
OVERSEAS PASSENGER TERMINAL – PART 1 PROPOSAL – AUTHORISATION OF 125 YEAR GROUND LEASE & 6 YEAR GROUND FLOOR HEAD LEASE

1. Purpose of Report

Wellington Waterfront Limited (WWL) has selected Willis Bond and Co as the preferred developer to redevelop the Overseas Passenger Terminal (OPT). WWL is now seeking approval to enter into a 125 year ground lease of the OPT site and a six year ground floor head-lease within the completed development.

Whilst the Council has delegated authority to WWL to enter into ground leases for heritage buildings for up to 199 years, WWL and Council officers believe it is appropriate that Council make the decision in this instance. The proposal retains significant heritage elements though the building is not being retained in its entirety. Alternatively if the proposal is treated as a new building, Council approval is required for all ground leases over 10 years. Furthermore, the head lease for the ground floors require Council approval and it therefore makes sense for Council to approve the complete proposal.

2. Executive Summary

The Waterfront Framework calls for the OPT to be retained and developed as part of the development of the Waitangi Park Precinct.

After a comprehensive selection process, Willis Bond was selected as the preferred developer and invited to exclusively take part in the final stage of this process. After an extended due diligence period and subsequent design refinements, the finalised proposal was presented to the Waterfront Development Sub-Committee (WDSC) on 8 May 2006. WDSC accepted that the proposal met the requirements of the design brief and the Waterfront Framework and agreed to a programme of public feedback.

The results of the public feedback programme showed that, apart from marina berth holders who have a specific issue with one aspect of the redevelopment [car parking], there are mixed views on the OPT proposal, but general support for the design concept.

WWL and Willis Bond are negotiating a conditional development agreement, on the basis of a 125 year lease which is considered to be an appropriate, commercially sustainable term for both WWL and the developer. WWL proposes to enter into a six year head lease over a substantial portion of the ground floor of the completed development to ensure that the appropriate mix of uses are available to the public.

Officers have considered whether this is a significant decision in terms of the Council's significance policy, and concluded that it is not. Notwithstanding this conclusion, it is noted that the Council undertakes a high level of consultation with the public on all waterfront developments, in recognition of the importance of this area. The consultation flagged a number of matters, including the proposed 125 year lease, for consideration by Council.

The Strategy and Policy Committee (SPC) is being asked to recommend that Council approve the above lease terms, subject to being satisfied with the commercial terms of the proposal. Due to the sensitive nature of these terms, the commercial terms are discussed in Report 8, in a Public Excluded forum.

3. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Note that WDSC has agreed that the OPT concept design proposal meets the requirements of the design brief and the Waterfront Framework.*
3. *Note that WDSC has undertaken a programme of public feedback on the proposal.*
4. *Note that WWL has entered into a conditional development agreement and lease for the OPT proposal with Capital Wharf Ltd, a wholly owned subsidiary of Willis Bond.*
5. *Note that WDSC has supported the proposal, noting that the 125 year lease and commercial terms are outside the delegation of WDSC.*
6. *Note that WWL will provide a verbal report updating the Committee on the negotiations with marina berth-holders.*
7. *Note that due to the sensitivity of the information contained therein the commercial terms of the agreement are discussed in a separate, public excluded report (Report 8).*
8. *Having considered the Significance Policy, recommend to Council that it agrees that the decisions are not significant and that the OPT is not a strategic asset.*
9. *Subject to the approval of the commercial terms contained in Report 8 (Public Excluded), recommend to Council that it authorise WWL to enter into a 125 year ground lease with Capital Wharf Ltd.*
10. *Subject to the approval of the commercial terms contained in Report 8 (Public Excluded), recommend to Council that it authorise WWL to enter into a 6 year ground floor head lease with Capital Wharf Ltd.*

4. Background

WWL is implementing the development of the waterfront in accordance with the Waterfront Framework, through an agreed development plan. This includes a range of public spaces and commercial and residential developments.

The Waterfront Framework states that the Overseas Passenger Terminal and Clyde Quay Wharf should be retained and developed as part of the development of the Waitangi Park Precinct.

The development selection process has been carried out in three stages between April 2004 and April 2006. Nine proposals were selected from six development teams. These were short-listed to three, from which Willis Bond was selected as the preferred developer in April 2005.

Willis Bond was granted a due diligence period to investigate the structural condition of the wharf, test the commercial assumptions made, finalise the concept design and submit a binding offer.

5. WDSC Considerations

The OPT concept design proposal was tabled on 8 May 2006 and WDSC confirmed that the proposal met the requirements of the design brief and the Waterfront Framework. Further to this, WDSC agreed that Council officers should carry out a programme of public feedback and report back to them on 26 June.

An overview of the design proposal and a summary of the key issues considered by WDSC are given below but if further information is required, reference should be made to Appendices 1-5 which comprises the reports and relevant appendices from both of the above meetings:

- The Willis Bond proposal is a mixed use development, with public uses such as restaurants and marine chandleries proposed for the ground floor and 95 resident apartments proposed for the upper levels. Public access will be retained around the wharf perimeter and WWL will have the option to take a head lease on the ground floor to ensure the right mix of activity.
- Independent assessment of the wharf has confirmed that it is in a very poor condition and that if this is not addressed in the next 20 years, further deterioration will render the wharf unsafe. The Willis Bond proposal accepts full responsibility for the necessary repair of the wharf and in so doing relieves Council of the likely \$10 million cost.
- An assessment of the OPT has identified the intrinsic heritage values of the building and the Willis Bond proposal has sought to retain these wherever practicably possible.
- A programme of public feedback on the Willis Bond proposal was undertaken from 8 May 2006 to 9 June 2006, as part of the WDSC approval process. Seventy-four submissions were received. A further 8 verbal submissions were heard by the WDSC at the 26 June meeting. The recommendation from the Council officers stated that, with the exception of marina berth holders who have a specific issue with one aspect of the redevelopment [car parking] there are mixed views on the OPT proposal, but general support for the design concept.

- Representatives of the marina berth-holders and WWL have met to resolve this issue, with both parties confident of a successful outcome. As per the WDSC recommendations, WWL will provide an update at the SPC pre-meeting briefing on 26 July.

6. WDSC Considerations

6.1 Developer/Investor

As a result of the tendering process, WWL intends to enter into a conditional development agreement with Capital Wharf Ltd (CW), which is a development company established by Willis Bond for the purpose of this project.

Willis Bond is an investment banking company specialising in commercial property and private equity markets in New Zealand. Willis Bond was established sixteen years ago in 1990 and has a proven performance history with WWL having successfully completed Shed 22 (Macs Brewery), Odilins and Wellington Free Ambulance building redevelopments. Willis Bond is also currently developing the Chews Lane site.

Under the terms of the development Agreement, Willis Bond is required to guarantee the obligations of CW till full settlement has been reached. In addition, CW must be engaged by Willis Bond to manage the development through to practical completion.

Negotiating the development agreement between WWL and Capital Wharf Ltd is in the final stages of completion.

6.2 Ground lease

Negotiations with the developer have assumed a ground lease term of 125 years, noting that the lease term would be subject to Council approval.

The ground lease will be a strata title that shrink-wraps the proposed building, wharf structure and piles directly under the building footprint including the underlying seabed. WWL will retain control of the remaining parameter of the wharf to ensure that the ongoing obligations to the Chaffers Marina (right of support) and CentrePort (berthing of vessels) can be achieved. Control of the outer wharf will also ensure that the public continue to enjoy unencumbered access around the wharf for activities such as walking and fishing.

The site was originally marketed on the basis that a 99 year lease was on offer. Willis Bond requested an extended lease period of 125 years as this provides the ability to offer longer, more desirable leasehold titles to the property market. In exchange for the increased lease term and in addition to the one-off realisation payment, WWL will receive a share of any profit from the development over and above the developers projected margin. Willis Bond has also agreed to accept responsibility for the new WCC development contributions levy that has been introduced prior to the development process commencing.

The commercial terms of the agreement are detailed in Report 8 (Public Excluded).

6.3 WWL ground floor head lease

To ensure that the ground floor space within the OPT is occupied by users delivering the Waterfront Framework values and principles, restrictions are included in the ground lease. In addition, the development agreement makes provision for WWL to enter into a six year head lease over approximately 1500 square metres of ground floor space to ensure the right mix of ground floor activity. This lease requires the approval of the Council, as it is a major transaction for WWL, under the Companies Act.

The final mix of uses for the ground floor of the completed development is still to be determined; however the existing marine chandleries and amenities that occupy the building remain the primary focus for this space. Commercial terms and arrangements with the existing tenants have not been negotiated at this stage.

The ground floor leases being offered are for a term of six years, with the option of six yearly lease extensions through to 2043. The leases will be subject to three yearly rental adjustments after the first six year term.

The commercial terms of this head lease are detailed in Report 8.

6.4 LGA decision-making

6.4.1 Background

The LGA 2002 requires that local authority decisions are made in accordance with the decision making requirements. Specifically, this proposal should be considered within the Council's Significance Policy.

6.4.1 Decision making requirements

The first consideration is whether the proposal involves a strategic asset. The OPT is not listed as a strategic asset, although it should be noted that the waterfront land and assets as a whole are on the Councils list of strategic assets. The Significance Policy provides that where Council is making a decision which relates to only a part of a group of assets, recognised collectively as a strategic asset, and the decision will not affect the overall strategic nature of the assets or their ability to meet Council outcomes, then that part of the asset is not, by itself, a strategic asset.

The assessment of significance occurs first by reference to financial thresholds; any decision which exceeds 10 per cent of total rates revenue in any one year to which the proposal relates indicates that a decision may be significant, but it is not an absolute measure. The targeted 2006/07 rates revenue is \$180 million; in light of this, an assessment of the financial impact established that the OPT proposal does not exceed the financial threshold.

Further to this, the proposal has minimal impact on Councils overall financial resources and ability to deliver as the capital and operational funding to WWL has already been approved in the LTCCP.

Second, in terms of community effect, the proposal does not materially affect all or a large portion of the community.

Finally, there have been no other identified reasons for concluding that the OPT decision is significant.

Council officers therefore consider that the decision to approve the ground and head leases for the OPT does not constitute a significant decision. Notwithstanding this conclusion, it is noted that it is an important decision. The process adopted has ensured that the Council is aware of community views and is satisfied that the OPT proposal has been assessed against any other viable options to achieve the object of retaining and developing the OPT.

In particular, the transfer of ownership or control of individual sites through long terms leases has been recognised in the LTCCP as being necessary to develop the waterfront in accordance with the terms of the Waterfront Framework. Further, in May and June of this year, a well advertised programme of public feedback was undertaken, specifically for the OPT proposal and the resultant feedback was considered by WDSC.

The OPT proposal received a total of seventy-four submissions of which twenty-five were in favour of the proposal and twenty-one were against it. The main reason for supporting the proposal was the attraction and activity it would bring to an area considered to be in need of rejuvenation. The main opposition to the proposal came from marina berth-holders; this has led to mediation between WWL and the marina berth-holder representatives, both of whom have publicly stated the strong likelihood of resolution being reached. WWL will provide an update on the status the mediation at the pre meeting briefing on 26 July. Seven submitters oppose the lease, principally on the basis of private use/ownership of public space within the Wellington Waterfront area.

It is noted that the area to be leased preserves the perimeter of the wharf for public access and recreation and, in addition, the public access and use of the ground floor will be ensured through the arrangement set out in this paper.

In the course of arriving at the Willis Bond proposal, all practicable options were explored. It is considered that the long term lease is necessary to ensure an appropriate security of tenure for any party undertaking the development to deliver the objectives of the Waterfront Framework. It is noted that the status quo option (i.e., to do nothing) is not viable, as not only would it not achieve the objective of developing and retaining the OPT, it would also give rise to significant issues regarding wharf maintenance and associated costs.

Further to this, the selection process adopted to select the OPT proposal has ensured that the proposal best achieves Council's objective of retaining and developing the OPT.

7. Conclusion

Elements of the OPT wharf are in an extremely poor state and if no action is taken the OPT will become a safety hazard and will ultimately need to be condemned. The OPT building is also under strength seismically and the Building Act requires local authorities to arrange a programme of seismic upgrading. It is currently estimated that the cost of these repairs would be \$10 million and that Council would be liable for this.

WWL has carried out a comprehensive and robust process to identify the most appropriate development proposal and have delivered an outcome that meets all aspects of the design brief and the Waterfront Framework.

Council Officers consider that the Willis Bond redevelopment proposal offers the best outcome for the City. The design is sensitive in terms of bulk and form to minimize the impact on views and retains significantly more heritage aspects of the site than any other proposal. The design was superior to all other proposals considered and promises to rejuvenate this Wellington landmark. The proposal has been fully endorsed by the management and Board of WWL and the Technical Advisory Group.

Committing to a lease of 125 years is considered appropriate as it provides an optimal, commercially sustainable term for both WWL and the developer. Entering into head-leases over a substantial portion of the ground floor of the development will enable WWL to secure the desired uses.

Subject to the robustness of the commercial terms being agreed in the Public Excluded Report 8, Council officers recommend that Council approves the OPT proposal, including the 125 ground lease and the 6 year head lease over the ground floor.

Contact Officer: *Byron Roff, Project Manager, WWL*

Contact Officer: *Ian Clements, Portfolio Manager, WCC*

Supporting Information

1) Strategic Fit / Strategic Outcome

The Waterfront Development Plan would contribute to the following Council outcomes:

More Liveable – Wellington will be a great place to be, offering a variety of places to live, work and play within a high quality environment.

Stronger sense of place – Wellington will have a strong local identity that celebrates and protects its sense of place, capital-city status, distinctive landform and landmarks, defining features, history, heritage buildings, places and spaces.

More Eventful – Wellington will maximise the economic value from promoting and hosting high-profile events.

More Prosperous – Wellington's urban form, and flexible approach to land use planning in the central city, will contribute to economic growth and prosperity.

2) LTCCP/Annual Plan reference and long term financial impact

C378 Wellington Waterfront Project.

A312 Wellington Waterfront Operations.

CX131 Wellington Waterfront Development.

In accord with the 2006/07 LTCCP.

3) Treaty of Waitangi considerations

Maori have had a long connection with the harbour and waterfront that continues today. There are several sites of significance for iwi around the waterfront including Waitangi Lagoon and Te Aro Pa.

4) Decision-Making

This is not a significant decision. However, the decision is important and the decision has been assessed under the decision-making framework of the LGA as appropriate following the consideration of section 79 LGA 2002. It is noted that the decision does not give rise to any inconsistent decisions, and indeed is consistent with the Waterfront Framework.

5) Consultation

a) General Consultation

Consultation was undertaken on the proposal. All affected parties were included, and any feedback was reported back to the Subcommittee.

b) Consultation with Maori

Representatives from Council's mana whenua Treaty partners – Wellington Tenth Trust and Te Rūnanga o Toa Rangatira were involved in the development of the Wellington Waterfront Framework that underpins the Waterfront Development Plan.

6) Legal Implications

The LGA decision-making framework has been addressed in this paper.

7) Consistency with existing policy

This report is consistent with existing WCC policy on waterfront development.