

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER of applications for resource
consent by Site 10
Redevelopment Limited
Partnership and Wellington City
Council in respect of the area
known as North Kumutoto
including Site 10

**STATEMENT OF EVIDENCE OF ALISTAIR ARTHUR ABURN
ON BEHALF OF SITE 10 REDEVELOPMENT LIMITED PARTNERSHIP AND WELLINGTON
CITY COUNCIL
3 JULY 2015**



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1. INTRODUCTION

- 1.1 My name is Alistair Arthur Aburn. I am a resource management specialist with more than 38 years' experience in the areas of town planning, resource management and environmental mediation. I am a director of Urban Perspectives Ltd, a resource management and urban design consultancy which I established in late 1996 in association with urban designer Deyana Popova. Prior to that I was for six years (1991-1996) employed by the Wellington City Council as City Planner, General Manager Environment and Change Manager, and prior to that I was for seven years (1984-1990) a partner and planning consultant with Murray-North Limited and manager of the company's Wellington office. My earlier planning experience was with the Wellington Regional Planning Authority/Wellington Regional Council (1975-1984).
- 1.2 My qualifications are BA (Hons) and MA from the University of Otago, DipTP from the University of Auckland and DipBS (Dispute Resolution) from Massey University. I am a Member of the New Zealand Planning Institute and an Associate of the Arbitrators' and Mediators' Institute of New Zealand.
- 1.3 I have been engaged by the applicants to provide a resource management assessment of the proposed North Kumutoto Project.

2. CODE OF CONDUCT

- 2.1 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise.

3. BACKGROUND AND SCOPE OF EVIDENCE

- 3.1 I am familiar with the planning history of the Lambton Harbour Area (now known more popularly as the Wellington Waterfront). My professional interest in the waterfront commenced in 1983 with the Wellington Civic Trust sponsored design competition when I was a member of the winning 'Paperchase' team. My interest and involvement has continued since then, when, at different times, I have been planning advisor to:
- (a) Lambton Harbour Management Limited (1985-1990); and

- (b) Wellington City Council (1991-1996) in my role as City Planner/General Manager Environment.
- 3.2 Since leaving Wellington City Council in late 1996 I have had a continuing role in the development of the Lambton Harbour Area with a direct involvement in more than twenty-five projects. I list these projects in **Appendix 1**.
- 3.3 In relation to the present applications, my involvement to date, which commenced in June 2013, has involved providing RMA advice to the applicants and assisting with the preparation of the resource consent application documents. I was the author of the assessment of environmental effects (AEE) report accompanying the applications.
- 3.4 In forming my resource management conclusions, particularly in relation to environmental effects, I have drawn (as appropriate) on the expert evidence of the applicant's technical witnesses, and in particular the evidence of:
- (a) John Hardwick-Smith of Athfield Architects (the project architects);
 - (b) Dan Males of Isthmus Group (the project landscape architects);
 - (c) Deyana Popova in relation to urban design, including townscape and visual amenities;
 - (d) Neil Jamieson in relation to wind;
 - (e) Hudson Moody in relation to shading;
 - (f) Brad Coombs in relation to open space and landscaping;
 - (g) Adam Wild in relation to heritage;
 - (h) Mark Georgeson in relation to traffic;
 - (i) Dr Frank Stoks in relation to CPTED;
 - (j) Dr Jeremy Helson in relation to ecology;
 - (k) Penny Kneebone in relation to contaminated land;

- (l) Adam Thornton in relation to natural hazards (seismic);
- (m) Richard Reinen-Hamill and Michael Revell in relation to natural hazards (climate change, tsunami and sea level rise);
- (n) Peter McGuinness in relation to construction management;
- (o) Morris Te Whiti Love in relation to cultural effects;
- (p) Mary O'Keefe in relation to archaeology;
- (q) Ramon Wilson in relation to on-site storage of hazardous substances (diesel fuel);
and
- (r) Jonathan Bacon in relation to maintenance to Shed 21 from Woolstore Plaza.

3.5 In addition, I have also drawn on the technical assessments prepared by the above experts and which were contained in Appendices to the AEE submitted with the applications.

3.6 Key Documents I have consulted or drawn on in preparing this evidence are:

- (a) Resource Consent Application(s) and AEE
- (b) Submissions and s274 Notices
- (c) S87F Reports prepared by Wellington City Council (WCC) and Greater Wellington Regional Council (GWRC)
- (d) Statutory Planning Instruments:
 - New Zealand Coastal Policy Statement (2010)
 - National Environmental Standard for Assessing and Managing Contaminants to Protect Human Health (2011)
 - Regional Policy Statement for the Wellington Region (2013)
 - Regional Coastal Plan for the Wellington Region (2000)
 - Regional Freshwater Plan for the Wellington Region (1999)
 - Regional Plan for Discharges to Land (1999)

- Wellington City District Plan (2000) incorporating DPC 48 (Central Area Review) (2013)

(e) Wellington Waterfront Framework (2001).

3.7 I have also consulted the draft Natural Resources Plan for the Wellington Region which was released for public feedback from September through to November 2014. The GWRC proposes to publicly notify the proposed Plan in mid to late 2015.

3.8 I have visited the North Kumutoto area on a number of occasions during the course of preparing the resource consent application(s) and also more recently as part of my preparation of this statement of evidence.

3.9 My evidence will cover the following matters:

(a) Project: a description of the proposed [re]development of the North Kumutoto Precinct in its planning context [Section 4]

(b) Statutory Context [Section 5]

(c) Policy and Planning Instruments [Section 6]

(d) Submissions [Section 7]

(e) S87F(4) Reports [Section 8]

(f) Resource Management Assessment:

- Planning Frameworks
- Section 104(1) RMA - Statutory Assessment [Section 9]

(g) Other Matters [Section 10]

(h) Part 2 RMA [Section 11]

(i) Issues Raised by S274 Parties [Section 12]

(j) Recommended Consent Conditions [Section 13]

(k) Summary and Conclusions [Section 14]

3.10 In summary, my principal conclusions are:

- (a) the North Kumutoto Project will make a positive contribution to the waterfront's amenities;
- (b) effects, where they have the potential to be adverse, have been appropriately avoided, remedied or mitigated;
- (c) an appropriate level of consistency has been achieved with the overall purpose and scheme of the applicable statutory instruments;
- (d) the project is consistent with the vision, themes and principles of the Wellington Waterfront Framework; and
- (e) the relevant statutory tests of the Resource Management Act 1991 are met.

Overall, therefore, I conclude that the proposed development of the new building on Site 10, the 'pocket park' on Site 8 and the public open spaces to be developed in association with these two sites, is an appropriate use and development for the North Kumutoto Precinct of the Wellington Waterfront/Lambton Harbour Area.

4. THE PROJECT

4.1 The proposed [re]development of the North Kumutoto Precinct (the "**Project**") is the subject of four consent applications and covers both the Site 10 building and the public open spaces, including the 'pocket park' on Site 8.

4.2 In the application documents the overall Project was described as two integrated proposals:

- Proposal 1 for the construction of the Site 10 building; and
- Proposal 2 for the construction of public open spaces.

4.3 Proposal 1 involves two applications, one to the WCC and one to the GWRC, as does Proposal 2. The details of the two proposals and related applications are provided in the

AEE at pages three to six. They are also summarised in the WCC s87F(4) Report at pages two to seven. As the 'explanatory note' to the applications noted:

"The consent applications are being lodged concurrently to enable integrated assessment and decision-making".

4.4 The applications were supported by a single integrated environmental effects assessment (AEE) report.

4.5 I consider that the key components of the Project are:

(a) construction of a new five-level commercial building on Site 10. The building incorporates a basement level, ground floor and four upper floors;

(b) construction of a 'pocket park' on Site 8;

(c) landscaping and the construction of other public open space areas, including the Whitmore Plaza and Woolstore Plaza;

(d) extension of Kumutoto Lane on the north side of the Whitmore Street intersection;

(e) extension of the waterfront promenade;

(f) enhanced public access to the coastal marine area (CMA); and

(g) enhanced public access generally through the North Kumutoto Precinct.

4.6 As noted in the AEE (at page 4):

Overall the Project will result in a significant transformation of the North Kumutoto Precinct in line with the values, objectives and principles of the Wellington Waterfront Framework.

Consents Required

4.7 The consents required from the WCC under the District Plan are in relation to:

- (a) the construction of new buildings in the Lambton Harbour Area (Rule 13.4.7) - a Discretionary Activity (Unrestricted);
- (b) the construction of new open space and the modification of existing open space (Rule 13.4.5) - a Discretionary Activity (Unrestricted);
- (c) the creation of 'open land' and (modified) parking areas (Rule 13.4.2) - a Discretionary Activity (Unrestricted);
- (d) earthworks associated with: (i) the construction of the basement level for the new building on Site 10; and (ii) the construction of the new open spaces (Rule 30.2.2) - a Discretionary Activity (Restricted);
- (e) the on-site storage of hazardous substances (diesel fuel) (Rule 13.3.3) - a Discretionary Activity (Restricted);
- (f) non-compliance with the standards for vehicle parking, servicing and site access (Rule 13.3.3) - a Discretionary Activity (Restricted); and
- (g) the use and development of potentially contaminated land (Rule 32.2.1) - a Discretionary Activity (Restricted).

4.8 Consent is also required for a Discretionary Activity under the Resource Management National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations (2011) for the associated soil disturbance and change in land use.

4.9 On a bundled approach, the required consents from the WCC are for a Discretionary Activity (Unrestricted).

4.10 The consents required from the GWRC under various Regional Plans are in relation to:

- (a) a water permit for the temporary take of groundwater and a water permit for the permanent diversion of groundwater under Rule 16 of the Regional Freshwater Plan for a Discretionary Activity - GWRC references 150102 [33223] and 150102 [33393]. The works necessitating the requirement for these consents are the excavation and construction of the basement of the Site 10 building;

- (b) a discharge permit for the discharge of contaminants to land (the reticulated stormwater system) from dewatering groundwater from a contaminated site, a Discretionary Activity under Rule 2 of the Regional Discharges to Land Plan - GWRC reference 150102 [33224]. Again the works necessitating the requirement for this consent are the excavation and construction of the basement of the Site 10 building;
- (c) a discharge permit for the discharge of contaminants to groundwater, a Discretionary Activity under Rule 5 of the Regional Freshwater Plan - GWRC reference 150102 [33224]. The work necessitating the requirement for this consent is the construction the basement level of the Site 10 building and associated dewatering of groundwater;
- (d) occupation of the coastal marine area (CMA), a Controlled Activity under Rule 16 of the Regional Coastal Plan - GWRC reference 150103 [33225]. The works necessitating the requirement for this consent are extensions to the waterfront promenade, including the new links between Site 8 and the Tug Wharf;
- (e) additions and alterations to existing structures within the CMA, a Discretionary Activity under Rule 25 of the Regional Coastal Plan - GWRC reference 150103 [33226]. The works necessitating the requirement for this consent are alterations to the protected wharf and reclamation edges;
- (f) disturbance of the seabed, a Discretionary Activity under Rule 25 of the Regional Coastal Plan - GWRC reference 150103 [33226]. The works necessitating the requirement for this consent are alterations to the reclamation edge 'rip rap'; and
- (g) discharge of contaminants to the CMA, a Discretionary Activity under Rule 61 of the Regional Coastal Plan - GWRC reference 150103 [33227]. The works necessitating the requirement for this consent are the alterations to the reclamation edge 'rip rap' and associated discharge of a contaminant to land or water in the CMA.

4.11 At paragraph 6.2.7 (page 8) of the GWRC's s87F(4) Report, it is confirmed that on a bundled basis the proposed works have been assessed as a Discretionary Activity. I agree that this is the correct approach.

5. STATUTORY CONTEXT

5.1 The statutory context for the proposal is s12(1) and s12(2), s14(2), s15(1), s104, s104B, s105 and s107 of the Act.

- **Section 12 Restrictions on use of the coastal marine area**

- **Section 14 Restrictions relating to water**

- **Section 15 Discharge of contaminants in environment**

- **Section 104 Consideration of applications**

(1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to:*

(a) *any actual and potential effect on the environment of allowing the activity; and*

(b) *any relevant provisions of -*

i. a national environmental standard

ii. other regulations

iii. a national policy statement

iv. a New Zealand coastal policy statement

v. a regional policy statement or proposed regional policy statement

vi. a plan or proposed plan; and

(c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

- **Section 104B Determination of applications for discretionary or non-complying activities**

After considering an application for a resource consent for a discretionary activity or a non-complying activity, a consent authority:

(a) *may grant or refuse the application; and*

(b) *if it grants the application, may impose conditions under section 108.*

- **Section 105**

- **Section 107**

6. POLICY AND PLANNING INSTRUMENTS

6.1 The policy and planning instruments that have relevance to an assessment of the proposal are:

National Standards

- (a) *National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (2011)*

Policy Statements

- (a) New Zealand Coastal Policy Statement (2010)
- (b) Regional Policy Statement for the Wellington Region (2013)

Plans

- (a) Regional Coastal Plan (2000)
- (b) Regional Freshwater Plan (1999)
- (c) Regional Plan for Discharges to Land (1999)
- (d) Wellington City Operative District Plan (2000) incorporating District Plan Change 48 (Central Area Review) (operative 16 October 2013)

Other Relevant Strategies

- (a) Wellington Waterfront Framework (2001)

7. SUBMISSIONS

- 7.1 I have read all of the submissions, 45 in total of which 37 were in opposition to the Project.
- 7.2 The proposed new building on Site 10 was the primary focus of the majority of the opposing submissions, with many submitters contending that the site should be retained/developed as public open space, and that the proposed building (which they opposed) was excessive for the site and was inappropriate for its heritage setting.
- 7.2 Other issues raised in opposing submissions related to the design of the Site 10 building, the Kumutoto Lane shared space and potential conflict between pedestrians and vehicles, access to the basement car park and the servicing/truck dock, environmental (wind and shading) effects, and potential coastal hazard and seismic issues.

7.3 Some submitters contended that the Project was inconsistent with District Plan objectives and policies and with the Wellington Waterfront Framework.

7.4 I will address the points raised in the submissions in my resource management assessment, principally when commenting on 'environmental effects' and 'consistency with plan provisions'. I will also separately comment on the points raised by the s274 parties in their s274 notices.

8. SECTION 87F(4) REPORTS

8.1 I have read the two section 87F(4) Reports prepared on behalf of the Wellington City Council and Greater Wellington Regional Council.

8.2 In my opinion, the reports are very thorough and provide a comprehensive analysis of the four applications that make up the Project.

8.3 I agree with the overall conclusions reached by Messrs Ryan O'Leary (WCC) and Douglas Fletcher (GWRC) respectively, which are:

Ryan O'Leary

427. Drawing on the conclusions of this report, I consider that the proposed development will be consistent with the purpose of the Act (Section 5), and Part 2 more generally. Specifically:

- *The proposal will promote the sustainable management of natural and physical resources through the use and development of high quality public open space which will enable people and communities to provide for their social, economic and cultural well-being. The proposed area of open space will be high amenity and will make a significant contribution to the waterfront integrating with both the proposed commercial building and the adjoining (established) areas of public space on the waterfront.*
- *The proposed use and development of the new commercial building will also enable people and communities to provide for their social, economic and cultural well-being. The proposal involves the removal of existing at-grade car parking and will facilitate the construction of a building as anticipated by the strategic framework relevant to an assessment of the proposal.*

- *Whilst the proposed development will provide for a number of positive effects, the adverse effects of the proposal on the environment can be appropriately avoided, remedied or mitigated. However, as discussed within the report, I have outstanding concerns in relation to adverse effects of the proposal on the local wind environment and invite the applicant to comment further in this regard.¹*

I address the matter of the effects of the Site 10 building on the public wind environment in my resource management assessment.

Douglas Fletcher

12. Conclusions

I consider that the NKPP will provide benefits to the people of Wellington by improving access to and along the CMA and by creating public open space. However, in terms of GWRC parts of the proposal I consider that the NKPP will have some adverse effects during construction such as:

- *The discharge of treated contaminated water to land and water*
- *The disturbance to land in and adjacent to the CMA*
- *Take of groundwater*

As outlined in Section 9 of this report, these effects will be temporary and largely limited to the period of construction and will be effectively mitigated by the recommended conditions of consent.

The NKPP will also result in some on-going and/or permanent effects after completion of construction such as:

- *Occupation of additional space within the CMA*
- *The permanent diversion of groundwater around the basement level of the constructed commercial building*
- *Additions to and alteration of structures of historic merit*

¹ WCC s87F(4) Report, page 90.

However, again as outlined in Section 9 of this report, these effects which are on-going or permanent will be acceptable because of the following reasons:

- *The effects arising from occupation of the CMA will be minor, due to the small scale of the occupation and because of the locations where the proposed occupation is to occur*
- *The proposed permanent diversion will result in adverse effects on the life supporting capacity of fresh water including on any ecosystem associated with fresh water that are acceptable, as the proposed permanent diversion will be to groundwater within a contaminated site which is hydraulically linked to coastal water and not to any freshwater ecosystem*
- *The changes to the features of historic merit will be acceptable due to the small scale of the works, and in light of the findings in the heritage assessment (Archifact, 2014) and the conclusions in the assessment of the GWRC heritage expert Mr Michael Kelly*
- *All effects will be effectively mitigated by the recommended conditions of consent as outlined in Section 9 of this report.*

My assessment concludes that the aspects of the NKPP that are within GWRC jurisdiction will be of benefit to Wellington, through the provision of improved access to the CMA and by increasing and improving public open spaces. In my view the GWRC consents can be granted, subject to appropriate conditions being imposed. My suggested conditions are attached as Appendix 1.²

8.4 In my opinion, both Messrs Ryan and Fletcher are 'correct' in identifying the positive outcomes that will accrue. My experience tells me that all too often the primary focus in RMA hearings is on the adverse environmental effects, this focus being a response to the obligations under s5(2)(c) on "avoiding, remedying or mitigating any adverse effects of the activities on the environment".

8.5 However, with the RMA including any "positive" effect within the meaning of effect, as case law has established, to ignore positive effects (or outcomes) is to make an "unbalanced decision".³

² GWRC s87F(4) Report, 57.

³ *Elderslie Park v Timaru District Council*, [1995] NZRMA 433.

8.6 In my opinion, the Project will deliver significant positive outcomes (effects). I expand on this conclusion in my resource management assessment.

9. RESOURCE MANAGEMENT ASSESSMENT

9.1 I propose to approach my resource management assessment as follows:

(a) **Planning Framework:** firstly, I will identify the overall planning framework for development in the Lambton Harbour Development Area (as informed by the Regional Coastal Plan) and in the Lambton Harbour Area (as informed by the District Plan) and assess the 'general measure of fit' (i.e. consistency) between the North Kumutoto Project and the overall planning framework;

(b) **Section 104(1) RMA:** secondly, I will undertake a s104(1) assessment covering:

- environmental effects assessment [s104(1)(a)]
- consistency with policy instruments [s104(1)(b)(iv) and (v)]
- consistency with plan provisions [s104(1)(b)(vi)];

(c) **Other Matters:** thirdly, I will have regard to other matters that I consider relevant to an assessment of the Project [s104(1)(c)];

(d) **Part 2 RMA:** fourthly, I will assess the Project under Part 2; and

(e) **S274 Parties:** finally, I will comment on matters raised by the s274 parties.

9.2 Before turning to my assessment as outlined above, I want firstly to briefly comment on the various consents (permits) required under the Regional Freshwater Plan and the Regional Plan for Discharges to Land.

9.3 Without questioning the importance of these consents, I nevertheless consider them, and the matters they relate to, to be of secondary rather than primary importance. They are essentially consequential technical consents that are necessary to enable what I consider to be the primary consent(s), namely the land use consents under the District Plan for the new building on Site 10, including the basement construction and associated earthworks, and the public open space(s) development, to be implemented.

A. PLANNING FRAMEWORK

9.4 The Project is principally located within the Lambton Harbour Area under the District Plan, although some of the proposed public open space works do straddle the line of mean high water springs and are therefore are within the coastal marine area (CMA) and therefore subject to the provisions of the Regional Coastal Plan.

(a) Regional Coastal Plan

9.5 The Regional Coastal Plan (RCP) specifically identifies the Lambton Harbour Development Area (LHDA) as a zone or area where development can be appropriate. Here I specifically refer to:

- (a) Objective 4.1.24;
- (b) Policy 4.2.45; and
- (c) Policy 6.2.1

which clearly promote an expectation of development in the LHDA, development which provides for a wide range of activities appropriate to the harbour/city interface.

9.6 For example:

Objective 4.1.24

*The comprehensive **development** [my emphasis] of the Lambton Harbour Development Area is provided for.*

Policy 4.2.45

In the Lambton Harbour Development Area to:

- *provide for a wide range of activities **appropriate** [my emphasis] to the harbour/city interface;*
- *provide for **development** [my emphasis] compatible with the urban form of the city;*
- *recognise the heritage character, **development** [my emphasis] and associations of the area;*
- *develop and have particular regard to any design guides for the area which are contained in any proposed or operative Wellington City District Plan;*
- *provide for a range of public open spaces, access and through-routes, and to ensure that their nature, purpose and function is maintained;*

- ensure that the effects of **development** [my emphasis] and activities do not detract from people's enjoyment of the area; and
- ensure that the area is an integral part of the working port of Wellington.

Policy 6.2.1

To consider the following as **appropriate** [my emphasis] in the coastal marine area:

- the use and **development** [my emphasis] of structures in the coastal marine area for:
 - (1) activities which are fundamentally dependent upon a location in the coastal marine area;
 - (2) activities which support and service those which must locate in the coastal marine area, and which, because of a lack of a suitable space or operational constraints, cannot be located outside of the coastal marine area;
- **the use and development of structures in the Lambton Harbour Development Area; [my emphasis]**
- the use and development of structures for defence purposes; or
- the development of structures for network utility operations.

9.7 In the explanation to Policy 4.2.45 it is stated, inter alia, that:

The intention of bullet point 1 is to limit activities only if their effects make them incompatible with other activities appropriate to the location, or if they detract from the amenities of the area.

9.8 In relation to bullet point 2 regarding "urban form", the explanation is that:

The overall urban form of the city provides for an enhancement of the amphitheatre where the built form reflects the stepping down of topography from the Kelburn area to the sea. As a result, development in the Lambton Harbour Development Area will generally be lower than the adjacent city centre.

9.9 In the explanation to Policy 6.2.1 it is stated, inter alia, that:

Except for the Lambton Harbour Development Area [my emphasis] any structure associated with a use that does not have to be located in the coastal marine area is considered inappropriate.

9.10 This explanation confirms that structures are generally deemed to be appropriate in the LHDA.

(b) Wellington City District Plan

9.11 The objective and policies for the LHA are contained in Chapter 12 “Central Area”. Key points they cover are:

Central Area Generally

- (a) to encourage a wide range of activities and facilitate a vibrant, dynamic Central Area (of which the waterfront forms part);
- (b) to maintain and enhance amenity values;
- (c) to protect significant vista views of the harbour and identified public views;
- (d) to preserve general urban form based on a 'low city' / 'high city' demarcation;
- (e) to maintain the distinctive elements of areas of special character;
- (f) to maintain and enhance the quality of the coastal environment adjoining the Central Area, and maintain and enhance public access;
- (g) to enable efficient, convenient and safe access;
- (h) to manage the supply of commuter car parking; and
- (i) to promote the development of a safe and healthy city.

Lambton Harbour Area Specifically

- (a) to maintain and enhance the unique and special components and elements that make up the waterfront;
- (b) to maintain and enhance the public environment and guide the design of public open spaces;
- (c) to ensure a range of public open spaces, public walkways and through routes;

- (d) to encourage the enhancement of the overall public and environmental quality and general amenity of the waterfront;
- (e) to recognise and provide for developments and activities that reinforce the importance of the waterfront's marine history and cultural heritage;
- (f) to provide for new development which adds to the waterfront character and quality of design and acknowledges relationships between the city and sea; and
- (g) to maintain and enhance the waterfront as an integral part of the working port of Wellington.

Note: an assessment of the specific LHA objectives and policies is provided in **Appendix 2**.

9.12 In terms of process, the key aims are:

- (a) to provide for and facilitate public involvement in the planning of the waterfront; and
- (b) to provide for consistency in the administration of resource management matters across the line of MHWS.

(c) Summary - Planning Framework

9.13 Drawing on the provisions of the Regional Coastal Plan and the District Plan, and as noted in the AEE submitted with the application, the following key 'themes' can be drawn, themes which I consider are relevant to an assessment of the Project: ⁴

- (a) appropriate use and development (including buildings);
- (b) enhancement of public access along the coastal marine area;
- (c) increasing the range and diversity of activities;

⁴ This approach has been referred to as the "thematic approach" by the Court of Appeal in *Auckland Regional Council v Living Earth Limited* [2008] NZCA 349. In a critique of the case in the RMLA Newsletter, it was noted that:

While this thematic approach necessarily provides no more than a summary of the relevant planning documents, there can be no suggestion that it was in any respect materially in error. Indeed it - the Court of Appeal - held that dealing with planning instruments on a thematic basis was entirely sensible and desirable. Given the ballooning numbers of objectives and policies in many plans this approach may be widely welcomed.

- (d) enhancing the public open space environment of the waterfront (LHA);
- (e) maintenance and protection of significant heritage features and values;
- (f) quality design outcomes - both built form and public open spaces; and
- (g) enhancing the 'sense of place' of the waterfront.

9.14 Reading the Plans 'in the round' in relation to waterfront buildings and the development of public open space, I consider that the 'environmental result(s)' that are anticipated for the waterfront are achieved by the Project.

9.15 In reaching this conclusion I have had regard to a large number of objectives and policies that can be considered relevant to an assessment of the proposal. I return to this point when assessing the proposal under s104(1)(b)(vi).

9.16 I note that I have also identified other themes that were derived from an analysis of the provisions of other Plans, including the Regional Freshwater Plan and the Regional Plan for Discharges to Land, including those relating to earthworks and contaminated land.

9.17 However, consistent with the point previously made in relation to the regional consents under these two Plans, I do not consider that the objectives and policies of these two Plans have a significant role to play in informing the overall planning strategy for the LHA/LHDA - i.e. the Wellington waterfront.

9.18 Again with reference to the AEE submitted with the application, following the identification of the themes derived from an analysis of the Plans' objectives and policies, I identified a number of questions that I considered could be posed for s104 evaluation. I review the questions below when assessing the consistency of the Project against the statutory policy statements and plans.

B. SECTION 104(1) RMA - STATUTORY ASSESSMENT

(I) Environmental Effects (Section 104(1)(a))

9.19 Section 104(1)(a) requires that regard is had to "any actual and potential effects on the environment of allowing the activity", in this case a new waterfront building and an expansion of the landscaped public open spaces available at the northern end of the waterfront - aka the North Kumutoto Precinct.

9.20 The various witnesses for the applicants have outlined and assessed the effects arising from the Project that have the potential to be adverse. This evidence demonstrates the actual and potential adverse effects will either be avoided, or that appropriate consent conditions are proposed to mitigate effects where they cannot be avoided, to the point where any residual effects will be acceptable.

9.21 Turning now to the various effects, I draw on the evidence of the applicant's technical witnesses, and also on my experience in assessing developments on the Wellington waterfront, to assist me in reaching conclusions regarding "environmental effects". The principal effects I comment on relate to:

- (a) urban form, urban design and townscape;
- (b) landscape and open space;
- (c) views and visual amenities;
- (d) cultural and built heritage;
- (e) environmental effects (wind/shade);
- (f) public safety / CPTED;
- (g) vehicle access, servicing and parking (traffic effects);
- (h) coastal marine / ecological effects;
- (i) natural hazard effects, including seismic risk and sea level rise;
- (j) earthworks and contaminated land;
- (k) hazardous substances; and
- (l) construction effects.

Urban Form, Urban Design and Townscape

- 9.22 In relation to urban design and townscape I draw on the evidence of John Hardwick-Smith and Deyana Popova. I have also had regard to the urban design assessment of Graeme McIndoe, which formed part of the WCC's s87F(4) Report.
- 9.23 Issues raised in submissions that can be broadly described as 'urban form, urban design and townscape' include:
- Site 10 building height at 22.4m is excessive and inappropriate;
 - Site 10 building bulk is excessive for the site;
 - Site 10 building does not exhibit 'design excellence';
 - Site 10 building will dominate and overwhelm the former Eastbourne Ferry Terminal building; and
 - Site 10 building will 'challenge' the protected Whitmore Street viewshaft (VS 6).
- 9.24 Drawing on the expert evidence referred to in 9.22, my conclusion is that the height, bulk and form of the Site 10 building are appropriate for this northern end of the waterfront. At 22.4m above mean sea level (msl) the new building establishes an appropriate relationship to Shed 21 to the north and also the desired 'step down' in height from the buildings in the CBD on the city-side of the Quays.
- 9.25 In terms of the building's horizontal bulk and form it is not too dissimilar to Shed 21 and is generally consistent with previous and existing waterfront buildings with their long elevations fronting the Quays. Many of the building's design features, including the three-tier facade composition and the ground floor and upper level setbacks, collectively work to 'break down' the sense of building bulk.
- 9.26 Several submitters, and in particular the Architectural Centre, are critical of the building's design, opining that it falls to achieve the desired standard of 'design excellence'. I have noted that both Mr Hardwick-Smith and Mr McIndoe have responded to these submissions.
- 9.27 Guided by the opinions and evidence of Mr Hardwick-Smith and Mr McIndoe I conclude that the Site 10 building does achieve the high standard of architectural design expected

of new waterfront buildings. Design excellence, not surprisingly, is not a term defined in the District Plan. Consequently, there will be an element of subjectivity involved in determining how any building ‘measures-up’ against design excellence criteria.

9.28 Aside from the contention that the proposed Site 10 building does not exhibit design excellence, I note nevertheless that the Architectural Centre states that it has:

“... no problems with a building of this size, form, orientation and location from a heritage or urban design perspective”.⁵

9.29 Having considered the points raised by the submitters in relation to ‘design excellence’, and having regard to the expert evidence of Mr Hardwick-Smith and Mr McIndoe, I have concluded that the Site 10 building exhibits ‘strong and contextually relevant’ design features that are rightfully expected of new waterfront buildings.

9.30 An important design feature, and one highlighted by Ms Popova, is the gantry which she regards as the ‘signature’ element of the design which gives the building its identity and makes it memorable without having to compete with its neighbours. In my opinion this feature gives the building its distinctiveness and is one that is entirely appropriate given the building’s waterfront setting.

9.31 The final point I wish to make on the issue of ‘design excellence’ is to note the further point made by Ms Popova when she opined that:

“... in the context of the wider waterfront the location of Site 10 does not call for an ‘iconic’ or landmark’ structure. Rather, the diverse contextual conditions around the site and the variable scale and character of the neighbouring heritage buildings suggest that, while establishing its own presence and identity is important for any new building on Site 10, the integration to its context is an overriding objective”.⁶

9.32 In my opinion the Site 10 building achieves this objective, while, at the same time, exhibiting the “high quality of design” outcome set by the Wellington Waterfront Framework.

9.33 Another concern raised by a number of submitters is that the Site 10 building ‘dominates and overwhelms’ the former Eastbourne Ferry Terminal Building.

⁵ Submission 25, Architectural Centre Inc, page 4.

⁶ Deyana Popova, Evidence in Chief, paragraph 77, page 23.

- 9.34 The Site 10 building acknowledges and responds to the relative close proximity of the much smaller scale heritage listed building. A key feature is the way in which the Site 10 building steps back and frames the former ferry terminal building. This is a point acknowledged by Heritage New Zealand:

There is sufficient separation of the proposed building from the Ferry Terminal to enable the heritage building to be approached, seen and understood in its three-dimensional nature.

The proposed building is cantilevered over open space. This overhang, and the path through the building, offer sheltered public space on the waterfront with an opportunity to appreciate the waterfront heritage - to enjoy views of the harbour and the Former Eastbourne Ferry Terminal. Views of the Ferry Terminal from a further distance are also maintained.⁷

- 9.35 In its s274 Notice Heritage New Zealand states that it supports the applications for resource consent, stating as its first reason that:

Heritage New Zealand considers that the proposal respects nearby heritage. The bulk and location of the building is suited to its heritage neighbours and its exterior appearance is not dominant or overwhelming.⁸

- 9.36 The final 'urban design and townscape' matter I wish to comment on is the contention that the Site 10 building 'challenges' the Whitmore Street viewshaft (District Plan Viewshaft VS4).

- 9.37 District Plan standard 13.6.3.1.1 states that new buildings must not intrude on an identified viewshaft. VS4 is a view from the intersection of Bowen Street and Lambton Quay to the waterfront down the axis of Whitmore Street. As the viewshaft drawings submitted with the application confirm (refer Volume 3, Appendix 10), the Site 10 building does not intrude into the viewshaft, contrary to what some submitters may contend.

- 9.38 From the origin point of the viewshaft (Bowen Street and Lambton Quay intersection) the building will not be seen. As the viewer moves east towards the waterfront the building will come into view from points generally east of Featherston Street. As the viewer approaches the Waterloo Quay intersection the Site 10 building will frame the northern

⁷ Submission 30, Heritage New Zealand, page 2.

⁸ Heritage New Zealand, s274 Notice, page 1.

side of the viewshaft; and, at the same time, maintain views to the former ferry terminal building which lies to the north of the viewshaft frame.

9.39 In relation to 'urban form, urban design and townscape' my overall conclusion is the proposed Site 10 Building is consistent with the urban form outcomes anticipated for this part of the waterfront. In terms of height, bulk and form it achieves an appropriate relationship to neighbouring buildings. In design terms it is distinctive without being overly dominating or bold. The building establishes an appropriate relationship with the heritage listed buildings Shed 21 and the former Eastbourne Ferry Terminal building. The protected Whitmore Street viewshaft is maintained.

Landscape and Open Space

9.40 Although the majority of submissions opposing the applications focus on the Site 10 building, a number are also critical of aspects of the proposed development of public open spaces and the associated landscaping. Among the issues raised in the submissions were:

- the whole of North Kumutoto should be developed as public open space, including Site 10;
- Site 8 is 'over-engineered' open space;
- Kumutoto Stream should be enhanced and made more natural; and
- the design of Whitmore Plaza.

9.41 The District Plan policies specifically relating to the LHA have a strong focus on open space:

*Policy 12.2.8.1 Maintain and enhance the public environment of the Lambton Harbour Area by **guiding the design of new open spaces** and where there are buildings, ensuring these are in sympathy with their associated public spaces.*

*Policy 12.2.8.2 Ensure that **a range of public open spaces**, public walkways and through routes for pedestrians and cyclists and opportunities for people, including people with mobility restrictions, to gain access to and from the water are provided and maintained.*

9.42 In the explanation to Policy 12.2.8.1 it is stated, inter alia, that:

The main focus of the Lambton Harbour Area is to reinforce its role as a primary open space on the waterfront. A series of different open spaces - some green, some sheltered and some paved - that cater for diverse uses and activities will predominate

and in the explanation to Policy 12.2.8.2, that:

Substantial and varied areas of open space near and adjacent to the water are important to ensure uninterrupted access to the water's edge is maintained and enhanced ... a series of different open spaces that cater for diverse uses and activities will predominate.

9.43 Furthermore, the open space 'theme' is one of the five themes underpinning the Wellington Waterfront Framework, which includes the following 'open space' principles:

- *the harbour is the primary open space on the waterfront;*
- *a series of different open spaces that cater for diverse uses and activities will predominate; and*
- *there will be a variety of open spaces - some green, some sheltered and some paved.*

9.44 The District Plan mechanisms put in place to deliver these anticipated outcomes are Rule 13.4.5 and Standard 13.6.3.8.1:

13.4.5 The development of new, or the modification of existing open space in the Lambton Harbour Area, is a Discretionary Activity (Unrestricted).

13.6.3.8.1 Site coverage in the Lambton Harbour Area: the maximum site coverage for building development within the total Lambton Harbour area is 35%.

9.45 I have reviewed the open space proposals and in my opinion they will achieve a 'step change' transformation for areas currently used primarily of vehicle access and at-grade car parking to high quality public open spaces, in particular the Site 8 'pocket park' and the Whitmore Plaza.

9.46 The overall outcome will be a continuation of the high standard of public open space developed across the waterfront that has been achieved to date.

- 9.47 In coming to this conclusion, I have had regard to the points raised in the submissions and to the evidence of Daniel Males and Brad Coombs.
- 9.48 In my opinion the continued success of the waterfront as public amenity space will be based on a successful 'juxtaposition' of buildings and open space. To this end I support the intention behind Standard 13.6.3.8.1 that no more than 35% of the total Lambton Harbour Area can be occupied by buildings and therefore at least 65% must remain as open space.⁹ The key is in the detail, the detail of the open space design and the detail of the interface between the buildings and the open space.
- 9.49 The attached drawing (refer **Appendix 3**)¹⁰ confirms that across the total Lambton Harbour Area (as defined on the Planning Maps), including the Site 10 building, total site coverage of buildings will be 22.94%.^{11 12}
- 9.50 With reference to Site 8, Sue Watt (Submission 18) states that Site 8 would be better left as it is, adding that "*further development is a complete waste of money especially given the amount already spent on its development*".¹³ The Architectural Centre (Submission 27) has a contrary view stating that "*Site 8 ... is the most successfully designed*" of the proposed open spaces and "*the only aspect of the application that we support*".¹⁴
- 9.51 At the present time Site 8 is primarily used as a car park and rubbish collection point. In my opinion it hardly qualifies as public open space. The development of the site as a high amenity public open space, which will include provision for access to the water's edge, is a strongly positive outcome consistent with the aspirations of the District Plan and the Wellington Waterfront Framework.
- 9.52 More specifically in relation to Site 8, I note the following comments:

⁹ The District Plan does not include a definition of 'open space'. However it does define 'public space' as follows:

PUBLIC SPACE: means those places in public or private ownership which are available for public access (physical or visual) or leisure and that are characterised by their public patterns of use. Public spaces include, but not limited to, streets, accessways, squares, plazas, urban parks, open space and all open and covered spaces within buildings or structures that are generally available for use by the public, notwithstanding that access may be denied at certain times.

¹⁰ Acknowledgment: the drawing was prepared by Nathan Stocker, District Plan Team, Wellington City Council.

¹¹ The 22.94% figure includes the 3,692m² footprint of the underground carpark at the southern end of Frank Kitts Park. If this structure, which is 'topped' with public open space, was excluded, the site coverage figure would be 21.18%.

¹² The Lambton Harbour Area, as defined by the District Plan Planning Maps, excludes the wharf structures and the buildings located on those wharf structures - namely, Shed 1, Shed 3 (Dockside), Shed 5 and Shed 6, the former Eastbourne Ferry Terminal Building and the Clyde Quay Apartments (former Overseas Passenger Terminal), all of which are within the coastal marine area and are therefore subject to the Regional Coastal Plan and not the District Plan. The Lambton Harbour Area does include areas of legal road.

¹³ Sue Watt, Submission 18.

¹⁴ Architectural Centre, Submission 27, page 10.

*Daniel Males*¹⁵

- Site 8 will extend the existing Kumutoto Plaza and create a memorable public destination [21]
- the folded timber deck is designed to encourage interaction and provide access to the water's edge [23]
- a new accessible route to the Kumutoto Stream mouth will also be created [24]
- two new bridge structures will connect the Tug Wharf with Site 8 allowing access from the promenade and helping to integrate the deck into the wider public realm [24]
- a relatively small pavilion is proposed to the south east corner of Site 8. This structure will provide some pedestrian shelter within the space and complement the existing series of architectural elements along the laneway [25]

*Brad Coombs*¹⁶

- Site 10 is designed as an extension of the Kumutoto Plaza, with a playful interpretation of a folded wharf structure, which falls towards the stream mouth and harbour, ensuring that views across the top of the surface are retained [22]
- the pavilion within Site 8 is a light architectural structure that offers shelter within an otherwise open site [23]
- light bridge structures provide connectivity between Site 8 and the Tug Wharf which adds viewing opportunities and interest over this widened portion of water [47]

9.53 Waterfront Watch (Submission 10) opines that the Kumutoto Stream estuary should be enhanced and made more natural. The Kumutoto Stream estuary was declaimed and 'day-lighted' as part of the previous Kumutoto landscaping proposal consented in 2005. Today it is one of the 'signature' open spaces on the waterfront. The current proposal to develop the immediately adjacent Site 8 as public open space provides an opportunity to effectively extend the stream estuary area. As Dan Males notes:

¹⁵ Daniel Males, Evidence in Chief. The numbers in [brackets] are to the referenced paragraph number.

¹⁶ Brad Coombs, Evidence in Chief. The numbers in [brackets] are to the referenced paragraph number.

“ ... the proposal has been designed as an extension of the Kumutoto Stream estuary area. The design will soften the existing coastal edge introducing more coastal ecology to the area and providing access for people to get close to this and the water”.¹⁷

9.54 Whitmore Plaza was described by the Architectural Centre as a “... large barren circulation space, scaled to the vehicular needs of a car. It is not a destination, and lacks meaningful shelter, but does have some provision of seating, but all of this is to frame and facilitate car use in a space that ought to be primarily designed for the pleasure of people - or at the very least be designed as a ‘shared space’...”.¹⁸

9.55 In the AEE submitted with the applications, Whitmore Plaza was described in the following terms:

Whitmore Plaza has been designed to create a significant pedestrian orientated public space that also facilitates vehicle access. This ‘shared space’ reinforces the plaza as a public space and pedestrian gateway and down plays vehicle priority. Large timber platforms provide opportunities for seating, art installations or performance. A reconfigured gateway and planting zone will help to re-orientate the space to the harbour and provide a buffer between the plaza and the Quays.¹⁹

9.56 In his evidence in chief, Daniel Males (the designer of the proposed open spaces) comments that Whitmore Plaza:

... is designed to complement the other more intimate spaces within the Kumutoto Precinct and wider Waterfront / City. The patchwork of intimate and more open plazas along the waterfront allows for varying types of occupation. Whitmore Plaza is therefore purposely a larger space that could be used for public gatherings or exterior exhibitions. It is a space for flexible activities rather than being pre-programmed or cluttered.²⁰

This approach is consistent, in my opinion, with the District Plan policy to encourage the establishment of “a series of different open spaces”.

9.57 A hallmark of the waterfront development over the last twenty years, ever since the completion of Frank Kitts Park in 1990, has been the high quality of the open spaces that have been developed, including:

¹⁷ Daniel Males, Evidence in Chief, 76, page 16.

¹⁸ Architectural Centre, Submission 27, page 9.

¹⁹ Volume 3: Appendices to the AEE Appendix 2 “Landscape Design Statement” page 8.

²⁰ Daniel Males, Evidence in Chief, 98, page 20.

- Waitangi Park
- the boatshed lagoon and associated open spaces
- Taranaki Wharf open spaces
- Kumutoto Plaza
- Kumutoto Stream estuary
- the water's edge promenade
- all the linking lanes and accessways.

9.58 As Brad Coombs states, the landscape and public open space proposals for North Kumutoto will continue:

... the tradition of local and international recognition of the quality of the design of the waterfront”²¹

9.59 I agree. I also agree with Mr Coombs when he concludes that the public open space developments:

... will lead to strongly positive effects and will improve the amenity and the overall function of the area - attracting more people and improving access to the harbour edge and to the water.²²

9.60 Accordingly, I am of the opinion that the proposed public open spaces will result in a ‘step-change’ transformation of the North Kumutoto Area from an area dominated by surface level car parking and vehicle accesses to a high quality public environment that supports a range of open spaces.

Views and Visual Amenities

9.61 A number of submitters have expressed concern that the proposed Site 10 building will result in a loss of harbour views and compromise or block viewshafts.

9.62 Rosamund Averton submits that “*viewshafts and glimpses are not a substitute for panoramic views*”.²³ Chris Horne and Barbara Mitcalfe submit that the Site 10 building will “*block a viewshaft from the CBD to Lambton Harbour and the hills beyond, and from the harbour's edge to Te Ahumirangi*”,²⁴ while Waterfront Watch submits that the

²¹ Brad Coombs, Evidence in Chief, 78, page 16.

²² Op cit, 86, 18.

²³ Rosamund Averton, Submission 2.

²⁴ Chris Horne and Barbara Mitcalfe, Submission 26.

southern end of the building “challenges” the protected Whitmore Street viewshaft).²⁵ Pauline and Athol Swann submit that the Site 10 building will result in the “loss of spectacular views from the Cenotaph at Bowen Street”,²⁶ while Frances Lee submits that the Project will “lead to a loss of viewshafts”.²⁷

9.63 Heritage New Zealand submits that the overhang (gantry) of the Site 10 building and the path through the building offer an opportunity to “enjoy views of the harbour area and Former Eastbourne Ferry Terminal. Views of the Ferry Terminal from a further distance are also maintained”.²⁸

9.64 I accept, as does the District Plan, that specific views of the harbour, local hills and townscape features are an important part of Wellington’s cityscape. To this end, the District Plan seeks to protect identified public views, including views of the harbour. The mechanism through which this is achieved is Standard 13.6.3.3.1 “View Protection” which states that:

*No building or structure shall intrude on any viewshaft as shown in Appendix 11.*²⁹

9.65 Appendix 11 lists twenty viewshafts, including Viewshaft VS4 (Whitmore Street). The AEE submitted with the applications included the statement that the Site 10 building will not intrude into the viewshaft as confirmed in the visual simulations included in Appendix 10 to the AEE.³⁰ Refer also previous comments under ‘urban form, urban design and townscape’ [9.36-9.38]

9.66 In terms of wider cityscape and how the proposed building integrates into its context, an assessment based on views of the building from a range of viewpoints was undertaken and recorded in section 6.3.4 of the AEE submitted with the applications.³¹ The assessment was undertaken by Deyana Popova.

9.67 In turn, Ms Popova summarised the position in her evidence in chief under the heading “Townscape Assessment - Visual Impact on Key Public Views”. Key conclusions that she reached included:

²⁵ Waterfront Watch Inc, Submission10.

²⁶ Pauline and Athol Swann, Submission 13.

²⁷ Frances Lee, Submission 34.

²⁸ Heritage New Zealand, Submission 30.

²⁹ Wellington City District Plan, Chapter 13.6 “Central Area Standards”, page 13/44.

³⁰ AEE Volume 3, Appendix 10, “Proposed Site 10 Kumutoto - Visual Simulations”.

³¹ AEE, Volume 2, page 56.

- (a) the Site 10 building, along with the adjacent Shed 21, will be visible from a range of distances. It will be prominent in distant views from both the south and south/east (the wider waterfront and Oriental Bay) as well as in views from the more immediate waterfront setting;
- (b) the visibility of the proposal from the cityside will be much lower and limited primarily to viewpoints located to the west, south/west and north/west of Site 10, within a viewing radius of approximately 100-180m;
- (c) in the more distant views from the southeast, the building will be seen as a small element of the wider harbour setting at the foreground of the collective cityscape of the CBD. Overall, due to distance, foreground elements and the dense backdrop of the CBD buildings (including the NZ Post Building), the visual impact of the Site 10 building will not be significant with its horizontal form blending into its visual context;
- (d) in mid-range views the general form of the proposal, as well as some of the more detailed design treatment, will be noticeable; and
- (e) in close up-views the building's detailed facade modelling, which is the focus in these views, reduces the impact of its bulk, enhances its visual quality and assists its integration with the surrounding context.

9.68 From a broad cityscape perspective (i.e. how the building 'visually' integrates into its context), drawing on the expert assessment and evidence of Ms Popova, I conclude that the outcome is a positive visual relationship. Simply because a new building is positioned within what was previously an 'open' view, does not, in my opinion, necessarily result, as some submitters submit when they refer to 'lost views', in a negative effect.

9.69 Importantly, in the case of the Site 10 building, not only will the protected public viewshaft not be affected; but across the wider North Kumutoto area, views from and to the city and sea will be maintained.

Heritage

9.70 The principal heritage issue raised by submitters opposing the Project is a concern that the Site 10 building will 'dominate' significant heritage buildings, notably the former Eastbourne Ferry Terminal Building and that the new 'outcomes' will make no contribution to the heritage of the North Kumutoto area.

9.71 On the other hand, Heritage New Zealand submits that the proposal “... respects nearby heritage. The bulk and location of the building is suited to its heritage neighbours and its exterior appearance is not dominant or overwhelming”.³²

9.72 In reaching my conclusion on the heritage effects associated with the Site 10 building and the public open spaces development, I have drawn on the expert assessment of Ms Vanessa Tanner and Mr Michael Kelly³³ and the expert assessment and evidence of Adam Wild.

9.73 The District Plan policy context for addressing waterfront heritage is Policy 12.2.8.4:

*12.2.8.4 Maintain and enhance the heritage values associated with the waterfront.*³⁴

The explanation to the policy stresses that heritage buildings are an important aspect of the history of the waterfront and should be restored and re-used.³⁵

9.74 Immediately adjacent heritage buildings to Site 10 are Shed 21 and the former Eastbourne Ferry Terminal Building. There will be no direct impact on either building. However, the issue for assessment is whether the Site 10 building will have any adverse effects on these heritage buildings given their locational proximity.

9.75 Ms Tanner comments that:

*In my opinion the proposed building on Site 10 has no more than a minor effect on the historic heritage buildings in its immediate vicinity and meets District Plan Objectives (12.2.5, 12.2.6 and 20.2.1) which seek to recognise and protect historic heritage from inappropriate subdivision, use and development and avoid, remedy or mitigate any potential adverse effects*³⁶

adding in her conclusion that:

³² Heritage New Zealand, Submission 30, page 2.

³³ Annexures 2 and 3 respectively to the WCC s87F(4) Report.

³⁴ Wellington City District Plan, Chapter 12, Central Area, page 12/41

³⁵ In Appendix 1 I list the waterfront projects I have been associated with. Of these projects seven have involved the refurbishment of heritage buildings. From north to south: Shed 21, Shed 5, the Bond Store (Museum of Wellington City and Sea), former WFA building; former Odlines building, Shed 22 and former Herd Street Post Office building.

³⁶ Vanessa Tanner, “Heritage and Archaeology”, Annexure 2 to WCC s87F(4) Report, page 6.

*To avoid adverse effects on historic heritage the present application has through its architectural design and alignment, its retention and restoration of heritage fabric minimised adverse effects on historic heritage.*³⁷

9.76 Michael Kelly's focus is on the heritage items listed in the Regional Coastal Plan which are the former Eastbourne Ferry Terminal Building and the protected wharf edge and sea wall/reclamation edge.

9.77 In relation to the former Eastbourne Ferry Terminal Building, Mr Kelly accepts that there is no direct impact, although he notes that its context will be altered somewhat by the landscaping changes.

9.78 In relation to the wharves and wharf edges, Mr Kelly accepts that the proposed open space related developments will have relatively minor effects on historic heritage adding that:

*The alterations are not without purpose; they are likely to improve the appearance and usefulness of the area, which may eventually enhance heritage values.*³⁸

9.79 Mr Kelly opines that with the exception of the Former Eastbourne Ferry Terminal Building, the other listed heritage items are:

*... not hugely significant from a heritage perspective; they are functional structures of modest historic and technical importance. Tellingly, they will no longer be listed when the new regional plan is released later this year.*³⁹

9.80 Adam Wild firstly completed the heritage assessment submitted with the AEE accompanying the applications.⁴⁰

9.81 In the Executive Summary to his assessment, he noted that:

The range of heritage buildings, features and elements (including gates, fences, wharves, wharf, and reclamation edge) lend the area a distinctive amenity collectively and the proposals add to and enhance those values by responding to those heritage elements and extending public opportunity to appreciate the amenity of the area. Sites 8 and 10

³⁷ Op cit, page 10.

³⁸ Michael Kelly, "Heritage", Annexure 3 to WCC s87F(4) Report, page 2.

³⁹ Op cit, pages 2-3.

⁴⁰ Adam Wild, "Assessment of Environmental Effects on Heritage", AEE, Appendix 12.

are not archaeological sites and there are no structures on them, extant or demolished, that predate 1990.

In terms of the District Plan there is no specific rule or assessment criteria with respect to effects on heritage that applies in this case. Consent is required for a Discretionary Activity (Unrestricted) the consent authorities' discretion is not restricted - therefore regard can be had to any effects on historic heritage. It is principally for these reasons that this assessment is more appropriately a 'contextual' assessment given the presence of listed buildings and other heritage in the area.

9.82 I agree with Mr Wild that no consents are required under the District Plan's heritage rules and therefore that a contextual assessment of heritage values associated with the North Kumutoto Area is the appropriate basis for identifying what effects (if any) arise from the proposed development of the Site 10 building and public open spaces.

9.83 Mr Wild's overall conclusion is that:

The proposed development of both Sites 8 and 10 and the wider and associated public areas is not considered to have any significant effect on surrounding heritage values.⁴¹

9.84 In reaching this conclusion, Mr Wild considered that:

- (a) the scale of the proposed development on Site 10 will not overwhelm the adjacent heritage places as key features on the waterfront. *"In this particular area development does not have to be a slave to the existing scale of historic heritage assets adjacent to the development sites, but it should respond consciously to a range of factors that, if ignored, would detract from the heritage values recognised in the wider context";⁴²*
- (b) heritage places adjacent to the proposed Site 10 building will remain *"key features of the waterfront"* and will continue to express those values for which they have been recognised (robust, smaller scaled industrial or maritime buildings) which will continue to distinguish them into the future;⁴³ and
- (c) the new elements draw inspiration directly from their place within the wider heritage context. *"Importantly the design of new elements (particularly the buildings) is*

⁴¹ Adam Wild, Evidence in Chief, 35, page 7.

⁴² Op cit, 47, page 9.

⁴³ Op cit, 63, page 11.

consciously of their time, while making reference to historic activities and form (the “gantry” form of the proposed Site 10 building, the delineation of the former wharf edge between the Tug Wharf and the Harbour Wharf associated with the former Eastbourne Ferry Terminal Building, and the enhancement of the Kumutoto Stream mouth)”.⁴⁴

- 9.85 Drawing on the expert evidence of Ms Tanner, Mr Kelly and Mr Wild I have reached the same conclusion as Mr O’Leary (the WCC s87F Report author), namely that effects on historic heritage will be minor.
- 9.86 I began this section of my evidence by referring to Policy 12.2.8.4 *“Maintain and enhance the heritage values associated with the waterfront”*. In respect of the Site 10 building, I consider that several of the elements incorporated in the building draw on characteristics of the historic working waterfront - in particular, the expressed gantry, the Harbour Wharf Link and the building’s alignment with Waterloo Quay. In this way the new building reflects and maintains ‘contextual’ heritage values.
- 9.87 While some existing views of Shed 21 (south elevation) and the former Eastbourne Ferry Terminal Building (west elevation) from Waterloo Quay will be lost, importantly both buildings will retain a strong visual presence from numerous viewpoints, thus again maintaining ‘visual amenity’ heritage values.
- 9.88 In respect of the public open space developments, I see these as contributing to a positive outcome and an overall enhancement of the area’s heritage values.
- 9.89 I conclude, therefore that the Project is consistent with the District Plan’s objective to maintain and enhance heritage values associated with the waterfront.

Environmental (Wind/Shading)

Wind

- 9.90 In relation to wind effects I draw on the wind assessment report included in the AEE and the evidence in chief of Neil Jamieson.
- 9.91 In the wind assessment submitted with the applications the conclusion reached was that:

⁴⁴ Op cit, 68, page 12.

Wind conditions around the development site currently range from very low to extremely high. The open nature of the area, with few buildings to provide significant shelter, means that there is considerable exposure to strong wind flows for some or all of either the prevailing northerly or southerly wind directions. What shelter that is available depends significantly on the wind direction, occurring mostly at locations downward of buildings for particular wind directions.

The development site is currently vacant. Any building on the site will change the local wind flow patterns because the wind that currently blows across the open site will be forced to take other paths. Accordingly, some changes to the existing wind environment, both increases and reductions, were expected.⁴⁵

9.92 Mr Jamieson concluded that:

Overall, the proposed development caused a notable improvement in the local wind environment over quite sizeable areas around the building, primarily due to the redistribution of existing horizontal wind flow patterns.⁴⁶

9.93 As part of his initial wind assessment, Mr Jamieson also gave consideration to possible design configuration changes. He noted that:

Additional testing showed that any building of substantial size on this site will typically cause significant redistribution of wind flow patterns and wind speeds, and that the new building's setbacks help it to perform better than a lower slab-sided building at some locations.

The additional testing also showed that vertical screens could potentially be used to provide localised screening at specific locations if considered appropriate, although it is realised that the desire for wind shelter would need to be balanced against other design considerations.⁴⁷

9.94 In the WCC s87F(4) report Mr O'Leary, when discussing the District Plan policies relating to wind effects, comments that:

The principal concern in this regard is that the proposed building will further degrade the pedestrian wind environment along the western side of Waterloo Quay. Mr Donn's view in

⁴⁵ Neil Jamieson, "Wind Tunnel Study of the Proposed Site 10 Development", Appendix 13, AEE, page 22.

⁴⁶ Op cit, page 22.

⁴⁷ Op cit, page 23.

this regard is that the change in wind environment will be significantly worse for pedestrians as a result of the proposed building. Mr Donn's view, supported by the wind tunnel test conducted by Mr Jamieson, is that this is a result of a structure being present on what is currently an open site. In this regard, further information is required to determine whether or not the proposed building will be consistent with policies 12.2.5.6 and 12.2.5.7. Furthermore, it is Mr Donn's opinion that wind mitigation measures in relation to these effects cannot be contained within the development site as outlined in Policy 12.2.5.9.⁴⁸

9.95 Mr O'Leary also refers to Policy 12.2.5.8 noting that the policy specifically seeks to ensure that the wind comfort levels for important public spaces are maintained, adding that this would specifically include Kumutoto Plaza.

9.96 Mr O'Leary then continues:

The wind tunnel test does not comment specifically on this aspect of the proposal but does measure points in close proximity to Kumutoto Plaza ('O1' and 'N1'). Further comment on this topic would be helpful in terms of determining whether the proposal would remain consistent with Policy 12.2.5.8, that is, whether or not the wind comfort levels in Kumutoto Plaza will be maintained.⁴⁹

9.97 I understand that Mr Donn is of the opinion that some off-site mitigation measures may be required to mitigate the wind effects that will be experienced at the Waterloo Quay/Whitmore Street intersection, a matter that has been addressed by Neil Jamieson.

9.98 In his evidence in chief, Mr Jamieson records that:

The testing I have undertaken indicated that there are no significant increases in the maximum gust speeds in this area over the 20m/s Safety Criteria Threshold with the proposed building, and so this is not a safety issue. However, there is a localised area where there are increases with the proposed building, in the time that the Cumulative Effect Criteria for strong winds are exceeded by between 23 and 37 days per year, This is an amenity effect.

It is important to note that a change of 20 days per year is the minimum level considered to be a change in wind conditions attributable to the effects of a building under the test methodology. It is also important to note that these effects were identified for a building

⁴⁸ WCC s87F(4) Report, page 57.

⁴⁹ Op cit, page 58.

design that was slightly larger than that currently proposed, and so the effects in the above area are likely to be slightly similar of the current design.

*While this area across Waterloo Quay experiences high pedestrian traffic, changes of the magnitude expected are unlikely to be noticed by pedestrians, who pass through this area relatively quickly. While Mr Donn suggests in his comments that are included in the section 87F report that wind shelter in this area is required, he did not include such a requirement in his recommendations from his earlier review of the review report. He did recommend in his earlier review that the building design be accepted subject to consideration of wind shelter in the other three areas described above but that such consideration was not required prior to construction.*⁵⁰

- 9.99 Mr Jamieson also refers to a meeting held at Wellington City Council on 18 May 2015, a meeting I also attended, and comments that:

*Wind shelter options were discussed, mainly for the area across Waterloo Quay adjacent to the New Zealand Post building, but it was also accepted that the inclusion of additional wind shelter in specific areas, while desirable, needed to be weighed against other factors, including urban design, visual connections, historical relevance, views, traffic, pedestrian access and safety. I expressed the view that, given the overall beneficial effects of the proposed development, and the localised and relatively minor effects on pedestrian amenity, additional wind shelter, while desirable, was not critical for the project to proceed.*⁵¹

- 9.100 Having regard to Mr Jamieson's evidence I have concluded that additional off-site mitigation across Waterloo Quay adjacent to the 'open space' area at the south end of the New Zealand Post building is not necessary for the following principal reasons:

- (a) while Waterloo Quay is an important pedestrian route between the Railway Station and the Central Area south of Whitmore Street it is essentially a 'pass through' location, although I accept that pedestrians do often have to wait for the pedestrian phase across the intersection. It is not an 'important' public space like, for example, Kumutoto Plaza that Mr O'Leary specifically references; and
- (b) no pedestrian safety issues arise and any diminution in pedestrian amenity will not be significant and could be largely un-noticed by the majority of pedestrians using the route.

⁵⁰ Neil Jamieson, Evidence in Chief, paragraph 16.7 (g) to (i), page 7.

⁵¹ Op cit, paragraph 19, page 8.

On the other hand, as both Mr Donn and Mr Jamieson acknowledge, the effects of the new building on Site 10 are beneficial, with significant improvements in wind conditions in the locality.

9.101 Overall, therefore, the outcome in relation to wind effects is positive.

Shading

9.102 In relation to shading effects I draw on the shading assessment report included in the AEE and the evidence in chief of Hudson Moody.

9.103 I note that Mr Moody, in the conclusion to his evidence in chief, accepts that there will be some public spaces around the Site 10 building that will be shaded at times. As he notes this is inevitable in that all buildings generate shading in one form or another, an 'outcome' that the District Plan recognises. In short, it is not possible to achieve full sunlight protection across an area where buildings are located, including buildings located in accordance with District Plan provisions.⁵²

9.104 Referring to his technical report, Mr Moody confirms that there will be no shading from the Site 10 building on Kumutoto Plaza at any time of the day or year. Kumutoto Plaza is the open space area at this end of the waterfront that is listed as one of the public spaces protected for sunlight between 12noon and 2.00pm at either Equinox.

9.105 Also, the new Site 8 'pocket park' will be clear of any shading from the Site 10 building throughout the year, apart from some minor shading on the northernmost part of the park during six weeks of the year (1 June to 15 July) for about 0 to 20 minutes around 10.20am in the morning.⁵³

9.106 Referring to Whitmore Plaza, Mr Moody confirms that it will be inevitable that the northern part of the plaza adjacent to the Site 10 building will suffer from shading. However, he notes that there will be other nearby open sunny places where the public will be able to enjoy full sun.

9.107 Mr Moody's overall conclusion is that the shading effects generated by the Site 10 building are consistent with the District Plan objectives and policies.

⁵² Here I am recalling the District Plan standard that provides for buildings to occupy up to 35% of the total area within the LHA.

⁵³ Refer WCC s87(4) Report (page 26). The information referred to was provided in response to a s92 further information request.

9.108 The conclusion that shading effects per se do not result in a proposed building being 'inconsistent' with the District Plan objectives and policies is 'supported' by the statement in the explanation to Policy 12.2.6.5 that *"in some cases overshadowing of public spaces from new building work is inevitable"*.⁵⁴

9.109 In my opinion the relevant matter for assessment is whether (or not) the overshadowing caused by the building will reduce the public's enjoyment of available public spaces in the area.

9.110 As Mr Moody notes, notwithstanding the shadowing of Whitmore Plaza at certain times, at all times there will be other nearby public spaces in full sun which the public can enjoy. In any event, even public spaces that are at times in shadow can provide a good level of public amenity.

9.111 I agree with Mr Moody when he concludes that shading effects are less than minor.

Public Safety (CPTED)

9.112 A key District Plan objective is to ensure that new building works maintain and enhance the amenity and safety of the public environment.⁵⁵

9.113 In reaching my conclusion on the amenity and safety of the public environment that will be created following the implementation of the Project, I draw on the expert evidence of Dr Frank Stoks.

9.114 Dr Stoks, an acknowledged expert in CPTED (crime prevention through environmental design), has undertaken a baseline survey of existing conditions to inform his assessment of the Project.

9.115 Dr Stoks concludes that the safety and security issues identified in the baseline review will be mitigated and that no additional CPTED concerns have been introduced as a consequence of the Project. Dr Stoks identifies the following as positive features:

- (a) bringing more people into the area to actively work, play, commute, pause, 'own' and respect it;

⁵⁴ District Plan, Chapter 12, page 12/30.

⁵⁵ See for example Objective 12.2.6 and Policies 12.2.6.15, 12.2.2.16 and 12.2.6.17.

- (b) having sufficient and diverse activities to keep it activated and thus mutually supervised;
- (c) providing a physical environment that is intrinsically low risk, in terms of crime and fear of crime, by embedding CPTED principles;
- (d) providing a sustainably high quality environment; and
- (e) being committed to facilities management, including security.⁵⁶

9.116 Drawing on Dr Stok's expert assessment I conclude that the safety of the public environment will be enhanced as a consequence of the development of the North Kumutoto public spaces.

Public Safety (Hazardous Substances)

9.117 A potential 'public safety' issue is the on-site storage and use of hazardous substances (diesel fuel).

9.118 As is the case with many of the main buildings in the Central Area it is proposed to install on-site a generator for emergency (electric power) purposes. The generator will be diesel fuel 'powered.'

9.119 In the AEE submitted with the applications it was stated that:

Given the measures to be put in place, and given compliance will be achieved with the HSNO Regulations prior to completion of the work, it is considered that potential adverse effects resulting from the storage, use and handling of hazardous substances (diesel fuel) will be appropriately avoided, remedied or mitigated.⁵⁷

9.120 I have subsequently had the opportunity to read the evidence in chief of Ramon Wilson, noting his conclusion that the generator room and associated fuel storage will comply with all applicable regulatory standards.⁵⁸ Thus, I conclude that any hazards and/or risk to public safety associated with the proposed diesel storage will be appropriately managed and mitigated.

⁵⁶ Dr Frank Stoks, Evidence in Chief, 56, page 17.

⁵⁷ AEE, page 66.

⁵⁸ Ramon Wilson, Evidence in Chief, page 5.

Traffic Effects (Vehicle Access, Parking and Servicing)

9.121 A number of submissions raise traffic-related concerns including access arrangements and the creation of shared spaces (some submitters contend that a 'mixing' of pedestrians and vehicles would create a hazard, with Waterfront Watch referring to a "muddle of people and vehicles").

9.122 The Wellington Waterfront Framework, which serves as the 'guiding' document for the [re]development of the waterfront, incorporates several traffic-related principles, including:

- the entire waterfront is predominantly for people, not motor vehicles, pedestrians and non-motorised transport will be able to use the waterfront safely. However, service vehicle access needs to be provided for;
- there will be a public walkway/promenade along the length of the waterfront, predominantly at the water's edge;
- more private and public transport drop-off points are needed;
- ideally, surface parking should be progressively removed as development takes place. The parking requirements of Te Papa, Circa, Chaffers Marina and other waterfront venues need to be considered; and
- parking provided on the waterfront will be primarily for waterfront users.

9.123 More specifically in relation to North Kumutoto, under the heading "Parking and Vehicle Access" it is stated that:

A large underground car park that would service the individual buildings is the preferred option and could be connected into the existing car park under the former Retail Centre.

It is recognised that this might not be practicable or economically viable. An alternative that could be considered is above ground parking in a building on Site 102, next to Shed 21.

*Vehicle access needs to be provided to access parking areas, but the principle that pedestrians come first needs to be taken into account.*⁵⁹

9.124 From a traffic-related perspective, the Project will result in:

- (a) the removal 25 existing car parks from Site 8;⁶⁰
- (b) the removal of 24 car parks on Site 9 (17 spaces of the current 41 spaces will be retained);
- (c) the removal of 79 car parks from Site 10;⁶¹
- (d) the removal (and relocation) of the motorhome park (20 spaces);⁶²
- (e) the reduction in the number of traffic lanes entering/exiting the Whitmore Street intersection;
- (f) no changes to the Bunny Street intersection;
- (g) 65 on-site car parks being established on Site 10 (62 in the basement);
- (h) provision for servicing of the Site 10 building; and
- (i) the extension of the shared-space Kumutoto Lane from south side of Whitmore Street along the eastern side of the Site 10 building and Shed 21. [Note: the existing car parks on the eastern frontage of Shed 21 are retained].

9.125 I consider that the above outcomes are consistent with the principles set out in the Framework.

9.126 Turning to the District Plan, the principal objective is:

Objective 12.2.15 To enable efficient, convenient and safe access for people and goods within the Central Area.

⁵⁹ Wellington Waterfront Framework, page 32.

⁶⁰ Five of the car parks are 'double stacked' spaces.

⁶¹ Based on a parking survey I conducted on Tuesday 30 June, 134 of the available spaces across Site 8, Site 9 and Site 10 were occupied (92.4%). All but one of the vacant spaces were on Site 8, which is 'reserved' parking, whereas the parking on Sites 9 and 10 is 'pay and display' parking.

⁶² Although not part of the current suite of applications, it is proposed to re-locate the "Motorhome Park" to CentrePort land to the immediate east of the Kumutoto Lane 'laneway' opposite the northern end of Site 10 (the area currently occupied by the existing Motorhome Park). The proposed site of the 'new' Motorhome Park is currently a 'pay and display carpark'.

Related policies include:

12.2.15.6 Manage the supply of commuter car parking.

12.2.15.8 Manage on-site parking to ensure any adverse effects on the surrounding street network are avoided, remedied or mitigated.

12.2.15.9 Require the provision of servicing or loading facilities for each site in the Central Area.

12.2.15.10 Ensure that the design and location of servicing or loading facilities is appropriate having regard to the nature of the development and the existing or likely future use of the site.

12.2.15.13 Require all vehicular access to sites to be safe.

12.2.15.14 Protect and enhance access to public spaces in the Central Area.

9.127 In my opinion the [re]development of the North Kumutoto area is consistent with the above objective and policies. In coming to this conclusion I have drawn on the expert evidence of Mark Georgeson and also on the conclusions reached in the WCC's s87F Report, which have been informed by the independent traffic review undertaken by the Council's senior traffic engineer Soon Teck Kong.

9.128 From Mr Georgeson's evidence in chief I particularly note the following conclusions:

(a) the development will not result in additional traffic on the waterfront. Indeed, the probability is that vehicle movements to and from this part of the waterfront will significantly reduce;

(b) vehicles that will be present will be managed within a defined space and design that extends the existing qualities of the Kumutoto South laneway and presents a shared space environment that is well established throughout the Wellington waterfront. In my opinion this will be a significant improvement on the existing situation and be consistent with the Framework principles;

(c) vehicle volumes will be low and vehicles speeds low; and

(d) the basement car park will not be a high turnover car park.

9.129 In response to submitters' concerns about the effectiveness and safety of the 'shared spaces', Mr Georgeson identifies the desired characteristics of the shared spaces highlighting that pedestrians have priority. Commenting that consistency of design and outcomes is important in ensuring shared spaces are legible and safe for all users, Mr Georgeson opines that:

*It is for this reason that the design of the proposed laneway repeats the form, style and function of the existing Kumutoto Laneway (South). The aim is an overall common design that users interpret as a shared space and understand what is expected of them.*⁶³

9.130 Mr Georgeson then adds:

In the way planned, I am of the view that the designs will remove the existing vehicular dominance, volumes and speeds and present a self-explaining and self-regulating environment. Surface treatments, traffic calming measures, street furniture and the narrow1ed gateway treatment at the Whitmore Street gates all point to a new and superior environment where drivers will not have the impression they have priority.

*While acknowledging that the designs do recognise the need to provide some vehicle access, including to the basement carpark, for delivering purposes and for the NZ Police (Maritime Unit), I note again that there will not be more traffic. I also observe that the success of the area will in part arise from reduced interactions with less vehicle movements and from spaces being better defined, functionally and operationally.*⁶⁴

9.131 In my opinion Mr Georgeson's comments are valid. I have had experience with the majority of waterfront developments and I have been able to experience, as a pedestrian, a number of areas where shared spaces have been implemented, most recently at Clyde Quay Wharf. I consider that these spaces do operate in a 'pedestrian priority' manner, while, at the same time, enabling the necessary level of vehicle access. For certain, the change at North Kumutoto will be from one where vehicles have priority to one where pedestrians have priority. As I have previously stated, I consider that this will be a 'step change' transformation.

9.132 I have noted the 'in principle' endorsement of the shared spaces by Mr Soon Teck Kong, subject to final approval of the design detail relating to traffic calming measures by the

⁶³ Mark Georgeson, Evidence in Chief, 122, page 23.

⁶⁴ Op cit, 123 and 124, page 23.

WCC's Roading Team prior to construction. While I accept the appropriateness of the recommended consent condition 14 (Application 3), given the record to date of Wellington Waterfront Limited (now City Shaper) as the Council agency responsible for implementing the waterfront developments, as witnessed by the high quality design of the completed public spaces, including the shared spaces, I am confident that the Project will achieve a high amenity, safe public environment where pedestrians have priority.

Coastal Marine / Coastal Ecology Effects

- 9.133 Any development in the Lambton Harbour Area, given the proximity of the area to the harbour waters, has the potential to impact on the resources of the coastal marine area. For the present applications, given the extensive earthworks associated with the excavation of the Site 10 basement and the associated potential impacts on ground water and associated groundwater discharges, along with the earthworks associated with the development of Site 8 and the other public open spaces, this potential exists.
- 9.134 The potential issues associated with the site works and discharges to ground water and the coastal marine area have been addressed in the GWRC's s87F report. Subject to appropriate (and recommended) consent conditions the conclusion reached by the GWRC officers is effects will be less than minor. For example, it is recorded in the s87F Report that Dr Megan Oliver, GWRC Environmental Scientist, advised that:

Overall I agree with the author, Jeremy Helson, that the effects of constructing the building on Site 10 and associated landscaping will have a less than minor impact on the marine environment, provided all care is taken to treat the discharge and to minimise the volume of discharge to the CMA.⁶⁵

I note that the 'proviso' is the subject of recommended consent conditions which, apart from some minor amendments which do not change intention or purpose of the condition(s), are acceptable to the Applicants.

- 9.135 In his assessment report submitted with the Applications,⁶⁶ Dr Jeremy Helson records, inter alia, that:

⁶⁵ GWRC S87F(4) Report, page 12.

⁶⁶ Dr Jeremy Helson, "The Likely Effects on the Marine Environment of the Proposed Development at Site 10 Kumutoto and Landscaping at Whitmore Plaza, The Laneway and Site 8", AEE Appendix 16.

New Construction on Site 10

The marine environment in the vicinity of the development has been the source of storm water discharge and is a working commercial wharf. This has resulted in contaminants being introduced into the marine environment and elevated levels of heavy metals have been detected as a consequence of these uses.

I consider any further and indirect contamination as a result of the proposed development is not likely to have a significant effect on the marine environment. This is due to the relatively low likelihood of contamination occurring, the already contaminated nature of the receiving environment and the capacity to mitigate such effects.

Landscaping

The proposed landscaping involves re-contouring, excavation and filling to prepare open spaces. Also proposed is a re-alignment of an existing rip-rap and a minor extension to an existing wharf.

The effect [on the] marine environment is likely to be negligible as a result of this work.⁶⁷

9.136 Subsequently, in his evidence in chief, and having had regard to the submissions and s87F Report, Dr Helson concluded that any further and indirect contamination of the coastal marine environment resulting from the Project is not likely to be significant given:

- (a) the low likelihood of contamination occurring; and
- (b) the already contaminated nature of the receiving environment; and
- (c) the capacity to mitigate such effects through the recommended consent conditions.

9.137 Drawing on Dr Helson's assessment and evidence, I conclude that there is a low likelihood of any significant adverse effects on the marine environment

Natural Hazards and Climate Change

9.138 Waterfront Watch Incorporated (Submission 10) contend that:

⁶⁷ Op cit, Executive Summary, page 2.

The site is unsuitable given the growing evidence of man-made climate change resulting from sea level rises, more violent storms and extreme weather events.

9.139 Expert evidence on the matter is principally that of Dr Michael Revell and Richard Reinen-Hamill. I have read that evidence and conclude that with a minimum floor level of 2.5m above mean sea level the new Site 10 building will be appropriately protected from probable sea level rises over the next 100 years. Therefore, I conclude that appropriate regard has been had to potential sea level rises associated with climate change.

9.140 On the matter of seismic hazard, I have had regard to the evidence of Adam Thornton and concluded that the Site 10 building, which will be base isolated, has been designed to a high seismic standard.

9.141 Therefore I conclude that appropriate regard has been had in the design of the building to the risk from seismic hazard.

9.142 Finally under this heading I refer to the risk from tsunamis. I have had regard to the evidence of Richard Reinen-Hamill. The conclusion(s) that I draw are:

(a) the narrow entrance to Wellington Harbour will have an ‘attenuation’ effect which will result in tsunami heights experienced in the inner harbour being significantly reduced (which is an opinion shared by Dr Dawe, the GWRC’s expert advisor on natural hazards);⁶⁸ and

(b) that the return period for a tsunami with a nearshore wave height in the inner harbour of 6.1m is well in excess of 500 years, which was the wave height figure referred to in Dr Richard Sharpe’s assessment.⁶⁹

9.143 I note that Mr Reinen-Hamill agrees with Dr Sharpe’s observation that:

The risk to occupants from this design-level tsunami is therefore unlikely to be any greater than that which would apply to other waterfront properties in the Wellington CBD.

Site Contamination

9.144 In relation to site contamination matters I draw on the evidence of Dr Penelope Kneebone, particularly in relation to the excavation of the Site 10 building basement. Dr

⁶⁸ For example, Mr Reinen-Hamill notes that a tsunami with a height of 12m at the open coast would reduce to around 2 to 4m at Kumutoto.

⁶⁹ AEE Appendix 21.

Kneebone's evidence draws on the detail ground contamination assessment and draft contamination site management plan submitted with the applications.⁷⁰

9.145 Dr Kneebone's principal conclusions are:

(a) the contaminated soil is typical of fill in Wellington reclamations of the same age; and

(b) implementing the procedures set out in the Contamination Site Management Plan will minimise potential adverse effects of the site works.⁷¹

9.146 I have also noted that Dr Kneebone is approving of the WCC's recommended consent conditions relating to "Contaminated Material"; and also agrees that the conditions proposed by the GWRC are generally appropriate, but is of the opinion that the proposed TSS compliance limit should also be used for the metals compliance limits, and that the compliance limits should apply to the dissolved fraction. This endorsement by Dr Kneebone of the recommended conditions, subject to the minor recommended amendment(s), confirms a close level of agreement between the specialist advisors on site contamination.

9.147 Drawing on Dr Kneebone's expert evidence, and given the implementation of the recommended consent conditions, I conclude that any effects associated with site contamination, whether on public health or the environment generally, including the harbour waters, will be less than minor and effectively limited to the construction period only.

Construction Effects

9.148 I have read the evidence in chief of Peter McGuinness. Also, I am familiar with the draft construction management plan submitted with the application.⁷²

9.149 As with any major construction project I accept that there will be disruption to some existing activities and potential nuisance, including construction noise.

9.150 In my opinion it is important to ensure that comprehensive and robust construction management plans are in place that will, to the greatest extent practicable, mitigate those

⁷⁰ AEE Appendix 18.

⁷¹ Dr Penelope Kneebone, Evidence in Chief, page 9.

⁷² AEE Appendix 22.

effects and, in the case of 'public safety', ensure that every precaution is taken to avoid any risks to public safety.

9.151 I have reviewed the recommended consent conditions regarding the preparation and approval of a Construction Traffic Management Plan (CTMP) and a Construction Management Plan (CMP), noting that:

- *The CTMP must establish acceptable performance standards regarding public safety including methods to avoid, remedy or mitigate adverse construction traffic effects during the development of the site;*⁷³
- *The CMP must establish acceptable performance standards regarding public safety and amenity including methods to avoid, remedy or mitigate adverse construction effects.*⁷⁴

9.152 I also note that the CMP must be implemented for the duration of the site works and must be modified, where directed by the Council's compliance monitoring officer (CMO), to deal with any deficiencies in its operation.

9.153 Based on the implementation of recommended Conditions (5), (6), (7) and (8) on Application 1 and (4) and (5) on Application 3, I consider that construction of the building and public open spaces can and will be managed in a manner to ensure that any adverse construction effects are mitigated to the greatest extent practicable.

9.154 I agree with the following statement made by the author of the WCC s87F(4) Report:

*Overall, It is my view that the effects of the proposal associated with construction will be localised, limited in extent and temporary in nature. I consider such effects will be minor and can be appropriately managed through consent conditions.*⁷⁵

Summary - Environmental Effects

9.155 In summary, I consider that the information originally presented in the AEE and now to this Court hearing in the evidence of the Applicant's technical witnesses provides a comprehensive and robust assessment of the actual and potential adverse effects of the Project.

⁷³ Consent condition 5 (Application 1).

⁷⁴ Consent condition 4 (Application 3).

⁷⁵ WCC S87F(4) Report, 149 at page 33.

9.156 In terms of s104(1)(a), I am of the opinion that any actual and potential adverse effects on the environment associated with the Project, given the proposed mitigation directed by the consent conditions, will be acceptable in the context of the sustainable management purpose of the Act. This is before regard is had to positive effects as part of an overall 'balanced' assessment of all effects, a point I will return to when forming an overall judgement as part of my Part 2 assessment.

(II) Consistency with Policy Instruments (s104(1)(b) ((iv) and (v))

9.157 In this section of my evidence I propose to assess the consistency of the Project against the provisions of New Zealand Coastal Policy Statement (NZCPS) and the Regional Policy Statement for the Wellington Region (RPS).

9.158 In the AEE submitted with the Applications, I identified and summarised what I regarded as the relevant objectives and policies from the NZCPS and the RPS. In doing so I followed the 'thematic approach', as approved by the Courts in Living Earth Limited v Auckland Regional Council.⁷⁶

9.159 Having identified in the order of some forty objectives and policies across the NZCPS and the RPS, in turn I identified the following key themes:

- appropriate use and development (in the coastal environment);
- enhancement of public access along the coastal marine area;
- enhancement of public open space in the coastal environment;
- maintenance and protection of significant heritage features and values;
- appropriately addressing risks and consequences of natural hazards having regard to sea level rise;
- recognising the role of tangata whenua in decision-making; and

⁷⁶ The reference to the Court decision is noted in Footnote 55, page 41 of the AEE.

- managing natural and physical resources across the line of mean high water springs in an integrated manner.⁷⁷

9.160 In turn, and based on the themes that I had identified, I posed a number of questions that I considered would enable me to identify the degree of consistency with the key provisions of the two relevant policy instruments, NZCPS and RPS. The questions were:

Question 1: can the Project be considered to be an ‘appropriate’ development within the Wellington Waterfront (Lambton Harbour Area) and adjacent to and within the coastal marine area?

Question 2: will the Project enhance public access to and along the harbour edge / coastal marine area?

Question 3: will the Project enhance the quality of public open spaces on the waterfront?

Question 10: will the Project appropriately address the risks and consequences of natural hazard events, having regard to sea level rise?⁷⁸

9.161 The AEE at Section 6.6 “Summary - s104 Evaluation” (pages 75 to 79) addressed each of the questions that had been posed. Without repeating all the detail provided in the AEE, I note the following principal conclusions.

Question 1: appropriate development

9.162 I concluded that that Site 10 building was an appropriate development in this part of the Wellington Waterfront.

Question 2: enhancement of public access

9.163 I concluded that the Project would add significantly to the public and pedestrian amenity of North Kumutoto by extending the waterfront promenade and providing significantly enhanced pedestrian linkages to and through the area. I noted that the development of

⁷⁷ Other themes that I identified derived from my analysis of relevant plan provisions (Regional Coastal Plan and District Plan) I address in the next section of my evidence.

⁷⁸ Other questions were framed in relation to the themes derived from the Plan provisions. Also, I chose to discuss consistency with some of the identified themes when addressing overall Part 2 matters (e.g. the role of tangata whenua in decision making).

the 'pocket park' on Site 8 would provide opportunities for closer access to the water's edge.

Question 3: quality of waterfront public open spaces

- 9.164 I concluded that the Project would deliver a significant enhancement of the public amenity of the North Kumutoto Area through the removal of large areas of 'at grade' car parking and their replacement with quality public open spaces.

Question 10: natural hazard risks / sea level rise

- 9.165 I concluded that the Site 10 building had been designed to achieve a high level of seismic performance. I also concluded that the building had been designed to address inundation from sea level rise. I note that since writing the AEE further discussion and analysis regarding sea level rise 'scenarios' has resulted in the Applicants' witnesses concluding that an appropriate minimum ground floor level for the building is 2.5m, with the result that the Applicants now propose that the recommended consent condition 33 be amended to change the 2.67m to 2.5m.

Question 12: co-ordinated management across line of MHWS

- 9.166 I noted that the four applications had been prepared in an integrated manner cognisant of the fact that components of the Project crossed the line of mean high water springs. The single AEE that was prepared to support the four applications was prefaced on this integrated/co-ordinated approach.
- 9.167 For the above principal reasons I concluded overall that the Project was consistent with the national and regional policy directives contained in the New Zealand Coastal Policy Statement and the Regional Policy Statement for the Wellington Region.

(III) Consistency with Plan Provisions (s104(1)(b) (vi))

- 9.168 My approach to establishing consistency with relevant Plan provisions was the same as that I adopted for assessing consistency with policy instruments - namely, firstly identify the relevant themes underpinning the relevant objectives and policies and secondly frame questions that required an assessment of the Project against those themes.

9.169 I identified four Plans as relevant Plans:

- Regional Coastal Plan
- Regional Freshwater Plan
- Regional Plan for Discharges to Land
- Wellington City District Plan

9.170 I acknowledge that I regarded the Regional Coastal Plan and the District Plan as the more important instruments.

9.171 Across the Regional Coastal Plan and the District Plan I identified a total of 62 objectives and policies of which all but three were from the District Plan. In turn, I identified the following themes:

- increasing the range and diversity of activities;
- maintenance and protection of significant heritage features and values;
- quality design outcomes - both built form and open spaces;
- enhancing the 'sense of place' of the waterfront;
- managing earthworks in areas adjacent to the coastal marine area; and
- managing the remediation of contaminated land.

9.172 In the same manner to the approach for the policy instruments, and drawing on the identified themes, in turn I posed the following questions:

Question 4: will the proposed new building on Site 10 contribute positively to the Central Area's urban form and the waterfront's 'sense of place'?

Question 5: will the proposed new building on Site 10 contribute to the Wellington Waterfront framework's vision of buildings in scale with and sympathetic to heritage buildings?

Question 6: will the proposed new building on Site 10 give rise to any adverse effects on waterfront amenities as a consequence of significant environmental effects (wind and shading)?

Question 7: will the Project accommodate vehicular and pedestrian traffic and movement in a safe and efficient manner?

Question 8: will there be any adverse effects associated with the Project earthworks, including the removal of contaminated material?

9.173 Again without repeating the detail, I note the following principal conclusions:

Question 4: urban form and 'sense of place'

9.174 I concluded that the proposed building achieves a high level of architectural design, with strong maritime references and an overall urban form that enables it to establish a positive relationship with the nearby heritage buildings, Shed 21 and the former Eastbourne Ferry Terminal Building.

9.175 I also concluded that the high level of ground floor 'public' permeability and active edge would enable the building to establish a positive relationship with the adjacent public open spaces.

9.176 I concluded that the overall height and 'urban form' of the building was consistent with the principle of buildings 'stepping down' in height from Central Area, noting that the permitted activity height limit on the opposite side of Waterloo Quay was 60m above mean sea level - i.e. approximately three times the height of the proposed Site 10 building.

9.177 Finally I concluded that Site 10 building would establish a strong 'sense of place' as envisaged by the Wellington Waterfront Framework.

Question 5: heritage

9.178 I concluded that the Site 10 building would establish an appropriate relationship with the adjacent heritage buildings. To support this conclusion, I noted the opinion of Heritage New Zealand which was that:

The overall size of the new building is within the plan perimeter of Site 10. The height and bulk of the proposed building are in comparative proportion to Shed 21. The new building

neither overwhelms Shed 21 in size, nor in the appearance of the external fabric. There have been efforts to align elevation features of the new building to the detailing of Shed 21 and, in this subtle way, show sensitivity to heritage in the new building. The building alignment along Jervois Quay ensures views of Shed 21 can be seen from the roadway.

There is sufficient separation of the proposed building from the Ferry Terminal to enable the heritage building to be approached, seen and understood in three dimensional nature.⁷⁹

Question 6: micro-climatic effects

9.179 I noted that the new building would result in additional shading and changed wind effects. I also noted that while there would inevitably be shading on the Whitmore Plaza the 'protected' Kumutoto Plaza would not be shaded at any time of the day or year; and likewise the new public open spaces on Site 8.⁸⁰

9.180 In terms of wind, I noted that the site is presently very exposed to wind and that the new building would result in a significant improvement in wind conditions on the waterfront, both in terms of gust wind speeds and amenity levels. I also noted that the public open spaces have been designed to provide areas of shelter.

Question 7: traffic

9.181 My principal conclusion was that the Project would achieve an overall 'transformation' of the area from one dominated by motor vehicles to one with a significant emphasis on pedestrian amenity. I considered this transformation to be a strongly positive outcome.

9.182 I noted that where there has to be a continuation of vehicle access and movement, as with most other parts of the waterfront, this use and access would be much more 'controlled' with general priority being given to pedestrians and cyclists over vehicles.

9.183 Referring to the pedestrian 'priority' signalled and provided for through the design of the 'shared spaces', I concluded that the outcome overall would be one where the focus

⁷⁹ I note that subsequently (in its s274 Notice), Heritage New Zealand has stated that it considers that:

... the proposal respects nearby heritage. The bulk and location of the building is suited to its heritage neighbours and its exterior appearance is not dominant or overwhelming.

⁸⁰ It was subsequently found that there would be some very minor shading on a small portion of Site 8 for a very limited period of time.

shifts from vehicle amenity to pedestrian amenity and safety in accordance with the vision laid down in the Wellington Waterfront Framework.

Question 8: earthworks and contaminated material

- 9.184 Accepting that there would be adverse effects in terms of some short-term disruption to public access to this part of the waterfront during the construction earthworks, I noted nevertheless that the earthworks themselves will be undertaken in a manner to ensure that any potential adverse effects, including dust and sediment discharge to stormwater and the coastal marine area, would be 'avoided' to the greatest extent practicable through comprehensive and robust construction measures such as the implementation of a sediment control and construction management plans.⁸¹
- 9.185 In relation to contaminated material, I concluded that any contaminated material would be handled in a manner to ensure that there was no risk to human health or the environment. I felt able to reach this conclusion given the technical advice I had received from Tonkin and Taylor.^{82 83}
- 9.186 For the above principal reasons, I concluded that the Project was overall consistent with the objectives and policies of the Regional Coastal Plan and the District Plan.
- 9.187 At paragraph 9.16 above I noted that the two other relevant Plans were the Regional Freshwater Plan and the Regional Plan for Discharges to Land.
- 9.188 The AEE at pages 29 to 30 listed the objectives and policies considered to be relevant to an assessment of Applications 2 and 4, being the applications to the GWRC for water and discharge permits. Having considered those objectives and policies I concluded that in the case of the Project the key issue was what (if any) effects there might be on the coastal marine environment, and, in particular, on harbour waters.
- 9.189 In turn, I framed the following question:

Question 9: will there be any short-term effects on harbour waters during construction?

⁸¹ I note the recommended consent conditions relating to the preparation and implementation of an "Erosion, Dust and Sediment Control Plan" - refer Application Three, Conditions (8) to (13).

⁸² Tonkin and Taylor, "Ground Contamination Assessment Wellington Waterfront Sites 8, 9 and 10", AEE, Appendix 18.

⁸³ I note the recommended consent conditions relating to the preparation and implementation of a final Contaminated Site Management Plan - refer Application One - Conditions (17) to (22) and Application Three - Conditions (25) to (28).

9.190 My conclusion was that although there could be some short-term effects, measures to be put in place during construction to control sediment laden water entering the coastal marine area would ensure any such effects were minimal.

9.191 In reaching my conclusion that any effects would be minimal I had had regard to the expert advice of Dr Jeremy Helson who undertook the assessment of likely effects on the marine environment.⁸⁴

9.192 Dr Helson had concluded, inter alia, that:

(a) in relation to the excavation associated with the Site 10 basement:

*... any further and indirect contamination as a result of the proposed development is not likely to have a significant effect on the marine environment. This is due to the relatively low likelihood of contamination occurring, the already contaminated nature of the receiving environment and the capacity to mitigate such effects;*⁸⁵ and

(b) in relation to the proposed landscaping, these works would have no more than a negligible effect on the marine environment given:

- *the very small scale of the proposed works;*
- *the nature of the marine environment; the seabed fauna being naturally adapted to small-scale disturbance and such disturbance occurring as part of everyday use of the wharf area;*
- *the common nature of the marine biota inhabiting the rip-rap and seabed in the vicinity; and*
- *no evidence of deleterious biological effects as a result of similar works in the area immediately south of the propose development.*⁸⁶

9.193 In relation to the objectives and policies from the Regional Freshwater and Regional Discharges to Land Plans, I note that the author of the GWRC's s87F(4) Report, Douglas Fletcher, concluded that the Project (given the proposed conditions of consent) would meet the intentions of the relevant objectives and policies of both Plans.⁸⁷

⁸⁴ Dr Jeremy Helson, "The Likely Effect on the Marine Environment of the Proposed Development at Site 10 and Landscaping at Whitmore Plaza, The Laneway and Site 8", AEE, Appendix 16.

⁸⁵ Op cit, page 2.

⁸⁶ Op cit, page 7.

⁸⁷ GWRC S87F(4) Report, 10.2.3.1 (page 52) and 10.2.4.1 (page 54).

9.194 For the reasons summarised above and discussed in more detail in the AEE, I agree with Mr Fletcher's conclusions.

10 OTHER MATTERS

10.1 There are two matters I want to briefly discuss in relation to s104(1)(c) 'other matters':

- North Kumutoto Planning History; and
- Wellington Waterfront Framework.

(I) Planning History

10.2 I consider that the planning history of Site 10 and the wider North Kumutoto area is a relevant 'other matter'.

10.3 The AEE at Section 3 (pages 7 to 18) outlined the planning history of the area starting with the Transitional District Plan (the Lambton Harbour Combined Scheme - 1989) and ending with the Environment Court's 2012 decision on Variation 11. The summary concluded with the following comment:

Thirty Years of Planning Guidance

Throughout the last thirty years of planning history a consistent 'intention' has been the [re]development of North Kumutoto for a mix of buildings and public open spaces, all as part of a revitalised Wellington waterfront.

Furthermore, this intention has always identified Site 10 (previously known as Site 102), as a potential site for a new waterfront building, an intention confirmed in the Wellington Waterfront Framework.

The present North Kumutoto Project seeks to bring this intention to reality.⁸⁸

10.4 Over this period of time the planning documents have generally intended that a building could/should establish a building on Site 10 (aka Site 102) - refer to the Table below. I make this comment in light of the submission from Waterfront Watch and others that Site 10 should be retained as public open space.

⁸⁸ AEE, page 18.

Table 1: Planning History - Site 10

Date	Planning Instrument or Relevant Document	Building Height
1989	Lambton Harbour Combined Scheme	44m above msl
1994	Proposed District Plan	24m above msl
1996	Community Consultative Committee Report on Lambton Harbour	Height of any building should reflect the scale of Shed 21.
2000	Proposed District Plan - operative 27/07/00	24m above msl
2000	Variation 17 (subsequently withdrawn)	34m above msl
2001	Wellington Waterfront Framework	New buildings at North Queens Wharf to relate to the scale and height of heritage buildings, bearing in mind that Shed 21 at the northern end is higher than the heritage buildings at the southern end.
2001	Variation 22 (a variation to the operative District Scheme) - operative 27/07/04	Introduced the concept of 'zero height'. The public notice stated that "... <i>there is no new site on the waterfront that carries an automatic right to build to a particular height without a resource consent being granted</i> ".
2009	Variation 11	30m above msl (proposed). Variation withdrawn following Environment Court decision. Court observed that 22m could be appropriate.

10.5 I consider that this long standing provision for a building or buildings on Site 10 is a relevant matter to which regard should be had. In my opinion, it is a very different situation from one where land has been zoned for open space or conservation/recreation purposes and is subject to a Reserves Act classification - i.e. is public land where

buildings are not envisaged. I make this comment in response to the comment made by a number of submitters that Site 10 should remain as public open space.

- 10.6 Under both the District Plan and the Regional Coastal Plan the Wellington Waterfront is a 'development' zone and one where the planning instruments clearly see buildings being appropriate. As I have noted above, under the District Plan the area landward of mean high water springs can, in accordance with permitted activity standard 13.6.3.8, have a total site coverage (i.e. building development) of 35%. At present total site coverage is 22.22%. The addition of the proposed Site 10 building will lift the figure to 22.94%, still well below the 35% standard - refer **Appendix 3**.⁸⁹

(II) Wellington Waterfront Framework (2001)

- 10.7 The Wellington Waterfront Framework (WWF), first adopted by Council in April 2001 and reaffirmed in September 2011, is often referred to as the Council's strategic planning policy guiding the development of the Wellington Waterfront.
- 10.8 Mr O'Leary has provided a comprehensive summary of the WWF at pages 74-75 of the WCC s87F Report. I endorse his summary.
- 10.9 From the perspective of the 'appropriateness' of the proposed building for Site 10, I would draw the Court's attention to the following specific statements regarding the North Kumutoto and the 'role' and character of buildings in that area:
- North Kumutoto has a strong connection to the CBD. This will be reflected with a stronger sense of city form being developed in this area through **a higher proportion of buildings than on the rest of the waterfront** [my emphasis];
 - buildings can provide a protected sheltered route from the Railway Station along the Quays / new buildings could include a colonnade on the quay edge to continue the line of the colonnade proposed at Shed 21;
 - a new building on Site 10 could provide on-site parking;

⁸⁹ The Lambton Harbour Area defined on the District Plan Planning Maps includes sections of Customhouse, Jervois and Waterloo Quays, Post Office Square and Cable Street, covering in the order of 4.81 hectares. If these areas of 'legal road' (including Post Office Square) were excluded from the 20.92 hectares used as the basis for calculating the site coverage, and the buildings within Post Office Square (some 124m²) were therefore not included in the site coverage either, the 'revised' figure would be 29.80%. On the basis that the District Plan definition of "public space" includes, inter alia, "streets", "accessways", "squares" and "plazas", I consider that the appropriate base figure for calculating site coverage in the Lambton Harbour Area is, therefore, 20.92 hectares, which is the area defined by/identified on the Planning Maps. Refer also Footnotes 11 and 12, page 27 above.

- vehicle access needs to be provided to access parking areas, but the principle that pedestrians come first needs to be taken into account;
- new buildings in this area will include a range of uses, and could include retail and commercial activities;
- building edges that face onto the major open spaces should enhance activity in those spaces / ground floors should be publicly accessible; and
- new buildings at North Kumutoto should be sympathetic to, and relate to the scale and size of heritage buildings.

10.10 In my opinion the proposed Site 10 building delivers on these 'performance briefs'.

10.11 Overall, as stated in the AEE (at page 74), I consider that the Project is consistent with the 'vision' for North Kumutoto as expressed in the WWF - which, as I noted, is the Council's strategic policy document guiding the development of the waterfront.

11 PART 2 RMA

11.1 Both of the s87F Report authors (Ryan O'Leary for the WCC and Douglas Fletcher for the GWRC) conclude that the Project is consistent with the Act's sustainable management purpose as laid down in s5. I agree.

11.2 I came to my conclusion that the Project would promote the purpose of the Act after having had regard to the principles presented in s6, s7 and s8, to which I now turn:

Section 6: Matters of National Importance

11.3 I consider that the following matters of national importance are relevant to an assessment of the Project:

s6(a): the preservation of the natural character of the coastal environment (including the coastal marine area) and its protection from inappropriate subdivision, use and development

11.4 North Kumutoto is an integral part of an urban waterfront that was initially developed for commercial port purposes but is now undergoing a 'transformation' to a publicly

accessible waterfront with a strong emphasis on public amenity and public use. Whilst some opportunities can be taken to [re]introduce some natural character, including the development of water's edge landscaped open spaces, natural character is not, in my opinion, the defining character of the inner harbour 'coastal environment'.

- 11.5 I regard the Project as an 'appropriate' development which is in line with the planning framework that has been established to guide [re]development and [re]use of the waterfront.

s6(d): the maintenance and enhancement of public access to and along the coastal marine area

- 11.6 Public access to and along the waterfront, including access to the water's edge and the wharves (the coastal marine area), is a principal objective of the Wellington Waterfront Framework. The public walkway (promenade) is the spine of the waterfront. The Project will add to and enhance the promenade as it passes along and through North Kumutoto.

- 11.7 In short, public access will not only be maintained, it will be enhanced.

- 11.8 I accept that there will be some temporary restrictions on public access through the area during the construction phase.

s.6(e): the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga

- 11.9 The Project Area is an area with strong association with the Te Atiawa/Taranaki Whanui ki te Upoko o te Ika and the hapu of Ngati Te Whiti. The cultural impact report, prepared in association with the Port Nicholson Block Settlement Trust and the Wellington Tenth Trust,⁹⁰ confirms that the reconnection of the people of Wellington with te moana o te Whanganui a Tara (the waters of Wellington Harbour) in a positive way is important, not only in terms of Maori culture, but also in terms of the overall culture of the City.

- 11.10 The report does not identify any particular cultural issues, but does identify the possibility of some Maori cultural artefacts or archaeological items being discovered during site works and therefore recommends that it would be prudent to have an accidental discovery protocol in place.

⁹⁰ AEE, Appendix 7.

11.11 In my opinion with the commissioning of the cultural impact assessment, and given the Applicant's endorsement of the accidental discovery protocol process, I consider that this matter of national importance has appropriately recognised and provided for.

11.12 Additionally, I note that Morris Te Whiti Love, in his evidence in chief, confirms that the Project is "*unlikely to raise any significant Maori cultural issues*".⁹¹

s6(f): the protection of historic heritage from inappropriate subdivision, use and development

11.13 The Wellington Waterfront has important historic heritage values that should be protected from inappropriate use and development. In the near vicinity of the Project are a number of listed buildings and items, including Shed 21, the former Eastbourne Ferry Terminal building, Sheds 11 and 13, the Tug Wharf, and the wharf edge and reclamation edge, all of which are listed heritage items in either the District Plan or the Regional Coastal Plan.

11.14 The Project has been designed to avoid any loss of historic heritage values. The new building on Site 10 achieves an appropriate relationship with Shed 21 and the former Eastbourne Ferry Terminal building. The proposed public open space development, although some of the works will impinge on the historic reclamation edge in front of Site 8, will add a more appropriate setting for appreciating the historic heritage of the North Kumutoto Precinct.

11.15 Heritage New Zealand has advised that the proposal for the Site 10 building respects the nearby heritage, the bulk and location of the building is suited to its heritage neighbours, and its exterior appearance is not dominant or overwhelming. Further, Heritage New Zealand confirms that the public open spaces offer opportunities for locating interpretation, and recommends the use of the historic gates and railings in the Project which form part of the preliminary design.

11.16 Given the above conclusions, I consider that Project is consistent with s6(f).

Section 7: Other Matters

11.17 I consider that the following "other matters" are relevant to an assessment of the Project.

s7(a): kaitiakitanga / s7(aa): ethic of stewardship

⁹¹ Morris Te Whiti Love, evidence in chief, paragraph 17, page 6.

11.18 I consider that the input by Maori into the assessment process (principally through consultation and the preparation of the cultural impact report) is consistent with the principle of kaitiakitanga; while the incorporation of an accidental discovery protocol in any consents granted is consistent with the ethic of stewardship.

s7(b): the efficient use and development of natural and physical resources

11.19 The use of Site 10 for a building, as has long been envisaged through the applicable planning instruments, is an efficient use of a site that has, since the demolition of the former Harbour Board building (Shed 17 in 1986), been principally used for car parking (and currently as a motorhome park).

11.20 The use of the ground floor of the new building for publicly accessible activities, the incorporation of the creative business hub accommodation, and the commercial office space, will all contribute to the economic viability of the Project. In turn, the significant capital sum payable by the Applicant (Site 10 RLP) for the long-term lease will enable the Council to fund the development of the North Kumutoto public spaces, which is budgeted at \$5 million in the Council's capex programme.⁹² This expenditure will result in a 'transformation' of much of North Kumutoto from an area currently largely occupied by car parks to a series of vibrant, high amenity public open spaces. This transformation represents an efficient use of resources to achieve a high quality 'urban waterfront' environment, consistent with the vision laid down in the Wellington Waterfront Framework.

s7(c): the maintenance and enhancement of amenity values

11.21 The amenity values of the immediate area will overall be enhanced through bringing a significant daytime population to the area and developing public open space, which in turn promotes public and pedestrian amenity. I consider that the Project will result in a significant enhancement of the public amenities of the North Kumutoto section of the Wellington waterfront.

s7(d): intrinsic value of ecosystems

11.22 The waters of the inner harbour and the seabed have been significantly affected over the years by port activities and as a result of stormwater discharge. The inner

⁹² \$3 million 2015-2016 and \$2 million 2016-2017 - Wellington City Council Long-Term Plan 2015-2025.

harbour/coastal marine area is a highly modified environment and not one with significant intrinsic value in terms of coastal ecosystems.

11.23 The Project will not result in any significant (further) deterioration of the water or ecosystems of the coastal marine area.

11.24 Furthermore, there are no extant land-based ecosystems. Rather, significant areas of 'hard surface' car parking and associated vehicle accesses will be removed and replaced with landscaped open spaces.

s7(f): the maintenance and enhancement of the quality of the environment

11.25 The Project will result in a significant enhancement of the quality of the environment in the North Kumutoto Precinct, principally through an enhancement of the landscaped public open spaces, but also through the construction of a new building consistent with the Wellington Waterfront Framework's principle of 'high quality' development.

11.26 Significant parts of the ground floor of the building will be accessible to the public and will open out onto sheltered public open spaces. The quality of the public and pedestrian environment will be significantly enhanced.

s7(i): the effects of climate change

11.27 The building has been designed to take account of the likely rise in sea level as a consequence of climate change.

s8: Treaty of Waitangi

11.28 I consider that through the initial commissioning of the cultural impact report and the consultation with the Port Nicholson Block Settlement Trust and the Wellington Tenth Trust, the Applicants have 'followed a path' consistent with the 'partnership principles' in the Treaty of Waitangi.

11.29 Furthermore, I am aware that the Applicants are committed to on-going consultation with tangata whenua and anticipate that representatives of the Port Nicholson Block Settlement Trust and the Wellington Tenth Trust will participate in the decision-making on the Project as it moves forward to implementation, if the necessary resource consents are granted.

11.30 Drawing on the above considerations regarding s6, s7 and s8 matters, and turning to the over-riding purpose of the Act (s5), I have concluded that the Project will promote the purpose of the Act in two important ways:

(a) it will provide for the sustainable management of a significant natural resource (Site 10) in a manner consistent with the relevant planning instruments and the Wellington Waterfront Framework. The building, and the activities that it will enable to establish on the waterfront, will make a significant contribution to the amenity and vitality of North Kumutoto; and

(b) it will provide for the sustainable management of a significant natural resource (Site 8) and other adjacent areas, which are currently principally occupied by car parks and associated vehicle access ways in a manner that will enhance the opportunity for members of the public to enjoy the open space amenities of the waterfront and therefore better provide for their social, cultural (and recreational) needs.

11.31 At the same time, the potential for any adverse effects associated with the Project on the public amenities of the waterfront, and on the private amenities of the owners and occupiers of other Central Area buildings, have been appropriately avoided, remedied or mitigated. Any residual effects will not be more than minor. Indeed, in relation to the public amenities of the waterfront, the overall outcome will be strongly positive.

11.32 Given the final statement made above, namely that the overall outcome will be strongly positive, I consider it important in reaching an overall judgement on the applications that regard is had to the positive effects that the Project will give rise to. In this way an overall balanced judgment will be reached.

11.33 I consider that the following are positive effects:

(a) transformation of an area dominated by surface level car parking and vehicle access ways to high quality public open spaces (Site 8 and Whitmore Plaza);

(b) a new opportunity for access to the water's edge;

(c) extended waterfront promenade and pedestrian amenity generally;

(d) a high quality building that will contribute to the waterfront's 'sense of place';

- (e) enhanced pedestrian access adjacent to the Quays (Site 10 colonnade and pedestrian shelters adjacent to Site 9); and
- (f) bringing a significant 'daytime' population to North Kumutoto that will add to the vibrancy and vitality of the waterfront.

11.34 Also, and as noted in answer to Question 11 posed in the AEE, which was:

Question 11: will the Project result in positive effects for the overall development of the Wellington waterfront?

I consider a positive effect is that the proposed developments will bring certainty to this important part of the waterfront after close on 30 years' of uncertainty, and thereby complete an important component of the overall vision for the waterfront.

11.35 It is for the above reasons that I come to the same conclusion as Ryan O'Leary and Douglas Fletcher, namely that the Project will promote the sustainable management of natural and physical resources in accordance with the purpose of the Act, and in accordance with Part 2 more generally.

12 S274 PARTIES

12.1 I have reviewed the s274 Notices filed by submitters and the original submissions filed by each of the parties.⁹³

12.2 One issue that is raised by several of the s274 parties is the contention that the Site 10 building will result in "a loss of public ownership and finite open space" of waterfront land. Other similar comments/contentions were:

- "taking of public land for private purposes"
- "alienation of public land"
- "privatises public space".

12.3 I acknowledge that the waterfront is in public ownership. However, in my opinion the landowner, the Wellington City Council, is entitled to develop waterfront land or, as is the case with Site 10, lease the land for appropriate development purposes. Ownership of the land is not an RMA matter *per se*.

⁹³ Notices filed by: Action for Environment, Waterloo Apartments Owners' Body Corporate 309984, Victor Davie, Heritage New Zealand, Chris Horne & Barbara Mitcalfe, Frances Lee, Waterfront Watch Incorporated and David Zwartz.

12.4 The Wellington City Council as landowner did undertake a consultation and decision-making process which culminated in the Council's decision at its meeting on 27 August 2014 to approved the design of the Site 10 building and the associated development of public open space at North Kumutoto, and to grant a 125 year lease for the development of Site 10.

12.5 In the Officer's Report on the Site 10 proposal, it had been noted that:

*The Wellington Waterfront Framework (Framework) identified Site 10 (formerly Site 102) at Kumutoto (formerly North Queens Wharf) as a site for further development, noting the area's strong connection to the CBD, its maritime character, and the need to provide a sheltered route from the Railway Station along Customhouse Quay. Specifically, the Framework states 'this will be reflected with a stronger sense of city form being developed in this area through a higher proportion of buildings than on the rest of the waterfront.'*⁹⁴

12.6 Given this decision-making process guided by the strategic policy framework for the waterfront, that is the Wellington Waterfront Framework, which in turn was the subject of extensive public consultation leading up its adoption by Council in April 2001, it is my conclusion that the focus should now turn to the RMA merits of the proposed development.

12.7 In relation to the expressed concern about a 'loss of finite open space', as I have already noted, the District Plan 'context' for an assessment of this matter is Rule 13.6.3.8 "Site Coverage" which states that:

13.6.3.8.1 Site coverage in the Lambton Harbour Area:

The maximum coverage for building development within the total Lambton Harbour Area is 35%.

Consequently, a minimum of 65% of the total Lambton Harbour Area must be open space.

12.8 The drawing attached at **Appendix 3** confirms that total site coverage following the completion of the site10 building will be 22.94%.

⁹⁴ North Kumutoto (Site 10) Proposal - Approval of Preliminary Consent Plan, Report 3 to Transport and Urban Development Committee, 8 April 2014, page 1.

12.9 Other principal issues raised in the s274 parties' submissions include:

- appropriateness of building height, bulk, scale and design;
- site coverage;
- degree of public access to the ground floor of the building;
- loss of harbour views/blocking of protected viewshaft (VS4);
- shade/wind;
- appropriateness of the Site 10 building in its heritage context;
- pedestrian safety (mixing of vehicles and pedestrians);
- climate change / sea level rise; and
- proposal does not comply with the objectives and policies of the District Plan.

12.10 In my opinion some of the issues raised are not RMA issues per se. In this 'category' I include:

- the suggestion that there had been insufficient opportunity for public consultation; and
- use of land for commercial activity (I note that commercial activity is a "Permitted Activity" in the Lambton Harbour Area under Rule 13.1.1).

12.11 Some other issues I have already addressed (e.g. conversion of public land to private use and loss of open space).

12.13 Other issues will be addressed by other expert witnesses. Here I am thinking in particular of the issues relating to the location of the car park entrance, truck dock, proposed two-way traffic movement and emergency vehicle access, matters that will be addressed by Mark Georgeson.

12.14 Referring to the matters listed in paragraph 12.9 above, I make the following comments:

appropriateness of building height, bulk and scale and design

- 12.15 Firstly, I note that Waterfront Watch, Action for Environment and David Zwartz comment that the height of the proposed Site 10 building “*exceeds the recommendation of the Environment Court*” in its decision on Variation 11.
- 12.16 I have read the Court’s decision and indeed referred to it in the AEE.⁹⁵ I understand that the Court opined that “*a permissible height of 22m is appropriate*”. If I am correct in equating “permissible” with permitted activity height, then I consider that the s274 parties are placing a stronger meaning on the referenced 22m height than may have been intended. In any event, the main building at 22.4m above mean sea level would not give rise to materially different effects in terms of overall urban form, bulk and scale, shading and wind etc., from the effects associated with a 22m high building.
- 12.17 For the reasons I have discussed in my evidence (particularly in the section on “Urban Design and Townscape” at paragraphs 9.22 to 9.39) I consider that the building at the height proposed is appropriate.
- 12.18 In relation to the ‘design’ of the building, and drawing on the evidence of John Hardwick-Smith, Deyana Popova and the detailed evaluation of Mr Graeme McIndoe in Appendix 1 to the WCC s87F Report, I conclude that the proposed Site 10 building does exemplify ‘design excellence’.

site coverage

- 12.19 Mr Victor Davie states in his s274 Notice that “site coverage” is a particular issue he is interested in.
- 12.20 As I have noted, Central Area standard 13.6.3.8.1 states that total site coverage in the Lambton Harbour Area must not exceed 35%. With the Site 10 building completed total site coverage will be 22.94%.

degree of public access to ground floor of buildings

- 12.21 Firstly, I note that there is no operative or proposed District Plan standard requiring that ground floors of buildings in the Lambton Harbour Area should be publicly accessible.⁹⁶

⁹⁵ AEE, Section 3.10, pages 14 to 17.

⁹⁶ I am aware that Variation 11 (subsequently withdrawn) did propose a new standard requiring that 60% of the ground floor of all new buildings in the Lambton Harbour Area should be publicly accessible.

There is, however, in the explanation to Policy 12.2.8.6⁹⁷ a list of matters that will be considered in relation to any application for a new building on the waterfront, including:

- *Whether the ground floor of the building has an 'active edge' that supports the public use of the space and which is predominantly accessible to the public.*

12.22 Furthermore, the Wellington Waterfront Framework includes as a 'principle' that "ground floors of buildings will be predominantly accessible to the public".⁹⁸

12.23 Drawing "Ground Floor Area Breakdown" submitted in response to s92 request for further information established that:

(a) the Site 10 site has an area of 2,750m²; and

(b) the building footprint at ground level would occupy 1,515m².

Consequently, 45% of the site is public open space. This includes the colonnade and the diagonal through-site link.

12.24 In terms of the ground floor of the building (i.e. the internal spaces) which totalled 1,515m², the breakdown was as follows:

▪ tenancies	572m ²
▪ lobbies	111m ²
▪ creative business units	412m ²
▪ building services	420m ²

12.25 Thus, for the total site 70% is publicly accessible and for the building 45% (tenancies and lobbies) is publicly accessible.

12.26 I regard the creative business units, which occupy 412m² (27%) of the ground floor as a positive feature of the proposal and while they may not be publicly accessible, they will have active display window frontages, as will the other tenancies.

12.27 Of the total building frontage, excluding the internal diagonal lane, 87% will incorporate active edge display windows. The internal lane is 95% active (tenancy display windows

⁹⁷ Policy 12.2.8.6: Provide for new development which adds to the waterfront character and quality of design within the area and acknowledges relationships between the city and the sea.

⁹⁸ Wellington Waterfront Framework, page 19.

and lobby entrance). This level of 'activation' compares to the 60% standard that Variation 11 sought to introduce.

- 12.28 Although the District Plan does not include a definition of "publicly accessible", it does define "public space" as follows:

PUBLIC SPACE: means those places in public or private ownership which are available for public access (physical **or visual**) or leisure and that are characterised by their public patterns of use. Public spaces include, but are not limited to, streets, accessways, squares, plazas, urban parks, open space and all open or covered spaces within buildings or structures that are generally available for use by the public. Notwithstanding that access may be denied at certain times [emphasis added].

- 12.29 In my opinion the proposed ground floor of the Site 10 building, which incorporates active edge display windows and a range of activities that are publicly accessible, is compliant with the District Plan's anticipated environmental results for buildings in the Lambton Harbour Area.

loss of harbour views/blocking of protected viewshaft (VS4)

- 12.30 As I confirmed when discussing the issue of 'views and visual amenities' under s104(1)(a) (refer paragraphs 9.61 to 9.69) the Site 10 building does not intrude into protected viewshaft VS4. I accept that the southern end of the building does provide a northern frame to the viewshaft, but consent is not required under 13.3.8.6 for any intrusion into the viewshaft.

- 12.31 In regard to the contention that the Site 10 building will result in a 'loss of harbour views', the only view that will be lost from a public viewpoint will be from Waterloo Quay across the site currently occupied by surface car parking and the Motorhome Park, to the harbour beyond. This view is only available from a short section of Waterloo Quay between the southern end of Shed 21 and the Whitmore Street gates. I do not regard this view as an important view given that it is in reality only a transient view for pedestrians and motorists. Any building on Site 10, no matter its height, will effectively block this view.

- 12.32 No other harbour view will be lost.

- 12.33 At this point I also note that no building owner or occupier opposite Site 10 has raised any concerns about loss of harbour views.

shade/wind

- 12.34 The advice of the Applicant's wind advisor is that overall the new building results in a notable improvement in the local wind environment over quite sizeable areas around the building, primarily due to the redistribution of existing horizontal wind flow patterns.
- 12.35 No safety issues arise as a consequence of increased wind speeds. There are some, however, small areas that will experience some reduced amenity due to an increase in wind effects, including a small area on the opposite side of Waterloo Quay. However, these effects are relatively minor when balanced against the overall positive outcome.
- 12.36 In terms of shading, not unexpectedly there will be shading on the spaces immediately east of the building, including Whitmore Plaza. I say 'not unexpectedly' as any new building will result in additional shading, a point that the District Plan acknowledges.⁹⁹
- 12.37 The Site 10 building will not result in any shading on the sunlight protected Kumutoto Plaza, not just during the protected hours (12noon to 2.00pm at either of the equinoxes), but any time of the day throughout the entire year.
- 12.38 Furthermore, the proposed 'pocket park' on Site 8 will be substantially free of any shadow effects. The only time when there will be some shadow on a small area at the northern 'tip' of the park is for a short period (0 to 20 minutes) at around 10.20am for about six weeks of the year (1 June to 15 July). No shadow from the Site 10 building will reach Site 8 at any other time throughout the year.
- 12.39 Overall, I conclude that any shading effects from the Site 10 building will be no more than minor, notwithstanding that there will be some shading on Whitmore Plaza and a section of the waterfront promenade.

⁹⁹ In the explanation to Policy 12.2.6.4 "*protect sunlight access to identified public spaces within the Central Area and ensure new building developments minimise overshadowing of identified spaces during periods of high use*" it is noted, inter alia, that:

People need access to direct sunlight. However, it is accepted that within the Central Area, full access is neither reasonable nor practicable. Because there are few rules protecting sunlight within the Central Area, Council will work to ensure that sunlight access is maintained to identified public spaces where people congregate and at a time of the day when they are more heavily used. Sunlight access to identified public spaces can be eroded over time. Therefore, activity standards in the Plan will help to protect sunlight access to identified public spaces.

The Lambton Harbour Area is being frequented by increasing numbers of people. Sunlight protection applies to parts of the waterfront, and is more extensive in some areas because of the special nature of this environment.

12.40 Importantly, the new public space at Site 8, which I am certain will become a much visited destination space, is almost completely free of any shading right throughout the year.

appropriateness of the Site 10 building in its heritage context

12.41 For the reasons already discussed (refer paragraphs 9.70 to 9.89 and 11.13 to 11.15) I consider that the proposed Site 10 building does achieve an 'appropriate relationship' to the neighbouring heritage buildings, a view shared by Heritage New Zealand.

pedestrian safety (mixing of vehicles and pedestrians)

12.42 The so-called 'mixing' of vehicles and pedestrians is a feature of several other 'shared spaces' on the waterfront and has not to my knowledge, especially following the installation of bollards controlling the number of vehicles using the promenade in front of Site 6, resulted in concerns about pedestrian safety.

12.43 Based on the expert evidence of Dan Males, Mark Georgeson and Frank Stoks, I conclude that: (a) pedestrians will have priority; and (b) vehicle movements will be slow. Consequently, I do not consider that there will be risk to pedestrians' safety given responsible behaviour by all parties - pedestrians, cyclists and motorists. The detailed design of the shared spaces will be subject to final scrutiny by Council, with pedestrian safety ('to minimise confusion between pedestrians and vehicular traffic') being a key focus - refer Condition (14) on Application 3.

climate change / sea level rise

12.44 The potential for up to a 1m rise in sea level as a consequence of climate change has been taken into account in the design of the building, and is reinforced by Consent Condition (33) on Application 1.

proposal does not comply with the objectives and policies of the District Plan

12.45 Action for Environment state in its s274 Notice that the proposal does not comply with the objective and policies of the Wellington District Plan. In its initial submission it referred specifically to Objective 12.2.11 [sic]¹⁰⁰ and Policy 12.2.2.7:¹⁰¹

¹⁰⁰ The reference should (I believe) have been to Objective 12.2.8

¹⁰¹ There is no Policy 12.2.2.7. I believe the intended reference was to Policy 12.2.6.7 given the reference in the submission to viewshaft.

Objective 12.2.8: To ensure that the development of the Lambton Harbour Area, and its connections with the remainder of the city's Central Area, **maintains and enhances the unique and special components and elements that make up the waterfront**" [Note: the highlighted words are those quoted in the submission]

Policy 12.2.6.7 Protect and where possible enhance, identified public views of the harbour, hills and townscape features from within and around the Central Area.

12.46 In my opinion, and for the reasons I have summarised in my evidence, I consider that the Project not only maintains but enhances the unique and special components and elements that make up the Lambton Harbour Area waterfront. I agree with the following stated opinion of Ryan O'Leary:

Having considered the specific objective and policies relevant to the Lambton Harbour Area, I am of the opinion that the proposal will positively contribute to the public environment. It will maintain and enhance the special components and elements that make up the North Kumutoto/North Queens Wharf Area and will be well integrated with the waterfront as a whole. The proposed building will maintain visual connections with the waterfront, as far as is appropriate, and the proposal will enhance physical connections with the remainder of the City's Central Area.

Overall, I consider that the proposal will be consistent with Objective 12.2.8 and Policies 12.2.8.1 to 12.2.8.9.¹⁰²

12.47 In relation to Policy 12.2.6.7 and the protection of the Whitmore Street viewshaft, as previously confirmed there is no intrusion. The submitter comments that the proposed building is "going right to the wire". I have accepted that the south end of the building does establish a northern edge or frame to the viewshaft without intruding into it.

12.48 I also note, as did Heritage New Zealand, that the gantry feature and the consequent setback of the ground floor back from the viewshaft's northern margin, enables views across Whitmore Plaza and 'under' the building's portico to the harbour and the former Eastbourne Ferry Terminal building, views that would be 'lost' if the ground floor was brought right up to the viewshaft line.

¹⁰² WCC s87F(4) Report, page 51.

12.49 Contrary to the submission from Action for Environment, I consider that the location and design of the building will not only maintain (i.e. there is no intrusion) but will enhance the viewshaft. I make this last comment based on the building setback at the lower levels and also on my belief that visibility does not necessarily equate to adverse visual effects.

13 CONSENT CONDITIONS

13.1 I have reviewed the recommended conditions (across the four applications) and consider that in principle they are appropriate and 'fit for purpose'. I have noted that Dr Kneebone has recommended minor amendments to Conditions 12 and 13 on Application 2 [GWRC reference 33224].

13.2 I anticipate that during the lead-up to (mediation and witness caucusing), and during the course of the Court hearing, there will be scrutiny of the detail of the recommended conditions. Consequently there could be some amendments.

14 SUMMARY AND CONCLUSIONS

14.1 In my opinion, the Project will make a positive contribution to the overall quality and attractiveness of the waterfront environment consistent with the objectives and policies of the applicable statutory instruments and with the 'vision' laid down in the Wellington Waterfront Framework.

14.2 In coming to this overall conclusion I have had regard to the following principal resource management issues:

a. Is a building of the height, bulk and scale proposed, incorporating the design detail portrayed in the architectural drawings, appropriate on Site 10?

14.3 In my opinion the answer is "yes". The proposed building is consistent with the 'stepping down' in building heights/urban form from the Central Area (CBD) to the waterfront. Also, the overall (perceived) bulk of the building is appropriately broken down through facade articulation and design detail. The gantry element establishes a strong reference point to its harbour side location.

14.4 The design of the building in my opinion achieves the "high quality" threshold set by the Wellington Waterfront Framework.

b. Are the proposed public spaces of a high quality and will they deliver positive public amenity?

14.5 The waterfront is one of the city's principal open spaces and ranks along with the Wellington Town Belt and the Wellington Botanic Gardens, each of which deliver different open space experiences.

14.6 The Project will deliver high quality open spaces well suited to the waterfront environment. Site 8 and the Whitmore Plaza in particular will lead the transformation of the area from an at-grade car park to high amenity public open space environment.

14.7 In terms of public open spaces the outcome is clearly a positive one.

c. Is the new Site 10 building appropriate in its heritage context? Is it consistent with s6(f) of the Act?

14.8 In my opinion the new building achieves an appropriate relationship with the neighbouring heritage buildings (Shed 21 and the former Eastbourne Ferry Terminal building).

14.9 The development of the public open spaces provides opportunities for enhanced heritage interpretation.

d. Will the development overall provide for a safe, 'pedestrian priority', environment?

14.10 In my opinion yes. I consider that the considered design approach to the shared spaces, with their pedestrian priority, will deliver a safe pedestrian environment. I note that overall there will be a considerable improvement in the opportunities for pedestrian movement through the area - adjacent to the Quays, adjacent to the waterfront and between the Quays and the waterfront.

14.11 I acknowledge that there are other RMA issues that also need to be assessed, including:

- viewshafts and visual amenities;
- environmental effects (sun/shading/wind);
- climate change and sea level rise;
- site contamination and earthworks and any effects on the coastal marine area and harbour waters; and

- cultural issues.

14.13 However, while important, I consider that in the context of the Project they do not rank as 'principal' issues alongside the four issues that I have listed above.

14.14 In terms of s104, including Part 2, my conclusions are:

Environmental Effects

14.15 I consider that where there are adverse effects these have been avoided, remedied or mitigated to the point where any residual effects, following the implementation of the recommended consent conditions, will be acceptable.

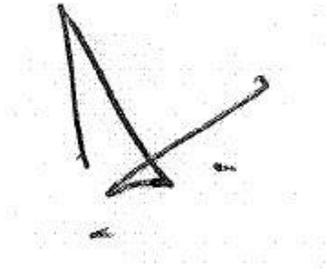
Policy and Plan Provisions

14.16 I consider that the Project is overall consistent with the objectives and policies of the applicable policy and planning instruments. Indeed, I consider that there is a good 'measure of fit' with the outcomes envisaged by the statutory instruments.

Part 2

14.17 I consider that the development of the Project has recognised and provided for the relevant matters of national importance (s6); has had appropriate regard to the other relevant matters (s7); and has, through consultation with the relevant iwi authorities, been undertaken in a manner consistent with the Principles of the Treaty of Waitangi (s8).

14.18 In my opinion, therefore, and given that significant positive effects will result, the Project will achieve the purpose of the Act. It will promote the sustainable management of significant natural and physical resources at North Kumutoto in a manner that will see the area 'transform' from an at-grade car park to a new high quality building and high quality public open spaces that collectively will result in a significant increase in the number of people being attracted to this part of the waterfront.



Alistair Arthur Aburn

3 July 2015

APPENDICES

Appendix 1: Relevant Project Experience - Lambton Harbour Area

Appendix 2: Central Area Objectives and Policies

Appendix 3: Lambton Harbour Area Site Coverage

APPENDIX 1

RELEVANT PROJECT EXPERIENCE - LAMBTON HARBOUR AREA

Projects Prior to Joining Wellington City Council

1. Frank Kitts Park Development - consultant planning advisor to Lambton Harbour Management Limited - notified application hearing (1988)
2. The Victoria Complex - consultant planning advisor to Fletcher Challenge Limited - notified application hearing (1988)

Projects after Leaving Wellington City Council

3. Variation 17: consultant planning advisor to Wellington City Council (1999)
4. Shed 21: preparation of resource consent application and AEE for the refurbishment of Shed 21 (Waterloo Apartments) (2000)
5. Taranaki Wharf Public Open Space Development: consultant planning advisor to Lambton Harbour Management Limited - notified application hearing (1999) and subsequent Environment Court hearing (2001)
5. Wellington Waterfront Framework: consultant planning advisor to Wellington City Council/Waterfront Leadership Group on statutory planning matters (2000-2001)
6. Variation 22: consultant planning advisor to Wellington City Council (2001)
7. Shed 22: preparation of resource consent application for the refurbishment of Shed 22 (Wellington Brewery) (2001)
8. Odmins Building: preparation of resource consent application for the refurbishment of the Odmins Building (NZX Centre) (2002)
9. Steamship Wharf Building: preparation of resource consent application and subsequent notified hearing for the relocation to the former Greta Point Tavern building (now Steamship Wharf) to North Queens Wharf (2002)

10. Head Street Post Office Building: preparation of resource consent application and subsequent notified hearing for the refurbishment of the former Herd Street Post Office building (now Chaffers Apartments) (2003)
11. Wellington Free Ambulance Building: preparation of resource consent application for the refurbishment of the former WFA Building (2004)
12. Site 7 North Queens Wharf (Kumutoto): preparation of resource consent application(s) and subsequent notified hearing for a new building at Site 7 (Meridian Building) and adjacent public open spaces (2005)
13. Hilton Hotel, Outer T, Queens Wharf: preparation of resource consent application and subsequent notified hearing and appeals to the Environment Court for the proposed Hilton hotel on the northern arm of the Outer T at Queens Wharf (2006-2007)
14. Overseas Passenger Terminal: preparation of resource consent application and subsequent notified hearing and appeals to the Environment Court for the redevelopment of the overseas passenger terminal (OPT) and Clyde Quay Wharf (2007-2008)
15. Shed 13: preparation of resource consent application for occupation of Shed 13 by Mojo Coffee (2009)
16. Variation 11: consultation advisor to Queens Wharf Holdings Limited and witness at Environment Court hearing (2009-2010)
17. Site 10: preparation of resource consent application for the establishment of the MotorHome Park on Site 10 (2009)
18. Shed 3 (Dockside): preparation of resource consent application for alterations to Shed 5 (2009)
19. Kumutoto Public Toilets: preparation of resource consent application for the public toilets at Kumutoto (2010)
20. Shed 35 and Maritime Building: preparation of resource consent applications for refurbishment of the two listed heritage buildings (2011). [Note: these buildings are covered by the District Plan provisions applying to the Port Redevelopment Precinct and not the Lambton Harbour Area]

21. Shed 6: preparation of resource consent application for additions and alterations to Shed 6 to facilitate the establishment of a conference centre (2012)
22. Clyde Quay Wharf: preparation of resource consent application for the development of public open spaces at Clyde Quay Wharf (2012)
23. Shed 5: resource consent application for additions and alterations to Shed 5 for Crab Shack Restaurant (2012)
24. Bond Store: resource consent application for additions and alterations to the Museum of Wellington City and Sea (2013)
25. Homegrown Music Festival: resource consent application for Homegrown Music Festival (staged on several sites on the Wellington Waterfront) (2014)
26. Crocodile Bikes: resource consent application for the relocation of Crocodile Bikes from Clyde Quay to Queens Wharf (2015)
27. TSB Arena: resource consent application for building additions and alterations to the TSB Arena (2015 - current project)

APPENDIX 2

CENTRAL AREA OBJECTIVES AND POLICIES

Chapter 12 of the District Plan “Central Area” lists 16 objectives and 99 policies that potentially apply to activities and buildings in the Central Area, which includes the Lambton Harbour Area (LHA).¹⁰³

Given the special character of the LHA there is one specific objective and eight policies that specifically relate to the LHA.

There is also an objective and four policies that relate to the Coastal Environment.

In the following table I provide my assessment of the ‘measure of fit’ between the Project and the LHA and Coastal Environment objectives and policies.

Objective/ Policy		Assessment
12.2.8	To ensure that the development of the Lambton Harbour Area, and its connections with the remainder of the city’s Central Area, maintains and enhances the unique and special components and elements that make up the waterfront.	
12.2.8.1	Maintain and enhance the public environment of the Lambton Harbour Area by guiding the design of new open spaces and where there are buildings, ensuring that these are in sympathy with their associated public spaces.	Application 3 will result in a significant ‘lift’ in the availability of high quality, public open spaces at North Kumutoto. Additionally, the proposed building on Site 10 has been designed to integrate with and support the adjacent public open spaces. Conclusion: the Project is consistent with Policy 12.2.8.1.
12.2.8.2	Ensure that a range of public open spaces, public walkways and through routes for pedestrians and cyclists and opportunities of	A key feature of the Project is the enhanced pedestrian accessibility through North

¹⁰³ I have read and considered the detailed assessment of those objectives and policies undertaken by Ryan O’Leary, the author of the WCC s87F(4) Report (refer pages 45 to 69). I agree with the conclusions reached. For that reason I do not intend to provide a further detailed assessment, but rather adopt Mr O’Leary’s assessment. I do, however, provide my assessment of the specific LHA objective and policies. I also note that I earlier undertook an assessment of the wider Central Area objectives and policies I considered relevant to an assessment of the Project (following the “thematic approach”) as recorded in the AEE - refer section 4.7.1 (pages 32 to 35), section 4.9 (page 41) and section 6.6 (pages 75 to 79)

	people, including people with mobility restrictions, to gain access to and from the water are provided and maintained.	<p>Kumutoto, including an extension of the harbour side promenade, and the 'contrasting' public open spaces (pocket park at the water's edge and landscaped plaza adjacent to the building).</p> <p>A new opportunity for access to the water's edge is provided.</p> <p>Conclusion: the Project is consistent with Policy 12.2.8.2.</p>
12.2.8.3	Encourage the enhancement of the overall public and environmental quality and general amenity of the Lambton Harbour Area.	<p>The North Kumutoto 'precinct' at the northern end of the LHA is presently dominated by at grade car parking and associated vehicle accesses. The Project will result in a 'step change' transformation of the area to high quality public open spaces and a building on Site 10 that exhibits design excellence and that will accommodate a significant daytime population thus contributing significantly to the vitality and vibrancy of North Kumutoto.</p> <p>The overall public and environmental quality and general amenity of North Kumutoto will be significantly enhanced.</p> <p>Conclusion: the Project is consistent with Policy 12.2.8.3.</p>
12.2.8.4	Maintain and enhance the heritage values associated with the waterfront.	<p>The Project will not detract from the heritage values associated with adjacent buildings or the area generally in any significant way.</p> <p>Opportunities for enhanced heritage values' interpretation could arise through the development of the public open spaces.</p> <p>Conclusion: the Project is consistent with Policy 12.2.8.4.</p>
12.2.8.5	Recognise and provide for developments and activities that reinforce the importance of the waterfront's Maori history and cultural heritage.	<p>Consultation was undertaken with the Port Nicholson Block Settlement Trust and the Wellington Tenth's Trust and a cultural impact assessment report prepared in association</p>

		<p>with the Trusts, in recognition of the importance of <i>te moana o te Whanganui a Tara (the waters of Wellington Harbour)</i> to Maori.</p> <p>Conclusion: the Project is consistent with Policy 12.2.8.5.</p>
12.2.8.6	<p>Provide for new development which adds to the waterfront character and quality of design within the area and acknowledges relationships between the city and the sea.</p> <p>Under the Policy a number of matters for assessment when resource consent applications are made are listed:</p> <p>(a) the principles and objectives of the Wellington Waterfront Framework</p> <p>(b) whether the ground floor of the building has an 'active edge' that supports the public use of the space and which is predominantly accessible to the public</p> <p>(c) whether the addition or alteration will result in a building that will be complementary to, and of a scale appropriate to, other existing buildings adjacent and nearby</p> <p>(d) whether the addition and alteration respects the form and scale of existing buildings</p> <p>(e) whether the addition or alterations will have a material effect on sunlight access to any open space</p>	<p>The Project will deliver the outcomes anticipated by the WWF for North Kumutoto.</p> <p>The building perimeter incorporates a display window / 'active edge' along approximately 87% of its frontage. With the addition of the internal 'lane' the ground floor is 95% active edge in character. Significant areas of the ground floor will be publicly accessible. Adjacent external spaces are 100% publicly accessible.</p> <p>Although a new building and not an addition or alteration, the building is of a scale appropriate in its context, including its relationship to existing buildings adjacent and nearby.</p> <p>In particular, it is noted that the expert heritage opinion, including that of Heritage New Zealand, is that the bulk and location of the building is suited to its heritage neighbours.</p> <p>N/A - there is no existing building on Site 10 which is being altered or added to.</p> <p>The Site 10 building will not result in any shadow on the 'protected' Kumutoto Plaza nor on the new pocket park (Site 8),</p>

	<p>(f) whether the addition or alteration will intrude on an identified viewshaft</p> <p>(g) whether the addition or alteration adversely effects the heritage values or significance of the heritage building</p> <p>(h) the adverse effects of the building work on wind, views, shading and sunlight on adjacent properties in the Central Area</p>	<p>apart from some very limited shading for approximately 6 weeks of the year over a very small part of Site 8.</p> <p>Because of the proximity of the building to the immediately adjacent Whitmore Plaza, significant shading will occur on that public space. However, other nearby public open spaces will be clear of any shadow.</p> <p>There will be no intrusion into the protected viewshaft (VS4) by the Site 10 building. Some landscape elements are located within the viewshaft. However, these elements will not 'block' views through to the inner harbour and Oriental Bay beyond (which are the focal elements of the viewshaft).</p> <p>N/A - there is no heritage building on Site 10. The Project does not result in a need to alter adjacent heritage listed buildings (Shed 21 and the former Eastbourne Ferry Terminal Building).</p> <p>No Central Area building owner or occupier has raised any concerns. Any effects are therefore deemed to be acceptable, including any effects on outlook and view.</p> <p>The Body Corporate for adjacent building in the LHA (Shed 21) has submitted - but does not specifically raise issues referred in clause (h).</p>
12.2.8.7	Maintain and enhance the Lambton Harbour Area as an integral part of the working port of Wellington.	<p>The 'working port' activity that the proposed North Kumutoto could potentially affect is the NZ (Wharf) Police. Consultation was undertaken to ensure the Applicants' understanding of nature of the operation and appropriate provision made.</p> <p>Furthermore, the Tug Wharf at which smaller vessels frequently berth, will be directly accessible</p>

		<p>from the Site 8 'pocket park' adding to the visual experience of the 'working port' for an increasing of people who are not just 'passing along' the promenade.</p> <p>Conclusion: The Project is consistent with Policy 12.2.8.7.</p>
12.2.8.8	To provide for and facilitate public involvement in the waterfront planning process.	<p>During the course of the process leading up to the preparation of the resource consent applications there have been opportunities for public consultation and engagement, including:</p> <p>(a) a community forum was held on 1 November to discuss the North Kumutoto Design Brief;</p> <p>(b) public consultation was undertaken by Wellington Waterfront Limited on the current proposal for Site10 and the public open space proposals over 28 January to 28 February. The outcomes of the consultation were reported to Council (as land owner) during the Council's deliberations on granting a lease for the Site 10 development.</p> <p>In addition, in the lead-up to lodging the resource consent applications, the applicants consulted with a number of parties:</p> <p>(a) who the applicant's considered might be directed affected - including, for example: Argosy Property as owners of the NZ Post Building, the Shed 21 Body Corporate; the NZ Police (Wharf Police) and Rydges Wellington; or</p> <p>(b) who might have an interest - including for example, Port Nicholson Block</p>

		<p>Settlement Trust, Heritage New Zealand, Wellington Civic Trust and, the Accessibility Advisory Group.</p> <p>Conclusion: public consultation has been undertaken during the lead up to the Council (as landowner) determining to approve the proposed Site 10 building; and subsequently in the lead-up to preparing the resource consent applications there has been further consultation with interested and potentially affected persons and parties.</p>
12.2.8.9	Encourage and provide for consistency in the administration of resource management matters across the line of mean high water springs (MHWS).	<p>The approach to preparing the four applications (two to each consent authority) has been based on an integrated assessment of the Project (consisting of a new building on Site 10 and new public open spaces that in places 'straddle' the line of MHWS) so as to align with the key objectives of both the Regional Coastal Plan and the District Plan.</p> <p>Conclusion: the Project is consistent with Policy 12.2.8.9</p>
12.2.12	To maintain and enhance access to, and the quality of the coastal environment within and adjoining the Central Area.	
12.2.12.1	Maintain the public's ability to use the coastal environment by requiring that, except in Operational Port Areas, public access to and along the coastal marine area is maintained and enhanced where appropriate and practicable.	<p>The public's access to and along the coastal marine area in North Kumutoto will be enhanced.</p> <p>Conclusion: the Project is consistent with Policy 12.2.12.1</p>
12.2.12.2	Enhance the natural values of the urban coastal environment by requiring developers to consider the ecological values that are present, or that could be enhanced, on the site.	<p>No significant ecological communities or values are presently existing in this section of the waterfront, either marine based or land based.</p> <p>Nevertheless, an opportunity is being taken to enhance ecological values through the development of the Site 8 'pocket park with landscaping using appropriate native plant species, along with aquatic planting that will provide habitat</p>

		<p>and added interest and activity at the water's edge.</p> <p>Conclusion: the Project is consistent with Policy 12.2.12.2</p>
12.2.12.3	<p>Ensure than any developments near the coastal marine area are designed to maintain and enhance the character of the coastal environment.</p>	<p>The proposed public spaces, in particular the Site 8 pocket park and the extension to the waterfront promenade, with opportunities for closer access to the water's edge, will enhance the public amenity and character of the coastal environment.</p> <p>The Site 10 building will not detract from the character of the waterfront's <u>urban</u> coastal environment, an environment where appropriate buildings have an important role to play.</p> <p>As the Wellington Waterfront Framework notes, North Kumutoto is an area where there is an expectation of a <i>“stronger sense of city form being developed ... through a higher proportion of buildings than on the rest of the waterfront”</i> (WWF, page 32).</p> <p>Conclusion: The Project is consistent with Policy 12.2.12.4.</p>
12.2.12.4	<p>To recognise the special relationship of the port to the coastal marine area through identification of the Operational Port Area.</p>	<p>N/A. The LHA is outside of the Operational Port Area.</p>

APPENDIX 3

SITE COVERAGE LAMBTON HARBOUR AREA

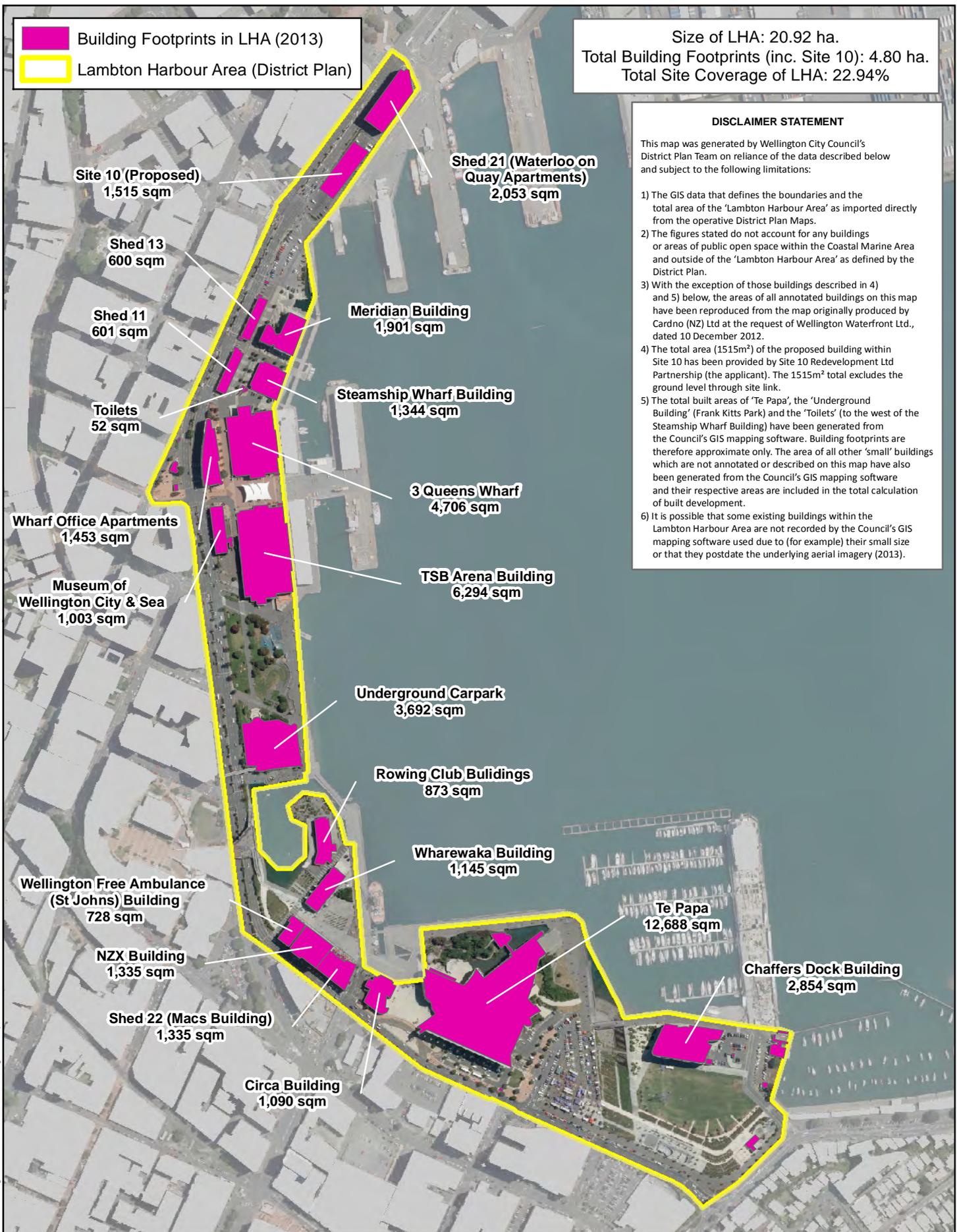
- Building Footprints in LHA (2013)
- Lambton Harbour Area (District Plan)

Size of LHA: 20.92 ha.
 Total Building Footprints (inc. Site 10): 4.80 ha.
 Total Site Coverage of LHA: 22.94%

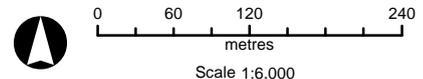
DISCLAIMER STATEMENT

This map was generated by Wellington City Council's District Plan Team on reliance of the data described below and subject to the following limitations:

- 1) The GIS data that defines the boundaries and the total area of the 'Lambton Harbour Area' as imported directly from the operative District Plan Maps.
- 2) The figures stated do not account for any buildings or areas of public open space within the Coastal Marine Area and outside of the 'Lambton Harbour Area' as defined by the District Plan.
- 3) With the exception of those buildings described in 4) and 5) below, the areas of all annotated buildings on this map have been reproduced from the map originally produced by Cardno (NZ) Ltd at the request of Wellington Waterfront Ltd., dated 10 December 2012.
- 4) The total area (1515m²) of the proposed building within Site 10 has been provided by Site 10 Redevelopment Ltd Partnership (the applicant). The 1515m² total excludes the ground level through site link.
- 5) The total built areas of 'Te Papa', the 'Underground Building' (Frank Kitts Park) and the 'Toilets' (to the west of the Steamship Wharf Building) have been generated from the Council's GIS mapping software. Building footprints are therefore approximate only. The area of all other 'small' buildings which are not annotated or described on this map have also been generated from the Council's GIS mapping software and their respective areas are included in the total calculation of built development.
- 6) It is possible that some existing buildings within the Lambton Harbour Area are not recorded by the Council's GIS mapping software used due to (for example) their small size or that they postdate the underlying aerial imagery (2013).



Site Coverage of Lambton Harbour Area (2013)



Property boundaries, 20m Contours, road names, rail line, address & title points sourced from Land Information NZ. Crown Copyright reserved. Property boundaries accuracy: +/-1m in urban areas, +/-30m in rural areas. Census data sourced from Statistics NZ. Postcodes sourced from NZ Post. Assets, contours, water and drainage information shown is approximate and must not be used for detailed engineering design. Other data has been compiled from a variety of sources and its accuracy may vary, but is generally +/- 1m.

MAP PRODUCED BY:
 Wellington City Council
 101 Wakefield Street
 WELLINGTON, NZ

ORIGINAL MAP SIZE: A4
 AUTHOR: stocke3n
 DATE: 29/06/2015
 REFERENCE:



Filepath: L:\DistrictPlan\GIS\Lambton Harbour Area Site Coverage\Lambton Harbour Area Site Coverage with Carpark.mxd