

ASSESSMENT OF EFFECTS ON THE ENVIRONMENT

NEW MIXED USE BUILDING

57-59 KINGSFORD SMITH STREET

1 INTRODUCTION

1.1 PREAMBLE

The Applicant wishes to construct a new building for predominantly residential use.

Resource consent is required for the proposal.

The purpose of this report is to describe the proposal and provide an Assessment of Effects on the Environment (AEE).

1.2 REPORT STRUCTURE

After this introduction, the report provides the following information:

- Section 2 provides a description of the site, the proposal and consultation.
- Section 3 outlines the District Plan objectives, policies and rules applicable to the proposal.
- Section 4 provides a resource management assessment of the proposal.
- Section 5 provides a notification assessment.
- Section 6 provides a conclusion.

2 SITE, PROPOSAL AND CONSULTATION

2.1 SITE

The site is identified on the aerial photograph and certificates of title in **Appendix 1**.

The site is located at the south end of Kingsford Smith St and is 2066m². It is occupied by two single storey warehouse buildings that are accessed via two adjoining vehicle crossings on Kingsford Smith Street with a combined width of approximately 10m.

The buildings are now well past their "use by" date and are currently being used for long duration car parking by people using the airport.

The site is within the wider "Rongotai South" area that is transitioning from single storey warehouse and service industry buildings and activities to multi-storey building development for mixed uses i.e. retail, hospitality (bars, cafes etc), business, commercial and residential.

The adjoining sites are all under-developed. The adjoining site to the east is the "Airport Motel" with single storey warehouses and a contractor's depot to the north.

To the south of the site is a separate lot (61 Kingsford Smith St) that is shown on the aerial in **Appendix 1**. This is owned by the Council and has reserve status. Adjoining this is legal road (Lyll Bay Parade) that includes the carriageway, footpath and a large area of road reserve.

As shown on the aerial photograph in **Appendix 1**, the Council reserve area and road reserve is remnant sand dunes. These have accreted along the south side of the existing warehouse building on the application site.

There is no history of the site being used for "HAIL" activities and therefore the site (and all the adjoining sites) are not included in the GWRC's SLUR register of sites that contain or may contain soil contamination.

2.2 PROPOSAL

The proposal is to construct and use a new building as shown by the application drawings and described in the design statements in **Appendix 2**.

The main aspects of the proposal include:

- Demolition of existing buildings.
- Construction of new building.
- Excavation to form a basement for car parking. The excavations are set back from the north and east boundaries by at least 1m.
- Ground floor accommodates vehicle access for the basement, vehicle access to ground floor car parking and loading/unloading, and space for business/retail/hospitality activities.
- Upper floors for residential apartments and associated facilities (i.e. courtyard, gym, swimming pool etc).
- Timber boardwalk, seating, planting and use of Council land adjoining the proposal.

Further aspects of the proposal are:

- The number of car parking spaces proposed is 60 with 2 additional tandem spaces.
- The project's geotechnical engineers, Coffey Ltd, estimate the approximate cubic volume of material to be excavated and removed from the site is 2066m^2 (site area) x 3.5m (depth of excavation) x 1.2 (bulking factor) = 9000m^3 .
- Material to be removed from the site will be transported to the nearest consented landfill using the most direct main transportation route and avoiding unnecessary transport through residential areas.
- The Applicant proposes that excavation and temporary retaining will be supervised by the project's geotechnical engineer to ensure the continued stability of adjoining sites and buildings.
- Following resource consent and the engagement of the main contractor, a Construction Management Plan will be prepared to avoid, remedy or appropriately mitigate the temporary adverse effects of excavation and construction activities and to provide for liaison with adjoining owners.
- Display windows for the proposed business/retail/hospitality activities are provided along the south side of the ground floor as required by the Council's District Plan. This will activate this ground floor frontage as required by the District Plan.
- A body corporate will be formed to manage the communal areas, facilities and services and the maintenance of the building.
- The proposed design, insulation and ventilation of the proposed residential apartments is the result of a collaborative design approach involving expert acoustic and ventilation engineering advice combined with careful architecture informed by the Council Design Guides to ensure that the quality and amenity of the proposed apartments is acceptable, particularly with reference to existing noise and potential future noise generated by the operation of activities on adjoining and adjacent sites and Wellington airport.
- The Applicant proposes that a suitable covenant will be registered against the land and future titles issued to inform people that the location is within the Airnoise Boundary and to provide for "no complaints" about noise from aviation activity at the airport.
- The Applicant wishes to properly activate the Lyll Bay ground floor frontage by constructing a boardwalk, seating, and undertaking planting so that the boardwalk can be used in conjunction with the retail/hospitality activities on the ground floor of the proposal.

CONSULTATION

The Applicant has had pre-application meetings with Council officers and this has assisted in the preparation of the proposal.

The Applicant is seeking the written approval of all the adjoining owners of land to the east and north (see aerial photograph in **Appendix 1**) to the proposal.

The Applicant advises there are owners of:

- 138-142 Tirangi Road and 1-5 McGregor St.
- 7 McGregor St.
- 13 McGregor St and 53 Kingsford Smith St

The written approval of the owner of 138-142 Tirangi Road and 1-5 McGregor St is in **Appendix 3**. The other written approvals will be forwarded when received.

The Applicant has also consulted Wellington International Airport Ltd who re-confirmed their opposition to residential apartments intended as the principal place of residence for people being constructed and used within the airnoise boundary area for fear of complaints of airport noise being upheld and leading to constraints being imposed on the future use and development of the airport.

3 DISTRICT PLAN PROVISIONS

3.1 DISTRICT PLAN MAP

Map 5 is in **Appendix 4**.

Map 5 shows that the site is within the "Business 1" area and is not affected by any notations or overlays. The site is not within "Designation A2 Height restriction to preserve control tower visibility".

Map 35 in **Appendix 4** shows that the site is within the Airport Air Noise Area.

3.2 DISTRICT PLAN COMPLIANCE ASSESSMENT

The proposal has been assessed for compliance with District Plan rules and standards and the following conclusions reached:

- The proposed demolition of existing buildings is permitted by Business Area Rule 34.1.7.
- The proposed excavation will exceed the conditions of Rule 30.1.1 because the height of cuts will exceed 2.5m and the area of excavation will exceed 250m². Resource consent is therefore required under Earthworks Rule 30.2.1 as a Discretionary Activity Restricted.
- The proposed car parking is permitted by Business Area Rule 34.1.1 because not more than 70 spaces are proposed.
- The proposed business/hospitality/retail activities are permitted by Business Area Rule 34.1.1 or in the case of retail, by Business Area Rule 34.1.2.
- Business Area Rule 34.1.6 permits new buildings "provided they comply with the standards specified in section 34.6.2" except new buildings exceeding 500m² which require resource consent under Rule 34.3.5 as a Discretionary Activity Restricted and assessed against the Business Area Design Guide, and/or for new buildings for residential activities which require consent under Rule 34.3.6 as a Discretionary Activity Restricted and assessed against the Residential and Business Areas Design Guides.
- In **Appendix 5** is an assessment of the extent to which the proposal complies with the Business Area standards, including the "Rongotai South Area Specific Provisions" a copy of which is in **Appendix 5**.

- Based on the assessment in **Appendix 5**, the proposal complies with the standards except for (i) the on site manoeuvring area for service vehicles does not fully meet all of the dimension standards (ii) two vehicle accesses are proposed instead of one access and (iii) the building exceeds height standard 34.6.2.1.1.
- Resource consent is required for the above non-compliances under Business Area Rule 34.3.4 for servicing and site access non-compliances as a Discretionary Activity Restricted and Rule 34.5 for height as a Non-Complying Activity because of condition 34.3.9.14.
- Resource consent is required for the proposed building and residential use under Business Area Rule 34.4.7 as a Discretionary Activity Unrestricted for "the construction of new buildings for noise sensitive activities within the airnoise boundary as depicted on Map 35". The definition in the District Plan of a noise sensitive activity includes residential activity, hotels, motels and child care centres.
- The proposal for the Council's Open Space land is considered to comply Open Space Rule 17.1.9 apart from standard 17.1.9.3 which limits structures to 10% of the site area (i.e. the site that is zoned Open Space).

If the Council officer processing this application considers there are additional rules of the District Plan that trigger the need for resource consent for the proposal, these are applied for and further information/assessment will be provided on request.

3.3 SUMMARY

The specific aspects of the proposal that trigger the need for an application for resource consent and the corresponding activity status is:

- Earthworks - Discretionary Activity Restricted.
- Two site accesses for vehicles instead of a single access - Discretionary Activity Restricted.
- On site manoeuvring space for a service vehicle that is smaller than the standard - Discretionary Activity Restricted.
- The design of the proposal assessed against the Residential and Business Areas Design Guides - Discretionary Activity Restricted.
- The height of the building – Non-Complying.
- The effects of residential use on the operation of the airport - Discretionary Activity Unrestricted.
- Coverage of the proposed boardwalk – Non-Complying (because the standard and terms under Restricted Discretionary Rule 17.2.3 are not met)..

The activity status of the application on a bundled basis is therefore Non-Complying.

4 RESOURCE MANAGEMENT ASSESSMENT

4.1 SECTION 104 OF THE RMA

4.1.1 Section 104

Section 104(1) of the Act states that when considering an application for resource consent, the consent authority must, subject to Part 2, have regard to:

- (a) any actual and potential effects on the environment of allowing the activity;
- (b) any relevant provisions of a national environmental standard, other regulations, national policy statement, New Zealand coastal policy statement, a regional policy statement or proposed regional policy statement, and a plan or proposed plan; and
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

4.1.2 Assessment of Adverse Effects

Section 104(2) states that when forming an opinion as to any actual or potential effects, a consent authority may disregard an adverse effect “if the plan permits an activity with that effect”.

In this respect, the District Plan provisions contain “permitted activities” and “permitted activity conditions” that of themselves generate adverse effects that are anticipated and provided for by the District Plan. It is considered that these adverse effects **should** be disregarded because this will result in a properly focused identification and assessment of any adverse effects that are over and above those considered acceptable by the District Plan. This assessment approach is consistent with the practice of the Environment Court.

Even if permitted effects are not disregarded, this AEE sustains a finding that the proposal still warrants resource consent being granted.

4.1.3 Assessment of Positive Effects

When assessing the effects of an activity, there can be a tendency to focus on the negative or adverse effects. However, “effects” under the RMA include positive effects.

The High Court in its decision in *Elderslie Park v Timaru District Council* stated that:

To ignore real benefits that an activity for which resource consent is sought would bring necessarily produces an artificial and unbalanced picture of the real effect of the activity.

Accordingly, the assessment below identifies the positive effects of granting resource consent to the proposal.

4.1.4 Overall Assessment Approach

In view of the above matters, the approach taken in this AEE report is to:

- Assess the environmental effects of the proposal (4.2 below).
- Identify conditions of consent to avoid or mitigate adverse environmental effects (4.3 below).
- Assess consistency with relevant provisions of a national environmental standard, other regulations, national policy statement, New Zealand coastal policy statement, a regional policy statement or proposed regional policy statement, and a plan or proposed plan (4.4 below).
- Assess any “other matters” (4.5 below).
- Section 104D assessment (4.6 below)
- Part 2 of the RMA assessment (4.7 below).

4.1.5 Written Approvals

Section 104(3) states that the consent authority must not have regard to any effect on a person who has given written approval to the application.

The written approvals of all the adjoining Business Area owners have been obtained.

4.2 ENVIRONMENTAL EFFECTS ASSESSMENT

4.2.1 Positive Effects

The positive effects of the proposal will mainly include:

- Replacing dilapidated warehouse buildings with an architecturally designed, attractive new building.
- Increasing the efficient use of the site by proposing a multi-story building as sought by the District Plan for this site and locality
- Providing business use of the ground floor with display windows and activation of the Lyall Bay ground floor frontage as sought by the District Plan.

- Limiting vehicle access to Kingsford Smith St as sought by the District Plan.
- Providing a reasonable level of on-site car parking to cater for the likely demand generated by residents of the proposed apartments.
- Providing apartments that are highly attractive for people to own and occupy.
- Providing common spaces and facilities for residents and their visitors that positively contribute to amenity and wellbeing.
- The boardwalk and associated use will enable the retail/business/hospitality activities within the ground level and the required display windows along the Lyall Bay frontage to be properly activated and bring life and vitality to this unused part of the frontage.

The cumulative positive effects are assessed to be significant.

4.2.2 Earthworks Effects

The proposed excavation will have the positive effect of creating a basement within which most of the proposed on site car parking for residents will be located. This makes efficient use of the site and also ensures car parking is screened from public view.

Because the proposed excavations will be in close proximity to adjoining sites and buildings, the Applicant engaged expert geotechnical engineers, Coffey Services NZ Ltd, to assess the geotechnical conditions of the site and to make appropriate recommendations. Their report is in **Appendix 6**.

The main findings of the report are:

- There is a low potential risk for liquefaction.
- There is a low potential risk for slope failure.
- The site is exposed to risk of tsunami.
- Raft or piled raft foundations are options for the development.
- Provision should be made for pumping water out of the basement in the event of flooding from storm surges or tsunami.
- The site is not subject to falling debris, subsidence or slippage provided the foundations are appropriately designed.
- Coastal erosion is not a risk because of the adjacent road and seawall.
- Subsidence will be managed through appropriate foundation design to limit settlement.
- Groundwater level is recorded as being below the anticipated level of the basement.
- Shoring of the temporary cut faces for the basement can be achieved by either sheet piles or by incorporating shoring into the proposed structure.
- Further investigations are recommended at the detail design stage.

The significant conclusion of the report is that *“from a geotechnical perspective there are no issues which would prohibit the development from taking place”* (p8).

Coffey has estimated the approximate cubic volume of material to be excavated and removed from the site is 2066m^2 (site area) \times 3.5m (depth of excavation) \times 1.2 (bulking factor) = 9000m^3 .

This quantity of material will be transported to the nearest consented landfill using the most direct main transportation route and avoiding unnecessary transport through residential areas.

There will be temporary adverse effects associated with the proposed excavations. However, these can be avoided, remedied or appropriately mitigated by compliance with the Council's standard earthworks management plan conditions (that address noise, dust, site access, transport effects etc). These conditions have proven efficacy and are proposed in section 4.3 of this AEE.

In addition, in view of the recommendations of the geotechnical report in **Appendix 6** and the location of proposed excavation along the boundaries with adjoining properties and Kingsford Smith St, it is appropriate that the stability of cut faces is ensured by compliance with the Council's standard condition requiring that the excavations are appropriately supervised by a suitably qualified geotechnical engineer. This condition also has proven efficacy and is proposed in section 4.3 of this AEE.

In summary:

- There are significant positive effects associated with the proposed excavations and earthworks.
- Adverse effects will be temporary and can be avoided, remedied or appropriately mitigated by compliance with Council's standard conditions.

4.2.3 Transportation, Site Access and Servicing Effects

The transportation effects of the proposal have been assessed by expert transportation engineer, Tim Kelly of Tim Kelly Transportation Planning Ltd.

His assessment report is in **Appendix 7**.

The main findings of the report and conclusions that can be reached from the report are:

- Kingsford Smith Street is wide with excellent visibility for drivers and a flush median.
- The site already has two adjoining site accesses with a combined total width of over 12m.
- 59 Kingsford Smith is already used for car parking. A site inspection reveals approximately 50 cars parked within the building.
- There is a frequent bus service along Tirangi Road and a service along Lyall Bay Parade.
- The proposed two site accesses are physically separated and this is positive from a pedestrian safety perspective.
- The proposed internal ramps, manoeuvre space and car parking spaces meet District Plan gradient and size standards.
- The proposed ground floor servicing facility will appropriately cater for rubbish and recycling generated by the proposal.
- Rubbish and recycling collection will be managed by the proposed Body Corporate so that this occurs at appropriate times.
- The amount of car parking proposed will assist to meet the demand from residents within the building.
- The traffic flows generated by the proposal can easily be accommodated by the nearby road network.

The significant conclusion of the report is that *"the proposed development will have negligible effects upon the operation of the road and pedestrian networks in the area"* (p13).

4.2.4 Design Effects

The design of the proposal has been assessed using the Business Area and Residential Design Guide – see **Appendix 2**.

The following are conclusions that can be drawn from this assessment and consideration of the application drawings:

- The basement level contains secure car parking, storage lockers and bike stands for residents that meet acceptable standards for non-public use. A remote control roller type gate will be located down the ramp to enable drivers to stop clear of the road and footpath to operate the security control.
- The basement has been set back at least 1m from the north and east boundaries to ensure stability will be maintained for existing buildings on these adjoining sites.
- The ground floor contains space for retail/business/hospitality activities along the frontage with the Council's Open Space A land plus display windows along this frontage as required by the District Plan to enable activation of this frontage. The tenancies also have sliding doors that will provide access out to the Open Space Area to further activate this frontage.
- The exact number, layout and detail design of the tenancies will be subject to tenant requirements.
- A centralised rubbish and recycling facility for the whole of the building is proposed on the ground floor.
- It is impractical to require the turning of service vehicles on site.

- Two vehicle crossings are proposed because it is not efficient or reasonably practical to combine them into one access. However, the two crossings are separated so that pedestrians are not exposed to a long continuous crossing width.
- The detail design of the lobby will provide for visibility for drivers using the two site accesses.
- No residential accommodation is proposed on the ground floor as per standard 34.6.2.6.1.
- The floor to floor height of the ground level complies with the 4m minimum required by standard 34.6.2.2.1 and the required 3m is provided for the floors above as per standard 34.6.2.2.2.
- The above ground level floors are designed for residential accommodation, providing a mix of unit sizes, number of bedrooms and orientation.
- The central courtyard is designed by Wraight and Associated Ltd, expert landscape architects, to compliment the swimming pool, spa, gym and theatre which are amenities proposed for the residents.
- Each apartment has been carefully designed by the project architects, Reve Architecture Ltd, to provide an acceptable level of residential amenity for the apartment type accommodation that is proposed. The areas of open decks have been carefully optimised in view of the exposure to noise generated by the airport and by traffic using Lyall Bay Parade, while providing sufficient space for residents to be able to sit outside if they wish.
- The additional building height sought above the permitted 16m will allow the upper floor to be constructed, thus taking advantage of the sites views and coastal location as sought by Business Area Policy 33.2.4.7 and helping add to the vibrancy and vitality of this part of the Business 1 Area.
- The additional building height sought (from the permitted 16m to 19.8m) will not “overpower” the Kingsford Smith Street or Lyall Bay Parade streetscapes. This is because these streets are wide, the expanse of Lyall Bay Parade plus the beach is significant, and the additional height is comparatively minor.
- The external design and appearance of the building expresses its function and has been informed by consideration of the parts of the Residential and Business Area Design Guides that are relevant to apartment buildings and apartment living.
- While some of the apartments do not meet the guidelines for multi-unit development in residential areas (i.e. for sunlight access and open space), this does not mean that the residential amenity of the apartments is unacceptable. The residential amenity of the proposed apartments will be very acceptable, particularly given the views that most of the apartments will enjoy, their close proximity to the beach, and the other on site amenities that will be available (i.e. gym, swimming pool, spa, shared courtyard etc).
- It is inevitable that the other adjoining sites to the north and east will be redeveloped over time and these will substantially screen these elevations of the proposal from view from Tirangi Road and McGregor Street.
- The proposal will compliment the revitalisation of this area of Rongotai South because it will add to its mixed use character with a carefully designed, functional and attractive building with residential activity that will introduce much needed surveillance of the streets and neighbourhood.

The conclusion is that this is an acceptably designed proposal that will not result in any unacceptable urban design effects.

4.2.5 Height Effects

The building height provisions for the Rongotai South Business Area are in **Appendix 5**.

These provide that the permitted building height for the site is 16m (measured from existing ground level) with an additional 2m to 18m as a Restricted Discretionary Activity under Rule 34.3.9. Additional building height beyond this requires consent under Rule 34.5 as a Non-Complying Activity.

The maximum building height of the proposal is 19.8m.

The reasons for the additional building height sought are as follows:

- In relation to proposed buildings and their design, the District Plan seeks “a solution that works for both the applicant and the public realm and achieve quality design” rather than “conforming to quantitative standards”.

- In pre-application meetings the Council's urban design adviser has implemented this approach by (i) seeking less height and bulk than permitted along the north side of the development to let more light and sunlight into the centre of the development and (ii) supporting greater height than proposed on the Kingsford Smith and Lyall Bay corner and frontages as the streets are wide and therefore additional building height will not overpower the public realm.
- Quality design will be delivered by providing more generous stud heights for the residential apartments than the minimum under the Building Act.
- The additional height sought will give effect to Business Area policies that support taking full advantage of the site's view and location adjacent to the beach which are attributes that will contribute to a very attractive level of amenity for residents.
- The adjoining Business Area owners have been approached for written approval to the proposal and one written approval obtained with others expected.

The proposal is therefore considered to achieve a solution that works for both the Applicant and the public realm and achieve quality design" rather than conforming to quantitative standards.

4.2.6 Effects on Airport

This matter is specifically triggered by Business Area Rule 34.4.7 that states that "*the construction of new buildings for noise sensitive activities within the airnoise boundary as depicted on Map 35 are Discretionary Activities (Unrestricted)*".

Under the relevant noise policies and explanation, it is stated (page 33/14) that:

When assessing applications for buildings within the Wellington Internal Air Noise Boundary, or to exempt new building works from the noise insulation and ventilation standards in the District Plan, the Council will consider:

- *Whether the likely exposure to noise will lead to an unreasonable level of health or amenity for occupiers of the building.*
- *Whether habitable rooms are located, orientated or designed in such a way which would make insulation to the required standards unnecessary*
- *Whether the development is likely to lead to potential conflict with and cause adverse effects, including reverse sensitivity effects, on airport activities.*
- *Whether the building is a listed heritage building....*
- *Whether the appropriate noise attenuation and/or management measures can be provided to protect the health or wellbeing of future users*
- *The extent to which the site or building is affected by airport noise, any special characteristics of the site or building which influence the level of airport related noise received, and any mitigation proposals included in the application which will reduce the adverse effects of noise on the activity or building.*

The environmental result will be developments that provide insulation and ventilation to ensure the noise environment of noise sensitive activities are protected to an appropriate level.

To assist with the assessment of these matters, the Applicant engaged acoustic expert Malcolm Hunt of Malcolm Hunt Associates Ltd to:

- Assist with the design of the proposal to address the above matters.
- Assess the noise effects of the operation of the airport on the amenity of residents within the proposal.
- Assess the effects of the proposed residential activity on the operation of the airport.

Mr Hunt's assessment report is in **Appendix 6**.

The main findings of the report and conclusions that can be reached from the report and wider assessment are:

- The report finds that *"the site of the proposed development has the lowest aircraft noise levels found within the Airnoise Boundary"* (p27).
- The exposure of residents within the proposed development to airport noise will not lead to an unreasonable level of health or amenity. This is primarily because (i) the development is at the extremity of the Air Noise Boundary (ii) the primary face of the apartments are to the north, south and west (i.e. away from the airport) and (iii) the apartments will be insulated to at least the standard regarded as desirable by the District Plan to give reasonable protection for the health and amenity of residents.
- It therefore cannot be held that the level of health and amenity for residents will be *"unreasonable"*. Mr Hunt's conclusion is that *"occupiers will be well protected indoors due to high standards of acoustic insulation proposed"* (p23).
- As noted above, the habitable rooms are located, orientated and designed to minimise their exposure to airport noise and will be insulated and ventilated to the required standards.
- Noise emissions from the proposed development (i.e. fixed plant) and proposed activities *"will be able to fully comply with all required District Plan noise standards"* (p25).
- There is a fear by WIAL that the residents within this proposed development will complain about airport noise and lobby for increased restrictions on the noise generating operations of the airport. However, factors that mitigate this fear from becoming a reality include:
 - i. People thinking about residing in the development will be under no illusions because they can see the airport, see its runway to the south, and see planes landing and taking off.
 - ii. People will be made aware of the operation of the airport by the proposed covenant.
 - iii. The internal areas within the apartments are reasonable in size and they have good sun, light and views.
 - iv. The apartments will be appropriately insulated and most have limited external exposure (i.e. they have other apartments above, below and to each side).
 - v. The use of outdoor decks in Wellington is limited by rain and wind.
 - vi. There are other noise sources closer to the apartments, including traffic on Lyall Bay Parade (a principal road in the District Plan road hierarchy) and waves crashing onto Lyall Bay beach.
 - vii. Inevitably over time the development will be screened by other multi level buildings to be constructed on adjoining sites.
 - viii. The development is on the extremity of the Air Noise Boundary which suggests complaint from these future residents is unlikely.
 - ix. There is adjoining and adjacent public land along Lyall Bay Parade and along the beach. Residents will therefore have convenient and quick pedestrian access to outdoor amenity that is outside the Air Noise Boundary.
 - x. There is an established mechanism for managing noise complaints through the Wellington Airport Noise Management Plan and Airport Noise Committee to deal with the very few noise complaints that have arisen.
- The above factors are cumulatively significant and suggest that internal and external amenity for residents will be very acceptable even if some residents regard proximity to the airport a detraction.
- WIAL's fear that people who will be in proposed apartments will complain and gain enough traction that the Council will initiate action to curb aircraft from landing and taking off, was considered by the Environment Court in *WIAL v WCC and Corrigan Commercial Ltd W 55/2005*. The Court considered *"this is based on supposition with no real evidence to support it"* (p18).
- That Environment Court finding was made in 2005. Since then, the Applicant is unaware of any material change in circumstances that would suggest this finding is not equally applicable in 2017.
- The other potential adverse effect that may be of concern to WIAL and/or the Council is a fear that granting resource consent to this development will *"open the floodgates"*. This fear was also assessed by the above Environment Court decision. The Applicant considers this fear should be rejected because:
 - i. What may occur in the future is in the realm of speculation.
 - ii. Residential activity within the ANB is a Discretionary Activity Unrestricted and therefore is anticipated and provided for by the District Plan for this site and the Business 1 Area.

- iii. The relevant objectives and policies do not indicate that residential development is undesirable, indeed the proposal is assessed in section 4.4 of this AEE to be consistent with and will promote all the relevant objectives and policies of the Business Area, including those that relate to sites within the ANB.
- iv. Each future residential proposal within the ANB will have to be the subject of an application for resource consent and assessed on its merits.

It is therefore considered that (i) the noise effects of the operation of the airport on the future residents will be acceptable and (ii) any adverse effects on the operation of the airport arising from people living within the proposed apartments will be "less than minor".

4.2.7 Other Effects

The proposed boardwalk and use of the Council's Open Space land will properly activate this frontage and provide a recreational amenity for people to use. A generous width of dunes will still remain so that any adverse effects on the streetscape will be acceptable.

It is considered that any other "residual" effects of the proposal are likely to be at a level generated by permitted Business Area activities and/or by the permitted Business Area building standards.

For example, the proposed ground level business activities are permitted activities.

Accordingly, while the adverse effects of these proposed activities can be assessed under this application because of the Non-Complying activity status, the adverse effects on "*the vitality and vibrancy of Regionally Significant Centres*" (see Business Area Policy 33.2.1.3) such as the Kilbirnie Town Centre, and other Centres Areas, will be negligible because:

- The total floor area proposed for business activity on the ground floor of the proposal is negligible compared to the very large size of the Kilbirnie Town Centre.
- The total floor area proposed for business activity on the ground floor of the proposal is very small compared to the large size of existing permitted business activities in the Rongotai South Business Area such as the many retail shops on nearby Tirangi Road and the impact these might have on Centres Areas.
- The proposed business activities will primarily serve people attracted to visit Lyall Bay or who are already visiting the existing nearby shops and hospitality activities in the Business Area of Rongoti South.

4.3 RESOURCE CONSENT CONDITIONS

The Applicant proposes the following conditions:

- Council's standard Earthworks and Construction Management Plan conditions, including Construction Noise Management Plan.
- Council's standard condition requiring earthworks to be supervised by a suitably qualified geotechnical engineer.
- Council's standard landscape plan condition.
- Conditions to ensure that the proposed residential apartments are appropriately insulated and ventilated consistent with the Applicant's expert acoustic engineer's report in **Appendix 8** together with certification.
- A condition requiring that landowner approval/license is obtained from the Council for construction, occupation or use of the Council's Open Space land and airspace above prior to building consent being lodged for such activities.

The proposed Body Corporate and "no complaints" covenant will be included in a subsequent application for subdivision consent to enable separate ownership of the apartments.

4.4 POLICY ASSESSMENT

The proposal has been assessed for consistency with relevant objectives and policies of the Business Area and the following conclusions reached:

4.4.1 Role and Function of Business Areas

The proposal is consistent with and will promote Objective 33.2.1 and associated policies regarding the role and function of Business Areas. Policy 33.2.1.1 seeks that “Business 1 areas provide mixed use areas where people can live and work” and this is what the proposal will promote.

Although Policy 33.2.1.2 provides assessment criteria for the potential creation of new Business Areas, the proposal has a high level of consistency with the criteria as follows:

- (a) The proposed business and residential activities “*are compatible with adjoining land uses*” as sought by Policy 33.2.1.2. This is because the adjoining site to the east is used for short term residential activity (motel) which is an activity compatible with the proposed residential activity. The Applicant has obtained the written approval of this adjoining owner.
- (b) The proposal does not “*undermine existing investment in infrastructure*” but instead makes more efficient use of existing infrastructure.
- (c) The proposal is “*accessible from the roading network*” because it has good frontage to Kingsford Smith St which is wide with excellent visibility for drivers. The assessment of the Applicant’s expert traffic engineer in **Appendix 7** is that the proposal will not generate “*more than minor adverse effects*” but will have “*negligible*” effects.

4.4.2 Activities

The proposal is consistent with Objective 33.2.2 as the proposed business and residential activities will not “undermine the City’s Centres” because of the factors identified in section 4.2.7 of this AEE. The proposal will also promote Policy 33.2.2.1 which seeks to enable people to live and work in Business 1 Areas.

The proposal is consistent with Policy 33.2.2.4 regarding retail activities. This is because the policy is to control “*large integrated retail developments*” and “*large supermarket developments*” and the proposal is not for these activities but for a very small floorspace area for business/retail/hospitality use.

The proposal is consistent with noise Policies 33.2.2.9-11 because:

- (a) The adjoining site to the east is already used for short term residential activity (motel) which is an activity compatible with the proposed residential activity.
- (b) The Applicant’s expert acoustic engineer’s report in **Appendix 8** confirms that “*appropriate on-site measures*” sought by Policy 33.2.2.10 “*to attenuate intrusive noise effects in Business 1 Areas to protect noise sensitive activities*” are proposed.
- (c) Consent is not sought to exceed the Business Area 1 noise standards.

The proposal is consistent with noise Policy 33.2.2.12 which is to “*require that noise sensitive activities and buildings in the Business 1 Areas of Miramar South, Ropa Lane and Kilbirnie North within the Wellington International Air Noise Boundary identified on planning map 35 be insulated from airport noise*”. The Applicant’s expert acoustic engineer’s report in **Appendix 8** confirms that the proposal will be appropriately insulated and ventilated so that the proposed residential apartments are appropriately protected from noise generated by the operation of the airport. The Applicant proposes conditions to ensure this is the case.

In section 4.2.6 of this AEE the proposal is assessed using the criteria under Policy 33.2.2.12. This assessment supports the conclusion that the proposal is acceptable with reference to all the relevant criteria under Policy 33.2.2.12 to appropriately manage the effects of the proposal on the operation of the airport.

The proposal is consistent with the environmental result under Policy 33.2.2.12 which is “*developments that provide insulation and ventilation to ensure the noise environment of noise sensitive activities are protected to an appropriate level*”. The Applicant’s expert acoustic engineer’s report in **Appendix 8** confirms that the proposal will be appropriately insulated and ventilated so that the proposed residential apartments are appropriately protected from noise generated by the operation of the airport. The Applicant proposes conditions to ensure this is the case.

4.4.3 Business Precincts

The proposal is consistent with Objective 33.2.3 which is “*to recognise where unique development opportunity areas exist within Business Areas and encourage redevelopment of these in a manner that is compatible with, and enhances amenity values and contribute to the City’s distinctive physical character, sense of place and contained urban form*”.

This site does have development opportunity attributes particularly for residential activity associated with its location on a corner site conducive to good sun, light and outlook, close proximity to Lyall Bay for recreation, views out over Lyall Bay and to the west that cannot be built out, and provision for 16-18m building height under the District Plan.

These opportunities and attributes make the site highly suitable for multi level residential apartment development.

4.4.4 Built Development, Urban Design and Public Space

The proposal will *“at least maintain the amenity values and public safety within Business Areas...”* as sought by Built Development, Urban Design and Public Space Objective 33.2.4. In fact, the proposal will enhance rather than just maintain amenity values and public safety primarily because:

- (a) The proposal will transform this pair of dilapidated single story warehouses with a development that will inject life, vitality and vibrancy into this neighbourhood and positively contribute to the neighbourhood's transition to a mixed use precinct as sought by the District Plan.
- (b) The design of the proposal has been informed by relevant guidelines in the Business Area Design Guide and Residential Design Guides and a collaborative design-based approach that has involved the Council's urban design adviser, Morten Gjerde, and resulted in design changes and refinement to achieve *“a solution that works for both the applicant and the public realm and achieve quality design”* rather than *“conforming to quantitative standards”*. This has resulted for example in the proposal providing more than the minimum floor to ceiling heights with associated increased building height, a reduction in the building bulk on the northern side to safeguard light and sunlight access into the development if the adjoining site to the north was built on to 16-18m in height, and refinements to the external design to (amongst other things) effectively communicate the building top.
- (c) The proposal provides *“good quality living and working environments”* as sought by Policy 33.2.4.1 – see the assessment in section 4.2.4 of this AEE.
- (d) The proposal provides *“conditions of safety and accessibility, including for people with restricted mobility”* as sought by Policy 33.2.4.1 by providing safe and convenient site access for vehicles, reasonable level of on site parking supply including spaces for people with restricted mobility, and lift access to all floor levels.
- (e) The proposal is consistent with Policy 33.2.4.3 that seeks *“an attractive, comfortable and clear street environment”* because the proposal has been designed so that there will be no outside storage areas, no on site car parking on the street frontages, no building setbacks from the street, no large blank walls along the street, and all the site specific standards relating to the adjoining Council owned land strip of land shown on the “Rongotai South Area Specific Provisions” in **Appendix 5** are complied with. The proposed use of the residential apartments will provide surveillance of Kingsford Smith St and Lyall Bay Parade and the beach which will enhance public safety.
- (f) The proposal is consistent with Policy 33.2.4.4 which is to *“allow residential development in Business 1 Areas where it utilises upper floors of buildings and provides secure and pleasant environment for the occupiers”* and Policy 33.2.4.5 to ensure that future residential occupants *“have an adequate standard of amenity and appropriate access to daylight and an awareness of the outside environment”*. The proposal will utilise the upper floors for residential as sought and the design provides for the apartments that will be *“secure and pleasant”*. The qualities of pleasantness include well designed and insulated apartments, location close to the beach, views for the majority of the apartments over the beach and to the west, appropriate levels of light and sunlight access, resident's swimming pool and gym, and proximity to the wide range of facilities and services in the near neighbourhood and wider Eastern Suburbs (i.e. retail shops along Tirangi Road, Parrot Dog and cafes on Kingsford Smith St, ASB Stadium, Regional Aquatic Centre, airport etc).
- (g) The proposal is consistent with Policy 33.2.4.7 regarding building height, bulk and location and the effects on the adjoining sites and streetscapes. This is because the building as designed will *“improve the existing built edge and take advantage of the area's views and coastal location”*. In particular:
 - The proposal has been designed to comply with all the site specific performance standards in relation to the adjoining Council reserve land.
 - The building has no setbacks from Kingsford Smith St which is appropriate and positive.
 - The adjoining streets of Kingsford Smith St and Lyall Bay Parade are very wide and can therefore accommodate the height of building proposed without the streetscape being dominated.

- The building height proposed will enable more people to take advantage of the area's views and coastal location as sought by the policy and enable a more generous stud height to be provided with ongoing benefits for the occupants of the apartments.
- The proposed building height is the outcome of the collaborative design-based approach that has involved the Council's urban design adviser, Morten Gjerde. The Applicant has chosen however not to go even higher as a way of giving greater emphasis to the Kingsford Smith/Lyall Bay Parade corner of the building.

Policy 33.2.4.8 seeks to *"ensure that all spaces accessed by the public are safe and are designed to minimise the opportunities for crime"*. All on site spaces will be subject to detail consideration at the detail design stage to implement CPTED principles. In addition, the residents within the building will introduce surveillance of the adjacent public areas (i.e. Kingsford Smith St, Lyall Bay Parade and the beach) and result in a significant improvement in keeping the public safe.

The proposed building also meets and exceeds the "environmental results" that are sought by Built Development, Urban Design and Public Space Objective 33.2.4 and its policies.

The environmental results sought are:

- Buildings that contribute to the positive urban design characteristics of the surrounding locality and City as a whole.
- Maintenance and/or enhancement of the visual quality of Business Area streetscapes and public spaces.
- Well considered residential developments that have a reasonable level of amenity.
- Residential developments which contribute positively to the vibrancy and mixed use nature of business 1 Areas.
- Buildings that do not cause a nuisance or detract from nearby Residential Areas.
- Buildings, activities and Business Area that are both functional and pleasant places to be in.
- Public areas are made safer.

This AEE supports the conclusion that the proposal is consistent with and will promote these desirable environmental outcomes.

4.4.5 Building Efficiency and Sustainability

Objective 33.2.5 is *"to promote energy efficiency and environmental sustainability in new building design"* with policies to *"promote a sustainable built environment"* and *"ensure that all new buildings provide appropriate levels of natural light to occupied spaces within the building"*.

The proposal implements this objective and policies indirectly by the increased level of building insulation (implemented to address airport noise effects) and which should in addition reduce electricity consumption. Other sustainability aspects include design of the proposal to ensure that all apartments will receive appropriate levels of natural light and for most of the apartments, the level will be well beyond the Building Act 2004 which *"will be promoted"*.

4.4.6 Access and Transport

The proposal is considered to be consistent with the access and transport Objective 33.2.6 and the associated policies for the following reasons:

- The proposal has an appropriate level of on site parking (60-62 spaces) but not so much that under the District Plan resource consent is required under Rule 34.3.1.
- The required amount of parking spaces for people with restricted mobility is proposed.
- Within the basement will be cycle storage for residents and there is space for short term bike storage on the ground floor.
- Public transport services are within walking distance.
- Lyall Bay beach and promenade are immediately opposite the site and footpaths lead in all directions.
- The proposal will enable people to work and live in the Business Area which is the intention of the District Plan.

The assessment of transportation expert, Tim Kelly, in **Appendix 7** supports the conclusion that the proposal has been designed to appropriate transportation standards and that there will be no unacceptable adverse effects on road safety and the efficiency of the road network.

4.4.7 Signs

Any signs proposed will be designed, located and operated in compliance with the Business Area sign standards in 34.6.3. This will ensure the proposal is consistent with sign Objective 33.2.7 and associated policies.

4.4.8 Subdivision

The proposal does not involve subdivision but in due course an application will be required in order to provide for the opportunity for people to purchase the apartments. This will be a positive outcome of the proposal without any adverse effects and thus consistent with Objective 33.2.8.

4.4.9 Coastal Environment

Objective 33.2.10 is *"to maintain and enhance access to, and the quality of the coastal environment with and adjoining Business Areas"*.

The Council reserve strip adjoins the Business Area. The proposal has been designed to comply with all the building standards of the District Plan that have been imposed to ensure an acceptable relationship with this strip.

The proposed pedestrian access across this strip and the adjoining road reserve is seen by the Applicant to be positive in providing a dedicated means of pedestrian access from the footpath of Lyall Bay to the required display windowed business/retail/hospitality activities on the ground floor of the proposal.

As noted earlier, the proposal makes good use of the opportunity to enable people to live next to the coastal environment and within the Business Area where there are work opportunities.

4.4.10 Natural Hazards

The Objective is *"to avoid or mitigate the adverse effects of natural and technological hazards on people, property and the environment"*.

The site is exposed to the risk of tsunami. This risk is mitigated by restricting residential accommodation to above the ground floor. The first floor height significantly mitigates this risk.

In addition, the Applicant intends to make one of Body Corporate functions the preparation of a safety plan for occupiers of the building.

4.4.11 Hazardous Substances

The proposal does not involve the storage of hazardous substances.

4.4.12 Tangata Whenua

The District Plan does not identify this site or this neighbourhood as being of significance to tangata whenua.

4.4.13 Conclusion

The above assessment is that the proposal is consistent with the Business Area objectives, policies, explanations and intended environmental results and will positively promote these objectives, policies, explanations and intended environmental results.

In relation to effects of the proposal on the airport, the assessment of the proposal using the Business Area objectives, policies, explanations and intended environmental results is that the proposal is consistent with what the provisions expect and require.

4.4.14 Assessment using the Airport and Golf Course Recreation Precinct Provisions

The Business Area provisions state that when assessing an application for resource consent for residential activity within the airnoise boundary, “reference will also be made to the objectives and policies in Chapter 10 of this Plan...”.

These objectives and policies have been reviewed to identify the extent to which they are relevant to the proposal and to assess the proposal against these provisions. In doing so, the following conclusions are reached:

- The objectives and policies are worded to apply to land and activities within the Precinct with no direct relevance to proposals outside the Precinct.
- Objective 10.2.1 is “to promote the safe, efficient and effective operation of the airport”. However the policies and explanation are limited to activities within the Precinct. There are no policies or explanation relevant to sites outside the Precinct.
- Objective 10.2.5 is “to protect the amenities of areas surrounding, and within, the Precinct from adverse environmental effects”. The policies and explanation make it clear that this objective is limited to adverse effects from airport activities within the Precinct and not to proposals outside the Precinct. Notwithstanding this, this AEE supports the conclusion that the amenity of the future residents of the proposed apartments will be acceptable in relation to airport noise.
- Also under Policy 10.2.5.4 is an explanation of a noise management plan to be implemented by WIAL to assist all interested parties and provide dispute resolution procedures in the event of noise complaints from residents.

4.5 ASSESSMENT OF “OTHER MATTERS”

There are no “other matters” considered to be relevant to the determination of this application.

4.6 SECTION 104D ASSESSMENT

It is considered that this AEE supports the conclusion that either one of the two “gateways” under Section 104 D are met and that therefore the Council is not prevented from exercising its discretion to grant consent.

Specifically, it is considered that sections 4.2 and 4.3 of this AEE support the conclusion that the adverse effects will not be more than minor and that section 4.4 of this AEE supports the conclusion that the proposal is not contrary to the objectives and policies of the District Plan.

4.7 PART 2 OF THE RMA ASSESSMENT

It is considered that for this site and proposal, the applicable District Plan provisions are not invalid, incomplete or uncertain. Accordingly, consistent with the High Court's decision in *RJ Davidson Family Trust v Marlborough District Council (2017) NZHC 52*, it is unnecessary for there to be an assessment of the proposal under Part 2 of the RMA.

In case the resource consent processing officer has a different view, the following assessment is provided:

- The proposal does not trigger any section 8 Treaty of Waitangi matters. This is because the District Plan does not identify the site as being of special significance to Maori.
- Granting consent will enable the Applicant to exercise its kaitiakitanga over the site and enable it to facilitate its more efficient use as sought by the District Plan. Section 7 of the RMA requires that “particular regard shall be given” to this matter by the Council when determining this application.
- There are no section 6 matters of national importance that will be affected (positively or adversely) by the granting of resource consent.
- Sustainable management will be promoted by the granting of resource consent. This is because granting consent will enable the Applicant to sustainably manage the site in a way, and at a rate, that will provide for its wellbeing and that of future residents, visitors and the operators of the ground floor permitted activities.

For the above reasons, it is considered that granting resource consent to this application would be consistent with and will promote Part 2 of the RMA.

NOTIFICATION ASSESSMENT

The notification assessment under s95 of the RMA is as follows:

- The Applicant does not request public notification of the application.
- No rule or national environmental standard requires public notification of the application.
- No adverse effects will be "more than minor".
- Public notification of the application is not therefore required under s95A(2).
- There are no "special circumstances" pertaining to the application that would justify publicly notifying the application under s95A(4) and incurring the Applicant with the associated risks, costs, uncertainty and delay.
- Public notification of the application is therefore not required or justified.
- The written approval of one adjoining property owner has been obtained and others are being sought. The Applicant will in due course update Council on this matter and provide further assessment if the written approvals of the other adjoining owners are not obtained.
- The written approval of Wellington International Airport Ltd (WIAL) was sought in order to avoid the need for the Applicant and Council to assess whether WIAL are an adversely affected party.
- The assessment of this AEE supports the conclusion that any adverse effects on WIAL are "less than minor".

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CONCLUSIONS

The following are the main conclusions of this AEE report:

- 1) This Business 1 area is in the process of being transformed from single level warehouse/service industry buildings to mixed use, multi level development.
- 2) The proposal is consistent with and will promote the objectives and policies of the District Plan, particularly for this site because of its attributes for residential activity.
- 3) The level of amenity for the future residents will meet and exceed the level sought by the objectives and policies of the District Plan.
- 4) The additional building height sought will enable the upper floor to be constructed and thus take good advantage of the sites location adjacent to Lyall Bay.
- 5) The noise effects from the operation of the airport will not have unacceptable adverse effects on the amenity of the residents and the proposal will not have unacceptable adverse effects on the operation of the airport.
- 6) Resource consent should be granted subject to the proposed conditions.



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APPENDICES

1. Aerial Photograph and Certificates of Title
2. Application Drawings, Design Statements and Design Guides Assessment
3. Written Approvals
4. District Plan Maps
5. Business Area Standards Compliance Assessment Table and Rongotai South Area Specific Provisions
6. Geotechnical Assessment
7. Transportation Assessment
8. Noise Assessment
9. Ventilation Assessment