

**BEFORE COMMISSIONERS  
APPOINTED BY WELLINGTON  
CITY COUNCIL**

**WELLINGTON CITY COUNCIL PROPOSED DISTRICT  
PLAN**

**IN THE MATTER** of Hearing Stream 3 – Heritage

**AND**

**IN THE MATTER** of a submissions by Il Casino  
Apartments Body Corporate; Thomas  
Broadmore and Juliet Broadmore in relation to  
Viewshaft #21

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**SYNOPSIS OF SUBMISSIONS IN SUPPORT OF SUBMITTERS**

**20 May 2023**

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**Counsel acting:** Ian Gordon  
Stout Street Chambers  
Level 6, Huddart Parker Building  
1 Post Office Square  
PO Box 117  
Wellington 6011  
T: 04 472 9026  
[ian.gordon@stoutstreet.co.nz](mailto:ian.gordon@stoutstreet.co.nz)

## **MAY IT PLEASE THE PANEL:**

### **Introduction**

1. These submissions are made on behalf of Thomas and Juliet Broadmore and the Il Casino Apartments Body Corporate, the submitters in relation to ODP Viewshaft #21.
2. The PDP proposes to delete Viewshaft 21 on the basis that it is compromised by consented developments in Te Aro, the Council having paid lip service to it.
3. The Viewshaft review is undertaken within the Intensification Streamlined Planning Process (ISPP) under Part 6 of Schedule 1 of the RMA for the intensification planning instrument (IPI). No appeal rights apply.<sup>1</sup>
4. The significance of this is that viewshafts are seen as potential constraints to intensification through building height limitations. A replacement viewshaft has been modelled and recommended to provide different views and development heights within part of Te Aro.
5. That option is recommended by the s 42A report writer.<sup>2</sup> It is not supported by the submitters.

### **Legal context**

6. Under Policy 3 of the NPS-UD, in relation to tier 1 urban environments, regional policy statements and district plans must enable a specified level of development and density. District plans may modify the relevant building height or density requirement as set by Policy 3 only to the extent necessary to accommodate a qualifying matter in that area.<sup>3</sup>
7. Subpart 6 of the NPS-UD requires every territorial authority to identify the building heights and densities required by Policy 3.<sup>4</sup> If it considers that it is necessary to modify the building height or densities to provide for a qualifying matter, it must identify the location where that qualifying matter

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<sup>1</sup> S 42a report – viewshafts, para 22

<sup>2</sup> S 42a report paras 106 -111 and para 118

<sup>3</sup> NPS-UD, Policy 4.

<sup>4</sup> NPS-UD, cl 3.31(1).

applies and specify the alternate building heights and densities proposed for those areas.<sup>5</sup>

8. One of the qualifying matters that may be considered is a matter of national importance that decision-makers are required to recognise and provide for under section 6 of the Resource Management Act 1991.<sup>6</sup> Section 6(f) includes “the protection of historic heritage from inappropriate subdivision, use and development” as a matter of national importance.
9. The Carillon is historic heritage. It is undoubtedly a Taonga.<sup>7</sup> It is a constant reminder of the futility of war and of those who lost their lives in futile conflicts. It only has to be seen to be such a reminder.
10. Intensification is *use and development* albeit, not of the Carillon, but in a way that potentially diminishes views of it and therefore its role in Wellington and nationally. If visibility is diminished, so is its historic heritage. Protection of that heritage is a matter of national importance in a s 6(f) sense. As counsel for the Council notes: *Section 6(f) of the RMA is fundamentally a provision aimed at advancing a public good – recognition and protection of historic heritage – at the expense of private interests.*<sup>8</sup>
11. A s 6(f) matter is of itself an identified qualifying matter. It is noted that the urban design consultants pay scant regard to national importance of the Carillon or the inward views to including those still enabled by Viewshaft 21.

#### *Other Qualifying matters*

12. If it is not accepted that diminution of views to and of the Carillon is a s 6(f) matter of national importance, then it may still be *any other matter*<sup>9</sup> that makes higher density development inappropriate in an area.

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<sup>5</sup> NPS-UD, cl 3.31(2).

<sup>6</sup> NPS-UD, cl 3.32.

<sup>7</sup> Evidence of Messrs Broadmore; Finlayson and Castle. Submission of New Zealand Historic Places Trust / Pouhere Taonga

<sup>8</sup> Legal Submissions – Nick Whittington – 5 May 2023

<sup>9</sup> NPS-UD cl 3.32(1)(h)

13. If the Council identifies a qualifying matter, it then has discretion as to how to respond. It may consider it necessary to modify the building height or densities to provide for a qualifying matter.<sup>10</sup> If it does consider that *it is necessary*, it may make *only* the modifications necessary to accommodate the qualifying matter.<sup>11</sup> Retention of the ODP Viewshaft 21 would be such a matter.
14. The urban design evidence of Deyana Popova and Dr Farzard Zamani, focusses on Viewshaft 21 as having a singular (compromised) purpose. They do not consider wider/holistic urban design benefits such as the contribution it may be making to:
- (a) Views towards Pukeahu Park and the Carillon, and
  - (b) The incidence of undeveloped low-rise buildings within the viewshaft which provide future open space opportunities - lacking in Te Aro.<sup>12</sup>
15. It is generally accepted that open space opportunities are necessary for a well-functioning urban environment.<sup>13</sup>
16. As Mr Broadmore observes, there is a tangible shortage of open spaces in Te Aro but neither urban design consultant considers such indirect benefits preferring instead to focus on the tension between views and built height. Dr Zamani settles on a new viewshaft to protect (views to) the western Hills and skyline. That new viewshaft would be from a different focal point<sup>14</sup> with a new 'floor' the height of the Century City Hotel (yet to be determined).
17. A s 32AA process would be required including assessment of options and cultural effects.
18. It is unclear from the section 42A report whether there has been involvement with hapu and iwi in the preparation of Plan that diminishes views to and from the National War Memorial.<sup>15</sup> The discretion to apply or

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<sup>10</sup> The use of the word "if" in NPS-UD, cl 3.31(2) clarifies that this is at the Council's discretion.

<sup>11</sup> NPS-UD, Policy 4.

<sup>12</sup> Evidence of Thomas Broadmore

<sup>13</sup> NPS-UD Objectives 1 and 4, and Policy 1(c)

<sup>14</sup> Tomb of the Unknown Warrior

<sup>15</sup> Policy 9

disregard a qualifying matter cannot be exercised until that has occurred. The same applies to any cultural effects under s 32(2)(a)<sup>16</sup>

### **Conclusion**

19. The question for the Council is whether, with the object of achieving a well-functioning urban environment, it is necessary to temper intensification in order to protect and celebrate views to and from the National War Memorial. That is a discretion to be exercised reasonably and following consultation with hapuu and iwi. The submitters say there would never be a better cause - qualifying matter – once the wider urban design opportunities and cultural issues are considered in the round.
20. The recommended alternative may not yet be available, but even if it is, all it will achieve is more maximum height buildings crowding over Pukeahu Park and the Carillon.
21. A well-functioning urban environment in Te Aro would include more open space and more, not less visual access to the Carillon. Retention of the ODP Viewshaft 21 will contribute to that in ways that the recommended option will not.



Counsel for the Submitters

21 September 2023

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<sup>16</sup> As imported by s 32AA(1) (b)