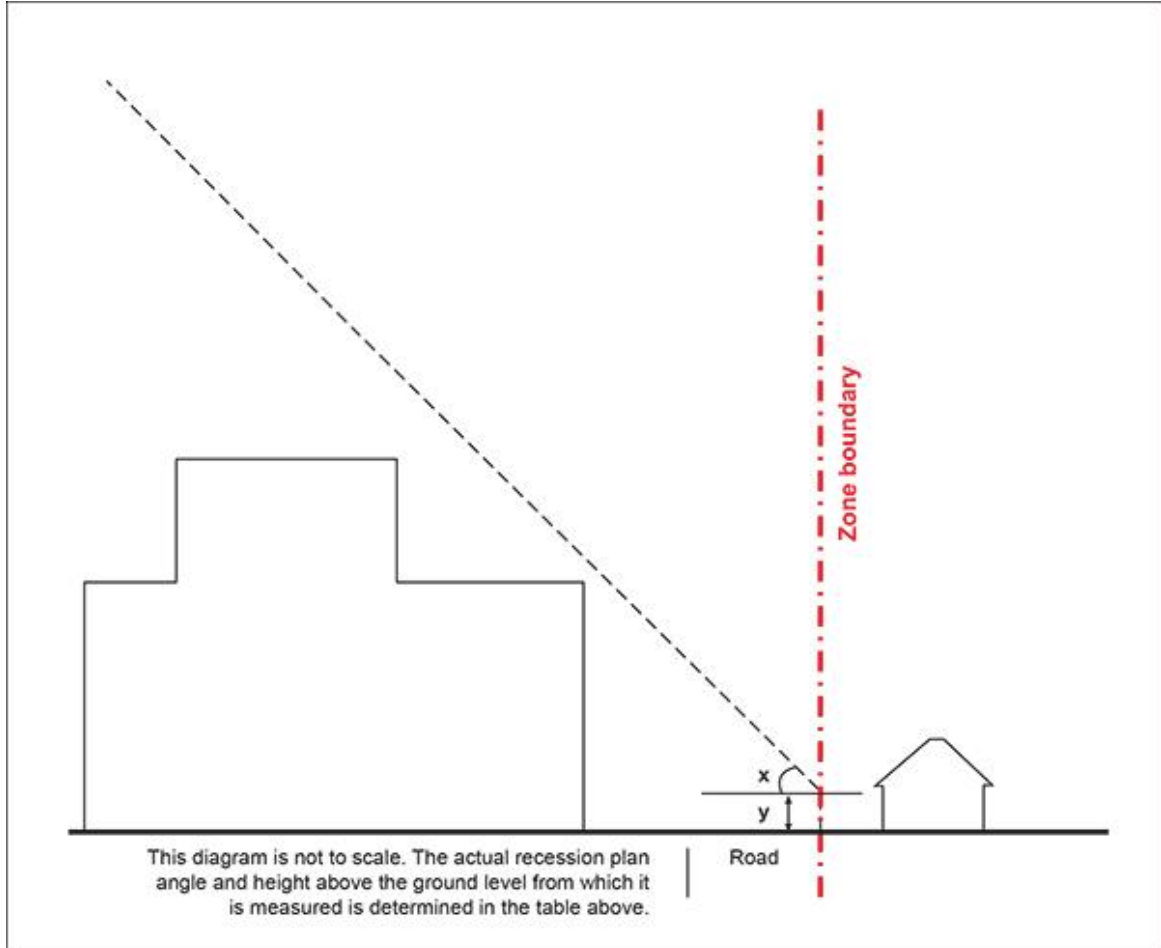
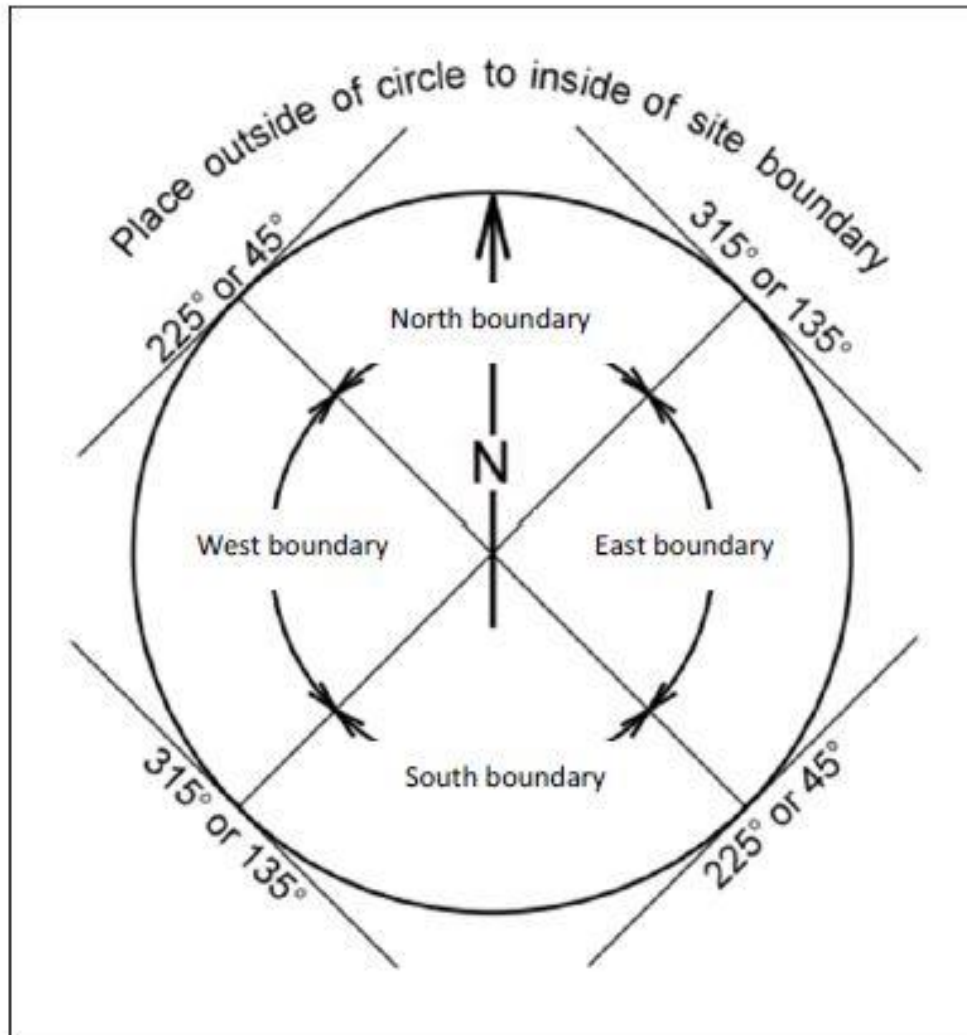


Figure H13.6.2.3 Recession plane indicator for sites adjacent to an open space zone



H13.6.3. Building setback at upper floors

Purpose:

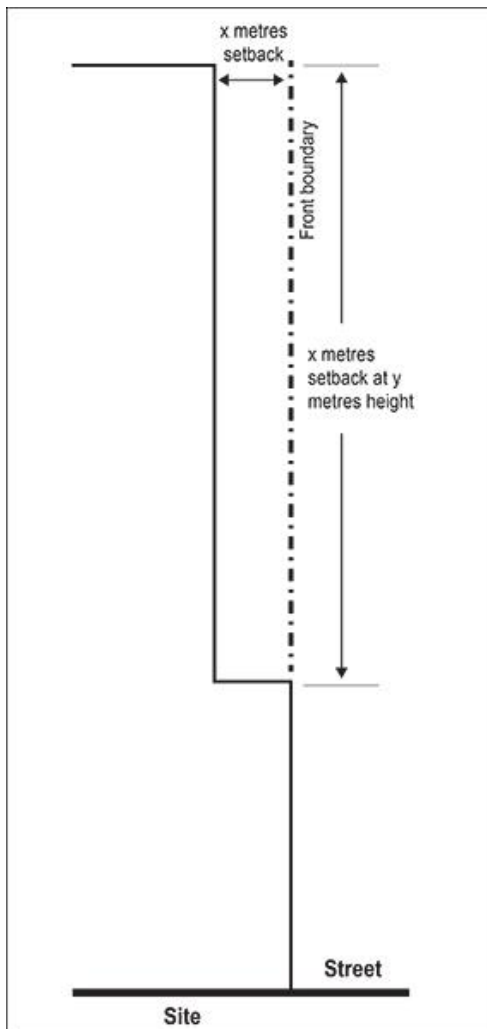
- provide adequate daylight access to streets;
- manage visual dominance effects on streets;
- manage visual dominance, residential amenity and privacy effects on residential zones; and
- mitigate adverse wind effects.

- (1) A new building must be set back from the site frontage from the point where it exceeds the height listed in metres specified in Table H13.6.3.1.

Table H13.6.3.1 Building setback at upper floors

Opposite zone		Minimum setback (identified as x in Figure H13.6.3.1)	Height (identified as y in Figure H13.6.3.1)
(B1)	When opposite a residential zone	6m	18m
(B2)	All other zones	6m	27m

Figure H13.6.3.1 Building setback at upper floors



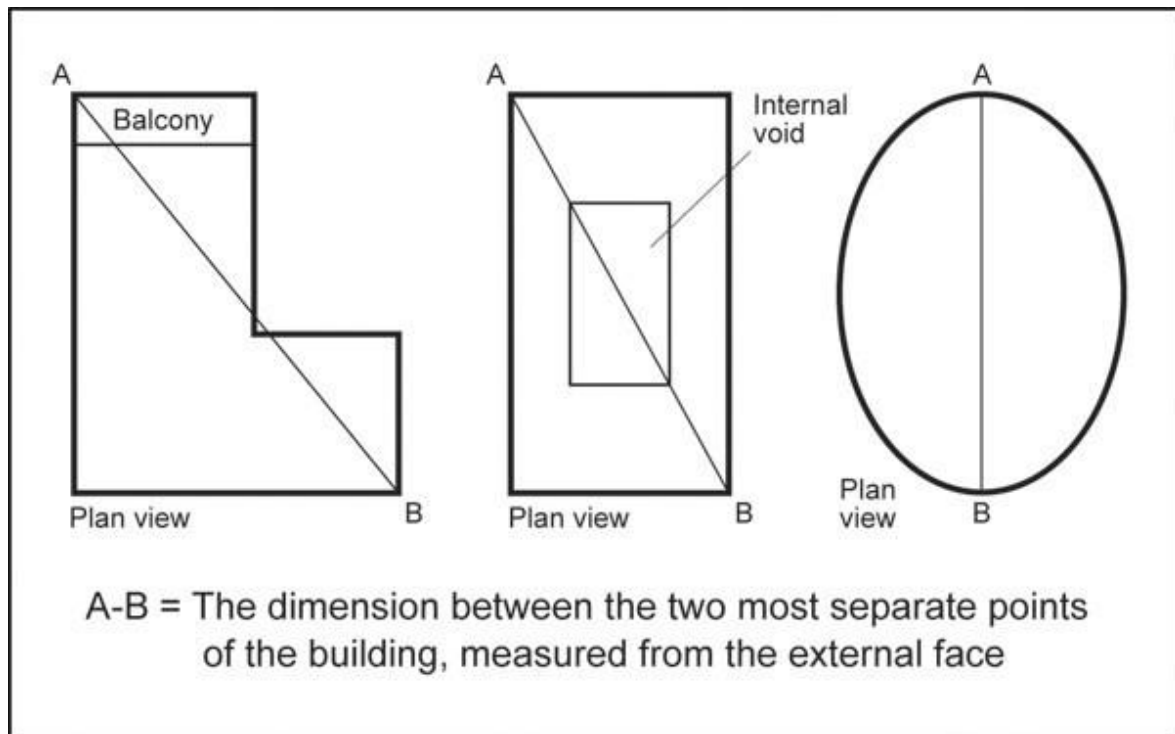
H13.6.4. Maximum tower dimension and tower separation

Purpose: ensure that high-rise buildings:

- are not overly bulky in appearance and manage significant visual dominance effects;
- allow adequate sunlight and daylight access to streets, public open space and nearby sites;
- provide adequate sunlight and outlook around and between buildings; and
- mitigate adverse wind effects.

- (1) The maximum plan dimension of that part of the building above 27m must not exceed 55m.
- (2) The maximum plan dimension is the horizontal dimension between the exterior faces of the two most separate points of the building.
- (3) The part of a building above 27m must be located at least 6m from any side or rear boundary of the site.

Figure H13.6.4.1 Maximum tower dimension plan view



H13.6.5. Yards

Purpose:

- provide a landscaped buffer between buildings and activities and adjoining residential zones and some special purpose zones, to mitigate adverse visual and nuisance effects; and
- ensure buildings are adequately setback from lakes, streams and the coastal edge to maintain water quality, amenity, provide protection from natural hazards, and potential access to the coast.

- (1) A building or parts of a building must be set back from the relevant boundary by the minimum depth listed in Table H13.6.5.1 below.

Table H13.6.5.1 Yards

Yard	Minimum depth
Rear	3m where the rear boundary adjoins a residential zone or the Special Purpose – Māori Purpose Zone
Side	3m where a side boundary adjoins a Residential zone or the Special Purpose – Māori Purpose Zone
Riparian	10m from the edge of all permanent and intermittent streams
Lakeside yard	30m
Coastal protection yard	25m, or as otherwise specified in Appendix 6 Coastal protection yard

Note 1

A side or rear yard, and/or landscaping within that yard, is only required along that part of the side or rear boundary adjoining a residential zone or the Special Purpose – Māori Purpose Zone.

- (2) Side and rear yards must be planted with a mixture of trees, shrubs or ground cover plants (including grass) within and along the full extent of the yard for a depth of at least 3m.

H13.6.6. Landscaping

Purpose:

- ensure landscaping provides a buffer and screening between car parking, loading, or service areas commercial activities and the street; and
- ensure landscaping is of sufficient quality as to make a positive contribution to the amenity of the street.

- (1) A landscape buffer of 2m in depth must be provided along the street frontage between the street and car parking, loading, or service areas which are visible from the street frontage. This rule excludes access points.
- (2) The required landscaping in Standard H13.6.6(1) above must comprise a mix of trees, shrubs or ground cover plants (including grass).

H13.6.7. Maximum impervious area in the riparian yard

Purpose: support the functioning of riparian yards and in-stream health.

- (1) The maximum impervious area within a riparian yard must not exceed 10 per cent of the riparian yard area.

H13.6.8. Wind

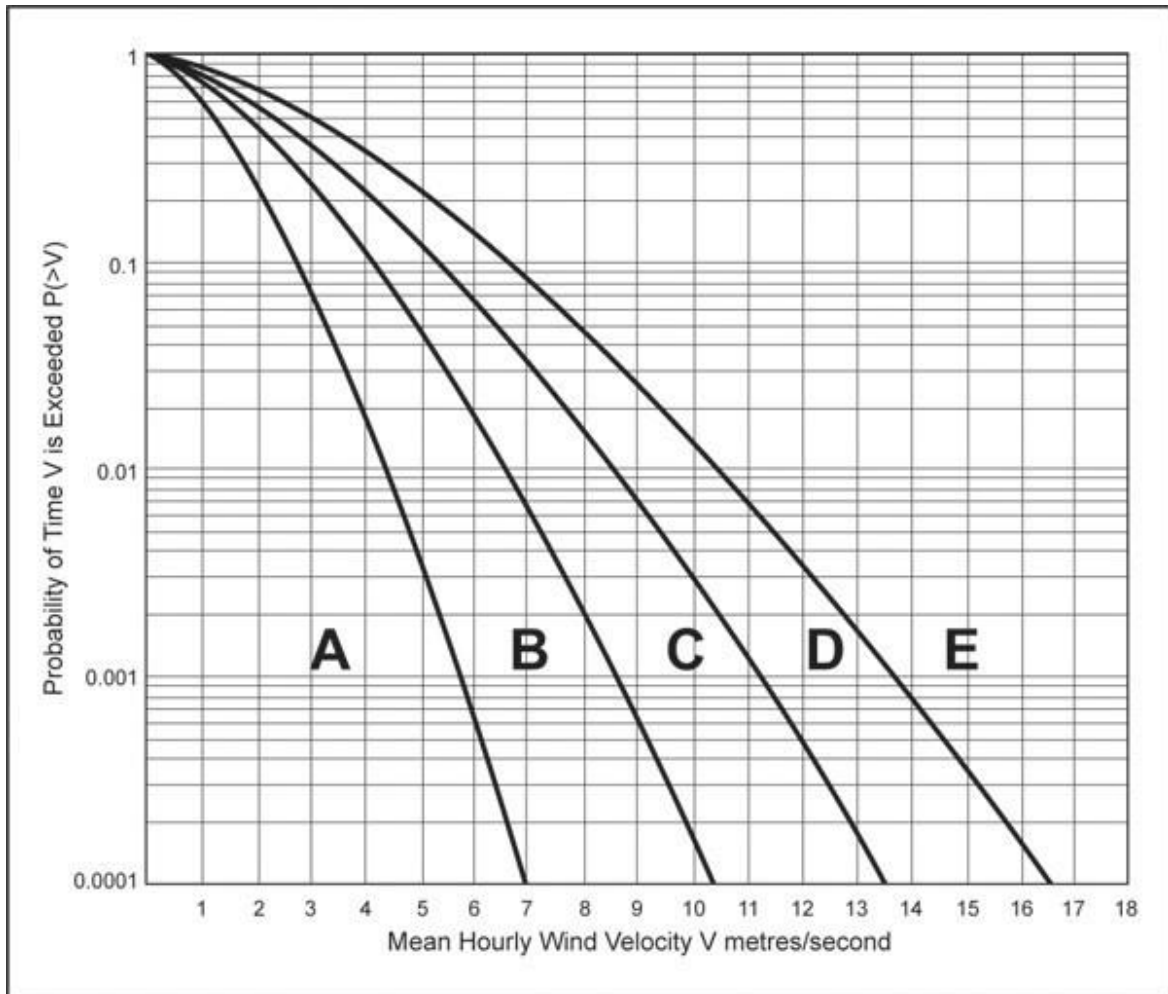
Purpose: mitigate the adverse wind effects generated by tall buildings.

- (1) A new building exceeding 25m in height and additions to existing buildings that increase the building height above 25m must not cause:
- a) the mean wind speed around it to exceed the category for the intended use of the area as set out in Table H13.6.8.1 and Figure H13.6.8.1 below;
 - b) the average annual maximum peak 3-second gust to exceed the dangerous level of 25m/second; and
 - c) an existing wind speed which exceeds the controls of Standard H13.6.8(1)(a) or Standard H13.6.8(1)(b) above to increase.
- (2) A report and certification from a suitably qualified and experienced person, showing that the building complies with Standard H13.6.8(1) above, will demonstrate compliance with this standard.
- (3) If the information in Standard H13.6.8(2) above is not provided, or if such information is provided but does not predict compliance with the rule, a further wind report including the results of a wind tunnel test or appropriate alternative test procedure is required to demonstrate compliance with this standard.

Table H13.6.8.1 Categories

Category	Description
Category A	Areas of pedestrian use or adjacent dwellings containing significant formal elements and features intended to encourage longer term recreational or relaxation use i.e. public open space and adjacent outdoor living space
Category B	Areas of pedestrian use or adjacent dwellings containing minor elements and features intended to encourage short term recreation or relaxation, including adjacent private residential properties
Category C	Areas of formed footpath or open space pedestrian linkages, used primarily for pedestrian transit and devoid of significant or repeated recreational or relaxational features, such as footpaths not covered in categories A or B above
Category D	Areas of road, carriage way, or vehicular routes, used primarily for vehicular transit and open storage, such as roads generally where devoid of any features or form which would include the spaces in categories A - C above.
Category E	Category E represents conditions which are dangerous to the elderly and infants and of considerable cumulative discomfort to others, including residents in adjacent sites. Category E conditions are unacceptable and are not allocated to any physically defined areas of the city

Figure H13.6.8.1 Wind environment control



Derivation of the wind environment control graph:

The curves on the graph delineating the boundaries between the acceptable categories (A-D) and unacceptable (E) categories of wind performance are described by the Weibull expression:

$$P(>V) = e^{-(v/c)^k}$$

where V is a selected value on the horizontal axis, and P is the corresponding value of the vertical axis:

and where:

P(>V) = Probability of a wind speed V being exceeded;

e = The Napierian base 2.7182818285

v = the velocity selected;

k = the constant 1.5; and

c = a variable dependent on the boundary being defined:

A/B, c = 1.548

B/C, c = 2.322

C/D, c = 3.017

D/E, c = 3.715

H13.6.9. Outlook space

Purpose:

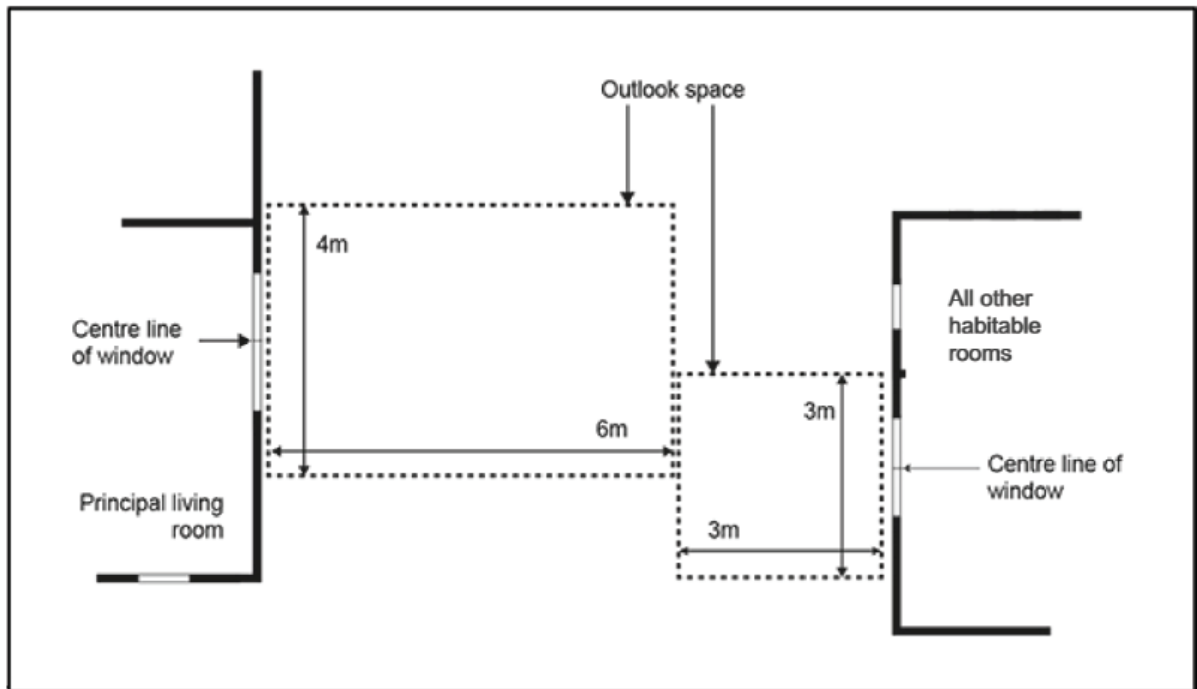
- to ensure a reasonable standard of visual privacy between habitable rooms of different buildings, on the same or adjacent sites; and
- manage visual dominance effects within a site by ensuring that habitable rooms have an outlook and sense of space.

- (1) This standard applies to dwellings, units in an integrated residential development, visitor accommodation and boarding houses.
- (2) An outlook space must be provided from the face of a building containing windows to a habitable room. Where the room has two or more external faces with windows the outlook space must be provided from the face with the largest area of glazing.
- (3) The minimum dimensions for a required outlook space are as follows:
 - (a) a principal living room of a dwelling or main living and dining area within a boarding house or supported residential care must have a outlook space with a minimum dimension of 6m in depth and 4m in width; and
 - (b) all other habitable rooms of a dwelling or a bedroom within a boarding house or supported residential care unit must have an outlook space with a minimum dimension of 3m in depth and 3m in width.
- (4) The depth of the outlook space is measured at right angles to and horizontal from the window to which it applies.
- (5) The width of the outlook space is measured from the centre point of the largest window on the building face to which it applies.
- (6) The height of the outlook space is the same as the floor height, measured from floor to ceiling, of the building face to which the standard applies.
- (7) Outlook spaces may be within the site, over a public street, or other public open space.
- (8) Outlook spaces required from different rooms within the same building may overlap.
- (9) Outlook spaces may overlap where they are on the same wall plane.

(10) Outlook spaces must:

- (a) be clear and unobstructed by buildings;
- (b) not extend over adjacent sites, except for where the outlook space is over a public street or public open space as outlined in H13.6.9(7) above; and
- (c) not extend over an outlook spaces or outdoor living space required by another dwelling.

Figure H13.6.9.1 Required outlook space



H13.6.10 Minimum dwelling size

Purpose: to ensure dwellings are functional and of a sufficient size to provide for the day to day needs of residents, based on the number of occupants the dwelling is designed to accommodate.

(1) Dwellings must have a minimum net internal floor area as follows.

- (a) 30m² for studio dwellings.
- (b) 45m² for one or more bedroom dwellings.

H13.7. Assessment – controlled activities

There are no controlled activities in this zone.

H13.8. Assessment – Restricted discretionary activities

H13.8.1. Matters of discretion

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

- (1) activities within 30m of a residential zone, emergency services and service stations:
 - (a) the compatibility of:
 - (i) the effects of intensity and scale of the development arising from the numbers of people and/or vehicles using the site; and
 - (ii) the effects of the operation of the activity;
on the existing and expected future amenity values of the surrounding area and any practicable mitigation measures that would be appropriate to manage those effects;
 - (b) the effects of the design and location of parking areas and vehicle access and servicing arrangements on visual amenity of the streetscape and on pedestrian safety;
 - (c) the effects of location, design and management of storage and servicing facilities on the amenity values of nearby residential properties including potential visual effects, adequacy of access for service vehicles (including waste collection) and any night time noise effects; and
 - (d) the assessment of the above matters having regard to the need to provide for the functional requirements of the activity;
- (2) supermarkets greater than 450m² and up to 2000m²:
 - (a) the compatibility of the effects of intensity and scale of the development arising from the numbers of people and/or vehicles using the site, with the existing and expected future amenity values of the surrounding area and any practicable mitigation measures that would be appropriate to manage those effects;
 - (b) the effects of the design and location of parking areas and vehicle access and servicing arrangements on visual amenity of the streetscape and on pedestrian safety;
 - (c) the effects of the size, composition and characteristics of retail activities proposed on the existing and expected future function, role and amenity of other centre zones having regard to the need to enable convenient access of communities to commercial and community services while disregarding any effects ordinarily associated with trade effects on trade competitors; and
 - (d) the assessment of the above matters having regard to the need to provide for the functional requirements of the activity;

- (3) new buildings and alterations and additions to buildings not otherwise provided for:
- (a) the design and appearance of buildings in so far as it affects the existing and future amenity values of public streets and spaces used by significant numbers of people. This includes:
 - (i) the contribution that such buildings make to the attractiveness pleasantness and enclosure of the public space;
 - (ii) the maintenance or enhancement of amenity for pedestrians using the public space or street;
 - (iii) the provision of convenient and direct access between the street and building for people of all ages and abilities;
 - (iv) measures adopted for limiting the adverse visual effects of any blank walls along the frontage of the public space; and
 - (v) the effectiveness of screening of car parking and service areas from the view of people using the public space;
 - (b) the provision of floor to floor heights that will provide the flexibility of the space to be adaptable to a wide variety of use over time.
 - (c) the extent of glazing provided on walls fronting public streets and public spaces and the benefits it provides in terms of:
 - (i) the attractiveness and pleasantness of the public space and the amenity for people using or passing through that space;
 - (ii) the degree of visibility that it provides between the public space and the building interior; and
 - (iii) the opportunities for passive surveillance of the street from the ground floor of buildings;
 - (d) the provision of verandahs to provide weather protection in areas used, or likely to be used, by significant numbers of pedestrians;
 - (e) the application of Crime Prevention through Environmental Design principles to the design and layout of buildings adjoining public spaces;
 - (f) the effects of creation of new roads and/or service lanes on the matters listed above;
 - (g) the positive effects that landscaping, including required landscaping, on sites adjoining public spaces is able to contribute to the amenity values of the people using or passing through the public space;
 - (h) taking an integrated stormwater management approach; and

- (i) all the above matters to be assessed having regard to the outcomes set out in this Plan and the functional requirements of the activities that the buildings are intended to accommodate;
- (4) in addition to the matters for new buildings stated above the Council will restrict its discretion to the following matter in regard to:
- supermarkets, department stores and large format retail where the activity or integrated retail development exceeds 1000m² gross floor area per tenancy:
- (a) the manner in which these building/developments are integrated with the adjacent existing and planned future centre and zone activities and public spaces and provide for the continuity of active public frontages and associated pedestrian amenity that is appropriate to those centres and zones having regard to the outcomes set out in this Plan and the functional requirements of the activities that the buildings are intended to accommodate. This will include the effects of the design and location of parking areas, vehicle access and servicing arrangements on the visual amenity of the streetscape and on pedestrian safety;
- (5) In addition to the matters for new buildings stated above the Council will restrict its discretion to the following matter in regard to:
- drive-through restaurants; or
 - service stations:
- (a) the effects of the location and design of:
 - (i) buildings and associated equipment, parking and service areas;
 - (ii) access for vehicles including service vehicles; and
 - (iii) landscaping;on the amenity of surrounding areas (particularly residential areas), on streetscapes and on pedestrian amenity and any methods by which those effects can be appropriately managed;
- (6) conversion of a building or part of a building to dwellings, retirement villages, visitor accommodation and boarding houses:
- (a) any matters that do not meet the standards set out for the activity in Standard H13.6.9 or Standard H13.6.10 having regard to the need to ensure a good standard of amenity within and between dwellings, visitor accommodation, boarding houses and retirement villages;
- (7) buildings that do not comply with the standards:
- (a) any policy which is relevant to the standard;
 - (b) the purpose of the standard;

- (c) the effects of the infringement of the standard;
- (d) the effects on the amenity of neighbouring sites;
- (e) the effects of any special or unusual characteristic of the site which is relevant to the standard;
- (f) the characteristics of the development;
- (g) any other matters specifically listed for the standard; and
- (h) where more than one standard will be infringed, the effects of all infringements.

H13.8.2. Assessment criteria

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

- (1) activities within 30m of a residential zone, emergency services and service stations:
 - (a) for Matter H13.8.1(1)(a)(i) refer to Policy H13.3(3)(a), Policy H13.3(3)(b), Policy H13.3(3)(c), Policy H13.3(8) and Policy H13.3(21);
 - (b) for Matter H13.8.1(1)(a)(ii) refer to Policy H13.3(3)(a), Policy H13.3(3)(b), Policy H13.3(3)(c), Policy H13.3(8) and Policy H13.3(21);
 - (c) for Matter H13.8.1(1)(b) refer to Policy H13.3(3)(c) and Policy H13.3(7);
 - (d) for Matter H13.8.1(1)(c) refer to Policy H13.3(21); and
 - (e) for Matter H13.8.1(1)(d) refer to Policy H13.3(12);
- (2) supermarkets greater than 450m² and up to 2000m²:
 - (a) for Matter H13.8.1(2)(a) refer to Policy H13.3(3)(a), Policy H13.3(3)(b), Policy H13.3(3)(c) and Policy H13.3(8);
 - (b) for Matter H13.8.1(2)(b) refer to Policy H13.3(7);
 - (c) for Matter H13.8.1(2)(c) refer to Policy H13.3(1); and
 - (d) for Matter H13.8.1(2)(d) refer to Policy H13.3(12);
- (3) new buildings and alterations and additions to buildings not otherwise provided for:
 - (a) for Matter H13.8.1(3)(a)(i) refer to Policy H13.3(3)(a) and Policy H13.3(3)(b);
 - (b) for Matter H13.8.1(3)(a)(ii) refer to Policy H13.3(3)(c);
 - (c) for Matter H13.8.1(3)(a)(iii) refer to Policy H13.3(4);

- (d) for Matter H13.8.1(3)(a)(iv) refer to Policy H13.3(3)(a);
 - (e) for Matter H13.8.1(3)(a)(v) refer to Policy H13.3(7);
 - (f) for Matter H13.8.1(3)(b) refer to Policy H13.3(6);
 - (g) for Matter H13.8.1(3)(c)(i) refer to Policy H13.3(3)(a) and Policy H13.3(3)(b);
 - (h) for Matter H13.8.1(3)(c)(ii) refer to Policy H13.3(3)(a) and Policy H13.3(3)(b);
 - (i) for Matter H13.8.1(3)(c)(iii) refer to Policy H13.3(3)(a) and Policy H13.3(3)(b);
 - (j) for Matter H13.8.1(3)(d) refer to Policy H13.3(3)(c);
 - (k) for Matter H13.8.1(3)(e) refer to Policy H13.3(3)(c);
 - (l) for Matter H13.8.1(3)(f) refer to Policy H13.3(3)(b);
 - (m) for Matter H13.8.1(3)(g) refer to Policy H13.3(3)(c);
 - (n) for Matter H13.8.1(3)(h) refer to Policy [E1.3\(10\)](#);
 - (o) for Matter H13.8.1(3)(i) refer to Policy H13.3(3)(12);
- (4) in addition to the policies for new buildings stated above the Council will have regard to the following policies when considering new buildings for the following purposes:
- supermarkets, department stores and large format retail where the activity or integrated retail development exceeds 1000m² gross floor area per tenancy:
- (a) refer to Policy H13.3(1), Policy H13.3(5) and Policy H13.3(20);
- (5) in addition to the policies for new buildings stated above the Council will have regard to the following policies when considering new buildings for the following purposes:
- drive-through restaurants; or
 - service stations:
- (a) refer to Policy H13.3(3)(a), Policy H13.3(3)(b), Policy H13.3(3)(c), Policy H13.3(7), Policy H13.3(8), Policy H13.3(12) and Policy H13.3(21);
- (6) conversion of a building or part of a building to dwellings, retirement villages, visitor accommodation and boarding houses:
- (a) refer to Policy H13.3(2);
- (7) buildings that do not comply with the standards:

H13 Business – Mixed Use Zone

(a) height, height in relation to boundary, building setbacks at upper floors, maximum tower dimension and tower separation:

(i) refer to Policy H13.3(3)(a), Policy H13.3(3)(b), Policy H13.3(8), Policy H13.3(13), Policy H13.3(14) and Policy H13.3(21);

(b) yards and landscaping:

(i) refer to Policy H13.3(3)(b), Policy H13.3(3)(c), Policy H13.3(7) and Policy H13.3(8);

(c) maximum impervious area in a riparian yard:

(i) refer to Policy H13.3(22);

(d) wind:

(i) refer to Policy H13.3(11);

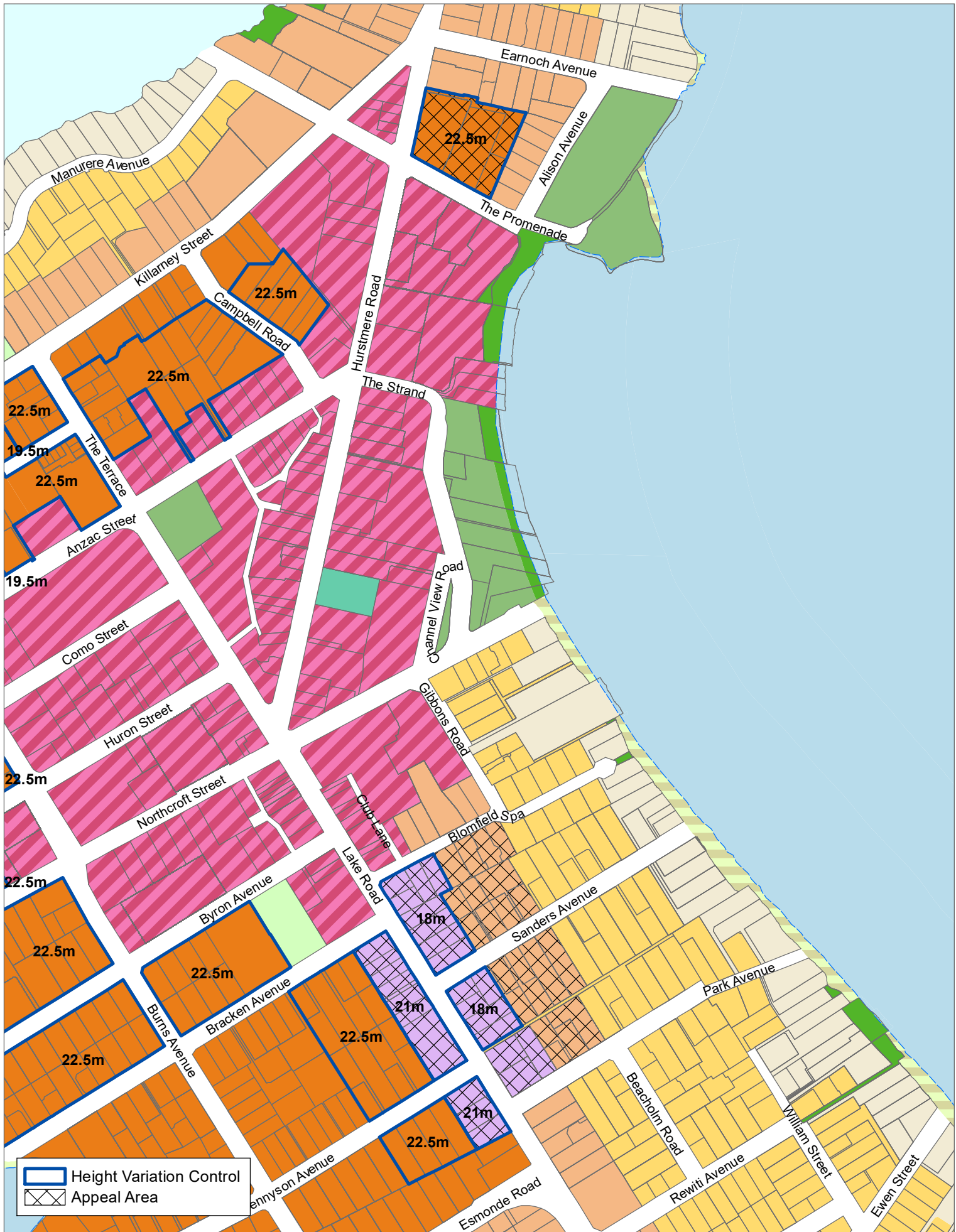
(e) outlook space, minimum dwelling size:

(i) refer to Policy H13.3(2).

H13.9. Special information requirements

There are no special information requirements in this zone.

Attachment 3: Updated GIS viewer



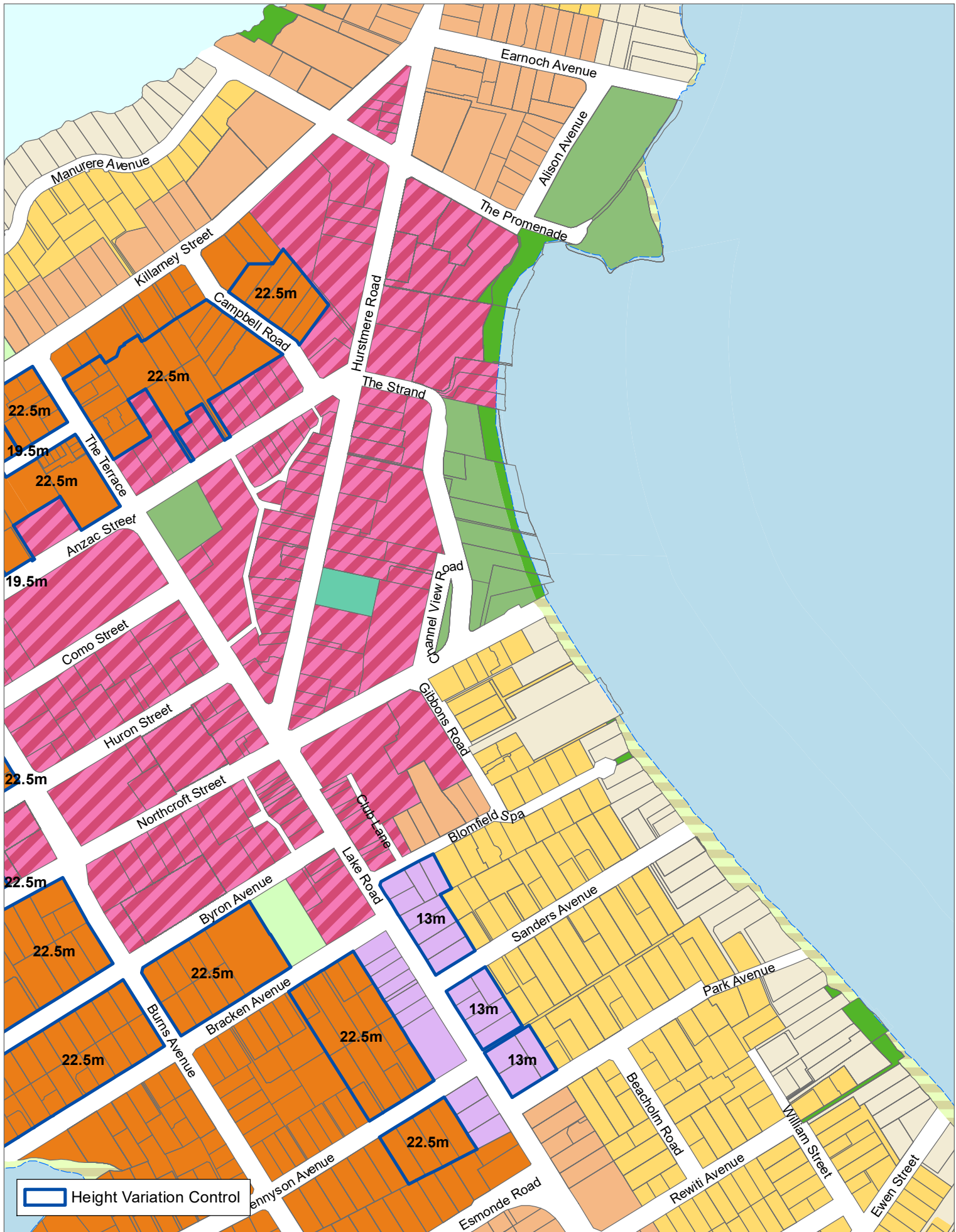
Belgioirio settlement - Before appeal




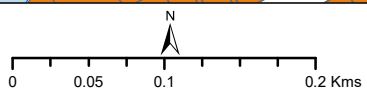
Plans and Places

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Date: 30/05/2022



 Height Variation Control



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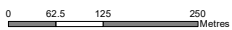


Plans and Places

BEFORE



AFTER



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Date: 12/08/2022

**Appeal Resolved:
CIV 2016 404 002333**



Plans and Places