



***Decision Report on
Proposed District
Plan Variation 11***

Wellington Waterfront (Rule Amendments)

11 November 2009

Absolutely

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ME HEKE KI PŌNEKE
WELLINGTON CITY COUNCIL

Wellington

**PROPOSED DISTRICT PLAN VARIATION 11 –
WELLINGTON WATERFRONT**

COMMISSIONER'S RECOMMENDATION REPORT

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REPORT OF THE HEARING COMMISSIONERS

RECOMMENDATION OF THE HEARING COMMISSIONERS TO WELLINGTON CITY COUNCIL

SUBJECT: PROPOSED DISTRICT PLAN VARIATION 11 – WELLINGTON WATERFRONT

INDEPENDENT COMMISSIONERS: PAMELA PETERS (C)
NEIL PENNEY
MARK ST.CLAIR

1. RECOMMENDATIONS

It is recommended the Council:

1. *Receive the report*
2. *Approve District Plan Variation 11 as publicly notified but with additions and amendments as detailed in the annotated copy of the provisions attached as Consequential Amendments to this report.*
3. *Accept or reject all submissions and further submissions to the extent that they accord with Recommendation 2 above.*

2. INTRODUCTION

2.1 Overview

2.1.1 We have jointly been delegated pursuant to section 34A of the Resource Management Act 1991, to exercise the necessary functions, powers and duties to conduct a hearing on District Plan Variation 11. Our appointment as Commissioners is limited to the role of recommending to Council. If the Council accepts our recommendations, then this report will become the Council's decision.

2.1.2 District Plan Variation 11 proposes to amend District Plan Change 48 (Central Area Review) by establishing a regulatory framework for the assessment of new development in identified areas on the Wellington Waterfront, including:

- the inclusion of more detailed policy provisions for future building development on the waterfront – in the North Kumutoto area, adjacent to the waterfront between Shed 13, the Meridian Building and Shed 21;
- the introduction of defined development standards including building height and ‘footprints’ for development in the North Kumutoto area;
- the inclusion of a new Rule 13.3.4A to provide for a new building development within the defined limits to be considered as a Discretionary Activity (Restricted) with a presumption for the non-notification of applications;
- A new Design Guide for the North Kumutoto area.

2.1.3 In addition, this Variation provides for:

- the removal of references to *The Wellington Waterfront Framework* as a Design Guide;
- the inclusion of a new policy and related rules for the ground floors of waterfront buildings which applies to the entire waterfront area; and
- updated references to governance arrangements on the waterfront.

2.1.4 District Plan Variation 11 was notified on 1 February 2009 and at the completion of the public notification period, a total of 49 submissions and 47 further submissions had been received. Most of the submissions oppose Variation 11 either in whole or in part.

2.1.5 We include a plan (Figure 1) showing the North Kumutoto area with references to building footprints named Site A, B and C that which are referred to in this report.

2.2 Glossary of terms used

AMSL – Above Mean Sea Level

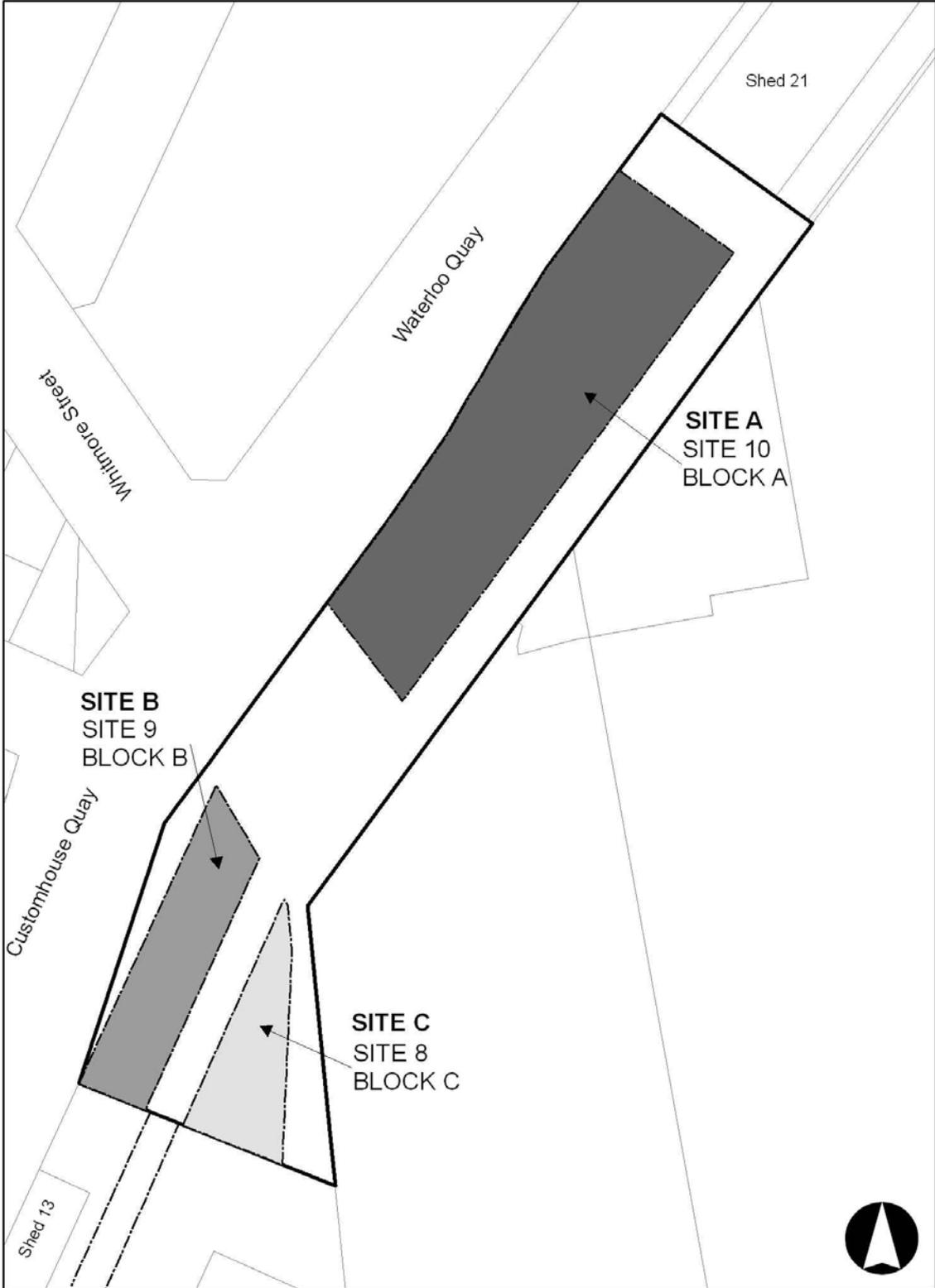
District Plan – Plan Change 48 (Central Area Review).

District Plan - Variation 22 – Established the objectives, policies and rules of the district plan to reflect *The Wellington Waterfront Framework*. Approved and fully operative on 27 July 2004.

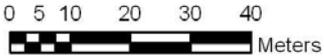
Kumutoto – named after the original stream in this area.

North Kumutoto Area – adjacent to the waterfront between Shed 13, the Meridian Building and Shed 21.

FIGURE 1



**NORTH KUMUTOTO AREA
PROPOSED DEVELOPMENT AREAS REFERENCED
IN THE REPORT**



North Queens Wharf area – as defined in *The Wellington Waterfront Framework* being generally adjacent to the waterfront between Queens Wharf and the Railway Station.

TAG - Wellington City Council Technical Advisory Group. This group is appointed by Council and has four members external to Council. TAG provides advice to the City Council and Wellington Waterfront Limited on all design matters along the waterfront.

The Wellington Waterfront Framework – is a non statutory policy document that provides the vision and guidance for the management and development of the waterfront from the Railway Station to Oriental Bay Boat Harbour. It was adopted by Council in April 2001.

Wellington Waterfront Sub-Committee – Council's nominated sub-committee.

WWL – Wellington Waterfront Ltd.

3. BACKGROUND

3.1 Variation 11

3.1.1 Mr. McKay, the Council's reporting officer, advised us that it has been some 25 years since moves were initiated to consolidate operational port activities to the north of the Lambton Harbour area and to develop the inner waterfront area as a high quality public space for the city. Mr. McKay advised us, that over this time there had been numerous plans and proposals for the area, leading eventually to the adoption of *The Wellington Waterfront Framework* by Council in April 2001.

3.1.2 We were provided with a copy of *The Wellington Waterfront Framework* as the most recent source document of proposed Variation 11.

3.1.3 As established in the Hilton case (W015/2008) *The Wellington Waterfront Framework* is now considered a non statutory policy document that provides the vision and guidance for the management and development of the waterfront area from the Railway Station to the Oriental Bay Boat Harbour. With regard to the North Queens Wharf area *The Wellington Waterfront Framework* identifies this area, as one with strong connections to the City's Central Business District and should

therefore have an urban form that contains a higher proportion of buildings than in other areas of the waterfront.

3.1.4 Subsequent to the adoption of *The Wellington Waterfront Framework*, the Council introduced District Plan Variation 22 in August 2001, Variation 22 contained provisions covering development on the waterfront and these are reflected in the current objectives, policies and rules. This Variation 22 was approved and fully operative on the 27 July 2004. These Plan provisions were recently reviewed as part of District Plan Change 48 (Central Area Review). Plan Change 48 remains subject to a number of appeals and is thus not yet fully operative. We were advised however, there are no outstanding appeals or issues affecting the waterfront.

3.1.5 Planning provisions over the timeframe 2001 to the present were addressed in the report to the 'Strategy and Policy Committee' in December 2008. Mr. McKay, in the Officer's report for this hearing, summarised that report which we include below as further background;

'From August 2001 when the former District Plan Variation 22 was notified, specific objectives, policies and rules have applied to the waterfront area. A deliberately strict regime was imposed requiring all new building development and the development of open space to be assessed as a Discretionary (Unrestricted) Activity. A key provision in this regard was the zero height limits which were designed to ensure that no building development would occur on the waterfront without the opportunity for public involvement.

As outlined in the Waterfront Framework (Section 5.2) and the District Plan it was envisaged that following the adoption of the initial provisions there would be a second stage design process leading to more detailed plans that would be introduced through further changes to the District Plan. Variation 11 represents the start of the stage two processes.

To date all developments have continued to be assessed as full discretionary consents on a case by case basis and this has provided the opportunity for public participation in the decision making process.

However, on 14 March 2008 the Environment Court issued its decision on the resource consent appeals relating to the proposal to construct a new Hilton hotel on the Outer-T of Queens Wharf. This decision raised important issues that are relevant to the operation of the existing District Plan provisions and the future determination of resource consents on the waterfront.

With regard to the District Plan the Court found that the following provisions that purport to incorporate the Waterfront Framework into the District Plan were ultra vires:

- *The provisions that refer to the Waterfront Framework as a Design Guide (meaning a design guide similar to the existing guides in Volume 2 of the District Plan);*
- *The references to the Waterfront Framework applying as assessment criteria for the consideration of resource consent applications.*

The decision also commented on various matters relating to the protection of both public and private views. This led to a concern that the zero height limit over the un-built areas of the waterfront might be construed to mean that there was a permitted base line of zero and that no development in these areas should therefore be permitted.

As noted the original intention as expressed in the Waterfront Framework was to have tailored District Plan provisions for identified areas on the waterfront and these were to be introduced through a 'Stage Two' plan change process. To address the issues arising from the Hilton decision and to establish a framework for the consideration of development proposals in defined areas The Council therefore determined to initiate the present variation to the District Plan. This variation provides for the following:

- *The removal of references in the policies to the Waterfront Framework being a design guide.*
- *The inclusion of more detailed policy provisions for future building development within the waterfront and in particular the North Kumutoto area.*
- *The inclusion of a new policy and rules to ensure that the ground floors of buildings are predominantly accessible by the public and have active edges to adjacent public spaces.*
- *The inclusion of a specific rule (Rule 13.3.4A) to provide for new development in identified areas on the waterfront as a non-notified Discretionary Activity (Restricted) application in accordance with building height and footprint requirements.*
- *The inclusion of new design guide provisions to provide for the assessment of applications for new building development and the development of related public spaces within the North Kumutoto area.*

- *The amendment of Rule 13.4.7 to make it clear that any building development within an identified area that is not covered by the Discretionary Activity (Restricted) provisions will still require consent as a Discretionary Activity (Unrestricted).'*

3.2 Material Provided prior to the Hearing

3.2.1 In preparation for the hearing we were provided with the following material;

- Proposed District Plan Variation 11- Amendments to Proposed District Plan Change 48 (Central Area Review)- Wellington Waterfront,
- Officer's Report- Proposed District Plan Variation 11,
- Validity of Redevelopment at North Kumutoto Report – Gerald Blunt, Council's Chief Urban Designer November 2008,
- Summary of Submissions- Proposed District Plan Variation 11 May 2009,
- Copies of written submissions,
- Section 32 Report Proposed District Plan Variation 11.

3.2.2 We note that this material is held on file at the Wellington City Council offices.

3.3 Other non-statutory processes

As well as the statutory processes for the District Plan outlined above, other public consultation, planning, and design processes have been undertaken by Wellington Waterfront Ltd in respect of future development in this area in conjunction with Council officers, the 'Technical Advisory Group' and the 'Wellington Waterfront Sub-Committee'. This has involved the preparation of a design brief for the area, a design competition and public displays of the winning design concept. These documents were provided to us at the hearing.

4. THE HEARING

4.1 Overview

4.1.1 Of the 49 submissions and 47 further submissions to Variation 11 many were opposed in part or whole to the variation. These written submissions were considered along with all other material provided for the hearing. We conducted two site visits one on 28th July 2009 before the hearing and another on 12th August 2009.

4.1.2 The hearing was held in the Wellington Civic Centre on the 10 and 11 August 2009. We have set out below, in the order of appearance, a brief summary of the

presentations made to us. The written evidence and Council reports tabled at and presented by the various parties is held on file at Wellington City Council.

4.1.3 We, the Commissioners, took our own notes of the verbal presentations and answers to questions, and notes were also taken by the Hearings Advisor. It is not intended to record that material in any detail in this report. However, specific issues raised in the material are referred to as appropriate in our evaluation.

4.2 First day of hearing - August 10th 2009

4.2.1 **Mr. Peter Brooks** spoke on behalf of the **Wellington Civic Trust (18)**. The Trust's submission covered concerns about the substantial reduction in the opportunities for the public to be involved in resource consent hearings and the consequent less open and less rigorous examination of consent applications. To compensate for such a loss, the Trust suggested the establishment of a new professional group consisting of an architect, landscape architect and an urban designer to review and report to hearing commissioners on applications.

4.2.2 **Mr. Colin Blair**, President of **Oriental Bay Residents Association Inc. (12)**, spoke on behalf of the group. The Association stressed in their submission that their members value the right to voice their opinions on proposed waterfront developments and asked that the public retain their right to express their views on the merits of proposed developments.

4.2.3 **Mr. David Lee**, Chairman for **Action for Environment Inc. (25)** appeared at the hearing and spoke to their submission. Action for Environment were also concerned about the loss of public involvement and felt Council was going backwards. Mr. Lee stated Variation 11 appeared to be a downsized version of the old Variation 17 which was rejected in 1999.

4.2.4 **Mr. Michael Faherty** presented on behalf of **Wellington Waterfront Limited (WWL) (30)** who supported the overall thrust of Variation 11. After receiving the Planning Officer's report, WWL were happy with the clarification on building mass standards not applying on the Waterfront. WWL requested that we reconsider the matter of the building footprint on Site B to reflect the footprint of the historic building on that site. WWL, further to the issues raised above, fully supported Proposed Variation 11 and subsequent minor amendments proposed in the Planning Officer's Report. WWL also made comments on Policy 12.2.8.6B, Rule 13.3.4A, and Rule 13.3.8.14A.

- 4.2.5 **Mr. R W England (35)** spoke in support of his submission on defining Wellington Waterfront as a Special Ecological Zone with a set of unique Planning Rules.
- 4.2.6 **Mrs. Christine Greenwood (16)** opposed Variation 11 in its entirety for a number of reasons. Mrs. Greenwood stated that the Variation lacked transparency and that it was Variation 17 in another form. The Variation denied democratic public participation in the development by essentially eliminating the case-by-case resource consent process. The Variation provided for increased heights, 'footprints' and reduced public access to 60% of ground floor space, and that public accessible space would therefore be downgraded.
- 4.2.7 **Mr. Craig Palmer (36)** requested that District Plan Variation 11 be rejected. Mr. Palmer felt that the approach in Variation 11 is anti-democratic and that it was necessary that designs proposed for the waterfront are subject to public scrutiny. Mr. Palmer also commented that Variation 11 looked to be Variation 17 in another form. In addition, Mr. Palmer thought that the building height limits were too high and would cause possible adverse wind funnelling effects and affect viewshafts, particularly along Whitmore Street. Mr. Palmer also expressed concern that Wellington City is already lacking recreational space and that Variation 11 would only result in further loss of such space.
- 4.2.8 **Ms. Penelope Laurenson**, a Planner at MWH, presented a submission on behalf of **The New Zealand Historic Places Trust (NZHPT) (34)**. In the submission, Ms. Laurenson stressed that NZHPT were not opposed to development in the North Kumutoto area, but wanted to ensure the surrounding historic heritage was afforded adequate protection and consideration in new development proposals.
- 4.2.9 **Mr. Michael Taylor (39)** appeared at the hearing and presented an oral submission outlining concerns with the loss of public open space and blocking of views, the removal of the zero height limit as a tool to trigger notification, and restricting full public participation into new developments.
- 4.2.10 **Mrs. Frances Lee (27)** was concerned with the freedom that Variation 11 would give Council Officers to do what they wanted on the waterfront. Mrs. Lee was also concerned that Council was treating the waterfront like part of the central city, proposing to change the rule to non-notification status was endeavouring to ensure that the public cannot be involved in any new plans; the proposed developments would be privatising public space; the proposed rules for Kumutoto would allow high, large footprint buildings along the roadside blocking views; Mrs. Lee opposed the removal of the zero height limit and the height of the proposed buildings at Kumutoto stating that they would have negative impact on the surrounding heritage buildings.

Mrs. Lee also commented on the Design Guide, stating that it appeared vague in parts. In closing, Mrs. Lee expressed concern about the legacy we would be leaving for future generations, if Variation 11 was approved.

- 4.2.11 **Mrs. Pauline Swann (21)** appeared and spoke to her and **Athol Swann's** submission. In their submission, they requested Variation 11 be rejected in its entirety. They had concerns that members of public were going to be shut out of the development processes and the proposed Rule change 13.3.4A, would change the status of Resource Consent applications to identified areas from Discretionary (Unrestricted) to Discretionary (Restricted) with the presumption that Resource Consent applications, would not be notified. Mr. and Mrs. Swann were also concerned about the loss of views.
- 4.2.12 **Mrs Mary Munro**, committee member for **Waterfront Watch Inc. (19)**, stated the Society's opposition to Variation 11. They were particularly concerned about the shutting out of public input during the development process. Waterfront Watch Inc. believe there is a fundamental difference between the North Kumutoto area and a block of land in the central city. The site has wide views and is surrounded by heritage buildings. Waterfront Watch Inc. requested we reject Variation 11, and retain the zero height limit to ensure all proposed new buildings trigger a notified Resource Consent, and subsequently the public would continue to be involved.
- 4.2.13 **Mr. Ian Gordon**, Counsel for **Queens Wharf Holdings Ltd. and Taranaki Wharf Holdings Ltd. (31 and 32)** appeared on behalf of these two submitters. The submitters were not opposed to objectives, policies and rules that better enable building and structures to be developed or re-developed on the waterfront, but that the proposed provisions exceed what is necessary or appropriate to achieve the purpose of the Resource Management Act 1991 (the Act), and ought to be more confined in nature. In particular, the submitters oppose rules requiring: publicly accessible ground floor spaces; minimum requirements for display windows and entranceways; and the requirement for active edges. Mr. Gordon called two witnesses Mr. R Cameron and Mr. I Athfield.
- 4.2.14 **Mr. Robert Cameron**, Valuer provided evidence on behalf of the submitters (**31 & 32**) Mr Cameron traversed in some detail the commercial history of both the Queens Wharf Centre and the Odlins Building. He concluded that the proposed rules would adversely affect the economic future of the sites and it was his opinion that in terms of planning provisions the status quo should be maintained. He stated that as private development on the waterfront was undertaken on leasehold tenure, the Council (through the waterfront company) has more than adequate opportunity to influence ground floor outcomes.

4.2.15 **Mr. Ian Athfield**, Architect also provided evidence for the submitters (**31 & 32**). He covered a history of the waterfront development from an architectural perspective and considered issues relating to the ground floor use of buildings and the provision of active edges in light of the specific designs of the Queens Wharf buildings and the Odlins Building. Mr. Athfield supported a more flexible approach to public accessibility and active edges in the areas south of the Meridian Building and the waterfront in general.

4.3 Second day of hearing - August 11th 2009

4.3.1 **Mr. Ian Gordon** presented submissions on behalf of **Land Lease Limited (FS49)**. Land Lease Limited were not opposed to the introduction of objectives, policies and rules that will better enable buildings and structures to be developed within the North Kumutoto Area, but rather that Variation 11 proposed provisions that exceed what is necessary or appropriate. Specifically Land Lease Limited sought to ensure that the Whitmore Street viewshaft was not compromised and the Variation 11 provisions be amended to make it clear that any development within the viewshaft would have a discretionary (unrestricted) status.

4.3.2 We recalled **Mr. Michael Faherty and Mr. Ian Pike** from Wellington Waterfront Limited to respond to various questions including the approach of WWL to the leasing of space on the ground of buildings, current governance arrangements, their processes for public involvement for development and the role of the Technical Advisory Group.

4.3.4 We also called **Mr. Gerald Blunt**, Council's Chief Urban Designer to outline the background on Council's Validity of Redevelopment at 'North Kumutoto' report and answer questions on the background and reasoning for a number of the controls, proposed in the Variation. We also questioned Mr. Blunt on the consultation which had occurred in respect of the various design processes for the North Kumutoto area which had taken place to date.

4.3.5 **Mr. Brett McKay**, the Council's reporting officer, was asked to respond to the key questions on issues raised by the submitters and to address his recommendations for amending the Variation from what had been notified or discussed at the hearing. Mr. McKay stated that for any new building development to be considered in the North Kumutoto area it was necessary to make specific provision in the District Plan generally as proposed under Variation 11, based on the Court decision for the Hilton Hotel and following the processes outlined in *The Wellington Waterfront Framework*. Maintenance of the status quo would potentially discourage new

development. Mr. McKay was of the view that this hearing process was helpful to bring focus to certain issues for improvements to the notified Variation 11.

4.4 Supplementary material provided at the hearing

4.4.1 During the course of the hearing we were provided with additional material relating to this Variation, including;

- Report on Heritage Values – Kumutoto Area, prepared by R&D Architects, Wellington.
- North Queens Wharf Visualisation Sites 8, 9 & 10, prepared by Boffa Miskell Ltd, July 2008.
- North Kumutoto Sites 8, 9 & 10 Design Competition – Design Brief.
- Draft North Queens Wharf Brief – Waterfront Development Sub-Committee June 2002.
- Winning Entry to the North Queens Wharf Design Competition.
- Copies of the Certificates of Title for the land in the North Kumutoto area.

4.4.2 The additional materials tabled and presented by various parties are held on file at Wellington City Council.

4.5 Statutory Framework

4.5.1 Under the Resource Management Act 1991 the Council is required to prepare variations to the District Plan in accordance with its functions under section 31, the provisions of Part 2 and its duty under Section 32.

4.5.2 In addition, the Council must also have regard to other documents including any proposed Regional Policy Statement or Plan or any relevant entry in the Historic Places Register.

4.5.3 In making rules under section 76 of the Act the Council shall have regard to the actual or potential effects on the environment of activities including, in particular, any adverse effect.

4.5.4 The requirements for processing a variation are set out in Part 1 of Schedule 1 to the Act.

4.5.5 It is within this context that we are to make our recommendations on Variation 11 to the Council.

4.5.6 During the hearing we were advised by Mr. McKay that there is nothing under the Proposed Regional Policy Statement or Plans that conflict with the Variation 11 proposals. Specifically, the Regional Coastal Plan identifies that the use and development of the Lambton Harbour Area is considered appropriate and it is recorded that:

The objective and policies on the Lambton Harbour Development Area have been adopted in recognition of the importance of this area as a part of Wellington City. This area has its own development plan, and has received special status in the past with its own planning scheme. The area is also unusual in that much of the seabed is in private ownership.

4.5.7 We are also satisfied that all processes under Part 1 of Schedule 1 have been followed and note that waivers of time limits for the two submissions and three further submissions were approved by the Chief Executive of the Council, under delegated authority in accordance with sections 37 and 37a of the Act.

5. PRELIMINARY/GENERAL ISSUES

5.1 Overview

5.1.1 There were a number of submissions and further submissions to the Plan Change which raise general issues that we have chosen to deal with, before addressing the primary issues in Section 6.

5.1.2 We have set out the preliminary issues as:

- (a) Section 32 Report;
- (b) Plan Change Withdrawal;
- (c) Scope issues.

5.2 Section 32 Report

5.2.1 One submission (45) expressed concern that the Section 32 documentation was “more than insufficient” and was not “genuine or helpful” in its exploration of options.

5.2.2 Mr. McKay, Council’s reporting officer, advised us that he questioned if the submitter was suggesting consideration of a wider range of ideas and options from a design perspective. In his view this was not the purpose of the Section 32 report. Mr. McKay went onto explain that the main purpose of the Variation was to put in place a regulatory framework at North Kumutoto and that the Section 32 report adequately examines the options in that regard. Mr. McKay also noted Variation 11 provisions did not prevent a possible wide range of design options for the area.

5.2.3 The Wellington Architecture Centre did not appear at the hearing therefore, we were not able to seek clarification from them on this matter.

5.2.4 Having reviewed all the background documents and from our questioning of Mr. McKay on the process leading up to the notification of the Variation, it is clear to us that the Plan Change has focused on a range of options for the North Kumutoto area and that the process outlined in the Section 32 report has been sufficient.

5.2.5 We therefore **recommend** that this submission be rejected.

5.3 Withdrawal/Cancellation of the Variation

5.3.1 There were a number of submissions that opposed the Variation as a whole or opposed any development in the North Kumutoto area. These submitters sought the withdrawal or cancellation of the Variation and/or the retention of existing provisions.

5.3.2 Without prejudicing our further recommendations below, we make the following comments on the submissions and evidence relating to this relief sought now.

5.3.3 A number of submissions and also in evidence presented to us, raised issues that Variation 11 would;

- exclude the public from future resource consent processes for new development in the North Kumutoto area;
- exclude participation in proceedings before the Environment Court; and
- the Variation was undemocratic.

5.3.4 In questioning these submitters, we were also advised that they did not want the final say in the detail of what was built on the North Kumutoto area. We have had some difficulty in reconciling this apparent contradiction. We note that the rights of third party participation are set out in the Resource Management Act under which this Variation is being processed.

5.3.5 We also understand that the current Plan development has included extensive public participation from the formulation of *The Wellington Waterfront Framework* through to the notification and hearing of Variation 11. Rather than look at participation in every resource consent process, this Variation is the opportunity to address the issue of development in the North Kumutoto area. This is appropriately done by the analysis of individual issues which we address below. On this basis we do

not accept that we should withdraw or cancel the variation. We therefore **recommend** that submissions seeking this relief be rejected.

5.3.6 Similarly, there were submissions and supporting evidence presented to us that the Variation was not consistent with *The Wellington Waterfront Framework*. In addition, it was submitted that it was not necessary to address the matters raised in the Environment Court decision on the Hilton case. The Court noted that it was not appropriate for provisions in the Plan to refer to *The Wellington Waterfront Framework* as a design guide or as assessment criteria for resource consent applications. Some of those presenting evidence to us suggested that the current provisions in the District Plan could be relied upon.

5.3.7 In his report and in questioning, Mr. McKay set out the reasons why the Council had taken the approach it had to address this issue.

5.3.8 On this matter, we consider that the approach by the Council in regard to the Variation is the correct one. We therefore **recommend** that submissions seeking this relief also be rejected.

5.4 Scope of the Variation

5.4.1 A number of submitters sought relief that appeared to be beyond the scope of the Variation. These include;

- Rezoning of waterfront,
- Professional Review Group,
- District Plan Review,
- Change of height limits in areas outside of North Kumutoto,
- Ballance Street viewshaft.

5.4.2 We have addressed each of these in turn.

5.5 Rezoning of Waterfront

5.5.1 As we have previously noted, Variation 11 applies to the defined North Kumutoto area of the waterfront and also to the policy and rules around ground floor public access and active edges to the entire waterfront area. Submission 35 from Mr. R England seeks the rezoning of the waterfront to a Special Ecological Zone with its own specific planning parameters. Mr. England also gave evidence in support of his submission along with supporting examples.

5.5.2 Mr. McKay, in his report, advised us that that this relief was beyond the ambit of Variation 11 and as such he did not support it.

5.5.3 We agree with Mr. McKay as this is contrary to the objectives and policies of *The Wellington Waterfront Framework* and Council's long established vision for this area. We therefore **recommend** that this submission be rejected.

5.6 Professional Review Group

5.6.1 Wellington Civic Trust, in their submission and evidence sought the appointment of a professional advisory group to independently assess Council's draft consent decisions on applications in the North Kumutoto area that would be reported to Council and made public. The Trust also noted in evidence that this may be beyond the context of the Variation.

5.6.2 We note that although outside the statutory process, the Council may involve the TAG group to a greater extent in terms of design issues on the waterfront. Nonetheless, we agree with the Trust that the establishment of such an additional group is beyond the context of the Variation and therefore **recommend** that this aspect of their submission be rejected. We do however; support the on-going involvement of TAG on design issues relating to the waterfront.

5.7 Next Review of District Plan

5.7.1 In evidence, the NZ Historic Places Trust sought greater consideration be given to the effects of development on the surroundings of historic buildings when the Council next reviews the District Plan.

5.7.2 We cannot direct the Council to undertake such a review within the scope of this Variation. We therefore **recommend** that this relief be rejected. In regard to other heritage matters, we address these in further detail later in this report.

5.8 Height Limit for Taranaki Wharf /Queens Wharf

5.8.1 Taranaki Wharf Holdings Ltd (**31**) opposed the exclusion of the NZX Building from Appendix 13 and similarly Queens Wharf Holdings Ltd (**32**) in regard to buildings in the Queens Wharf Special Height Area. Both submitters sought height limits similar to those proposed in the North Kumutoto area.

- 5.8.2 In the Officer's report, Mr McKay stated that he considered these submissions to be beyond the scope of this Variation, as height limits only applies to the North Kumutoto area.
- 5.8.3 Mr. Gordon, on behalf of these submitters, again made the request for the similar building heights, plus 15% to better allow the buildings at Queens Wharf the ability to attract the critical mass of people to achieve the objectives of the Plan. We questioned Mr. Gordon on the issue of scope and he commented that we would be "drawing a long bow" as to recommending acceptance of this relief within the scope of the Variation.
- 5.8.4 In this case we agree with Mr McKay's assessment that these submissions are beyond the scope of the variation and we therefore **recommend** that they be rejected.

5.9 Ballance Street Viewshaft

- 5.9.1 In evidence on behalf of 'Action for the Environment' (25), Mr. David Lee, drew our attention to the issue that building footprints proposed for the North Kumutoto area would block the viewshaft from Ballance Street and affect the viewshaft on Whitmore Street. The effect on the Whitmore Street viewshaft we address later in the decision. At this point we concerned ourselves only with the Ballance Street viewshaft issue.
- 5.9.2 We sought clarification from the Council's reporting officer, Mr. McKay as to the Ballance Street viewshaft and he advised us that there was no viewshaft in the District Plan from Ballance Street. Mr. McKay noted that the viewpoint for the viewshafts identified in Plan Change 48 are from Lambton Quay to the harbour and beyond and that views to the harbour from Lambton Quay are not available down Ballance Street.
- 5.9.3 In response to questioning, Mr. Lee was of the view that there should be an identified viewshaft from Ballance St to the harbour, and we understood him to mean that that view point could be from Featherston Street.
- 5.9.4 The 'Action for the Environment' submission did not specifically seek a viewshaft from Ballance Street.
- 5.9.5 When considering all of these matters, we conclude that the request for a viewshaft from Ballance Street is beyond the scope of the Variation and was not specified as relief sought in the original submission. We therefore **recommend** that this request be rejected.

6. PRIMARY ISSUES

6.1 OBJECTIVES AND POLICIES

6.1.1 Governance – Central Area Chapter 12 and Policy 12.2.8.8

6.1.1.1 The governance arrangements in regard to the waterfront are referenced in the introduction to Chapter 12.1 of the Central Area and in Policy 12.2.8.8. We were advised in the officer's report that these references were updated to reflect the changes in the governance arrangements from the time that the decision on Plan Change 48 was released and the notification of this Variation.

6.1.1.2 In the Variation itself, the final sentence in the second paragraph of the Special Areas section of the Introduction to Chapter 12.1 was removed and the explanation for Policy 12.2.8.8. was reworded.

6.1.1.3 There were three submissions in opposition to the removal of the sentence from Chapter 12.1 and one in support. There was one submission in opposition to the redrafting of the explanation to policy 12.2.8.8. and one in support. Mr. Taylor (39) sought rewording of the policy explanation to include a group of community and professionals with the responsibility for the planning and development of the Waterfront. This was sought in part to ensure public participation in terms of any future development.

6.1.1.4 Mr. McKay, in his report, was of the view that the changes were necessary to reflect the current governance arrangements for the waterfront and that the changes to the policy explanation did make it clear that public participation will be maintained through the formal District Plan change processes. Including, that areas outside the North Kumutoto area are still subject to the zero height limit until any such Plan changes are promulgated.

6.1.1.5 We did not hear any evidence directly relating to the governance issues as set out in the introduction to Chapter 12 .1 of the Central Area and in Policy 12.2.8.8.

6.1.1.6 As we noted previously, we have already addressed that the establishment of professional review groups for the planning and development of the waterfront is beyond the scope of the Variation.

6.1.1.7 We consider it appropriate to amend the provisions of the District Plan to reflect the current governance arrangements and therefore **recommend** that those

submissions in opposition be rejected and those in support of the changes be accepted.

6.2 New Buildings on the waterfront - Policies 12.2.8.6 and 12.2.8.6A

- 6.2.1 Mr. McKay's report notes changes to rationalise the existing policy 12.2.6.6 and explanatory text and also a new policy relating to new building development in the Kumutoto area.
- 6.2.2 Some submitters oppose the provision of future building development on the waterfront, and the deletion of wording in the explanatory text that the buildings in the Kumutoto area will be in scale with the heritage buildings. Others raised concerns about the explanatory note reference to heritage buildings only and not structures.
- 6.2.3 Mr. Taylor (39) sought that the word "related" be deleted from Policy 12.2.8.6. As the policy should apply to all public spaces and not just those related to building developments.
- 6.2.4 Mr. McKay set out in his report, the detailed context of the submissions and provided his recommendations as to the relief sought.
- 6.2.5 The evidence presented to us that relates to these matters was within the context of opposition to development of the waterfront and that any development should not occur without public input. Many submitters referred us back to *The Wellington Waterfront Framework* and they considered this Variation inconsistent with the Framework, particularly in regard to public involvement, and that it is primarily a public area.
- 6.2.6 We considered the provisions of *The Wellington Waterfront Framework* and note that in addition to these matters the Framework also identifies that the waterfront area envisaged new buildings, including commercial development. *The Wellington Waterfront Framework* also notes a two stage process in planning for future development, the first being a variation to the District Plan for policies and objectives (in the form of Variation 22 and subsequently reflected in Plan Change 48) and the second of more detailed Plan changes, that is Variation 11 before us.
- 6.2.7 On reviewing the Framework itself and in considering the Officer's report, the various reports referred to in the Section 32 report and from our hearing of and questioning of submitters and Council officers, we note that the Framework recognises that there will be buildings in the Kumutoto area (referred to in the Framework as North Queens Wharf). The Framework also addresses the relationship of buildings to open

space, and heritage, which are issues that we address in detail later in the decision. However, without prejudicing these submissions in detail, we find that the policy framework in place does envisage buildings in the North Kumutoto area. In addition we were also presented with evidence regarding the fact that buildings were previously located adjacent to Waterloo Quay and Customhouse Quay.

6.2.8 We have addressed detail on heritage later in this report. Nonetheless, we note that in evidence on behalf of New Zealand Historic Places Trust, Penelope Laurenson, accepted the reasoning and recommendation in the Officer's report in regard to Policy 12.2.8.6A.

6.2.9 We therefore **recommend** that the word "related" be deleted from Policy 12.2.8.6.A as requested by Submitter 39, be accepted, and that the other submissions related to this policy be rejected.

6.3 High Quality Design - Policy 12.2.8.6B

6.3.1 This policy seeks to include in the District Plan, *The Wellington Waterfront Framework* policy of requiring high quality design for development in the North Kumutoto area. In his report Mr. McKay drew our attention to high quality design being a key principle in the Framework.

6.3.2 There were submissions in support and opposition to this policy as well as submissions seeking changes to the wording of the explanatory note in regard to absolute height limits and the potential building footprints compliance, as detailed in Page 16 of the Officer's report.

6.3.3 We understood from the submitters, through their general presentation of evidence, the point that the policy should reflect the limits on development in the North Kumutoto area. As noted above we have addressed the specific issues raised in submissions and evidence below. Without prejudicing those matters, we find the policy and explanation reflect *The Wellington Waterfront Framework* principles for high quality design.

6.3.4 We therefore **recommend** that those submissions in opposition or seeking changes to this policy and explanation be rejected and the submissions in support be accepted.

6.4 Height

6.4.1 This was an important issue in respect of the existing context for the area which had a zero height limit, effectively requiring any future development to be notified and be

evaluated further through the public process. A number of submitters presented various views in respect of this issue and these are summarised below.

- 6.4.2 Mr. McKay, Council's Reporting Officer, outlined in his officer's report "*The need to establish clear parameters for the assessment of proposed new development on the waterfront arose from the Environment Court's comments on view protection and the relationship of this to the existing zero height limit provisions that currently apply to most areas of the waterfront.*"
- 6.4.3 Importantly, we were provided with the clear understanding that this District Plan Variation was the final stage of the two stage process of extensive public involvement and consultation on this area of Wellington's waterfront in respect of the District Plan, objectives, policies and rules that had been debated from the time The public were consulted on *The Wellington Waterfront Framework* prior to being adopted in April 2001.
- 6.4.4 *The Wellington Waterfront Framework* outlined possible building heights in this area (North Queens Wharf) and stated that "*New Buildings in scale with heritage buildings and enhanced with squares and lanes*" and "*....should be in a 'scale' with their surroundings. Scale may be buildings of the same height, but it may also mean they are different heights and sizes. However there will be strong proportional relationships between them*".
- 6.4.5 Mr. Blunt, Council's Chief Urban Designer, outlined in the 'Validity of Redevelopment at North Kumutoto' report the contextual relationship of the existing buildings in the immediate area, in particular the heights of existing buildings both on the waterfront area and across Waterloo Quay/Customhouse Quay. In response to questioning at the hearing, Mr. Blunt explained the long established stepping down of the Central Area building heights toward the waterfront and that building heights in the North Kumutoto area should be lower than building across Waterloo Quay/Customhouse Quay.
- 6.4.6 Another important report that has informed our understanding of the proposed heights of possible buildings at North Kumutoto, was the 'North Queens Wharf Visualisations Sites 8, 9 & 10' prepared by Boffa Miskell Ltd in July 2008. This report provided outline block visual representations of building height and outline of the three sites as follows:
- Site A (Site 10) at 5 storeys (25.3m amsl);
 - Site B (Site 9) at 2 and 4 storeys (12.7m and 21.1m amsl) stepped at the midpoint of the footprint;
 - Site C (Site 8) at 3 storeys (16.9m amsl).

The visualisation also showed further options for all three sites reduced by 1 storey (4.2m) and increased by one (1) storey.

6.4.7 More importantly at Site B we noted that the visualisation indicated a building form stepped at the midpoint of the footprint from 2 storeys at the southern end to 4 storeys at the northern end. In response to our questions, Mr. McKay and Mr. Blunt advised us that this was in response to the adjacent height of the historic Shed 13 building to the south and at the northern end to provide a more consistent building height with that of Site A, to spatially define the open space and frame the views along the Whitmore Street viewshaft.

6.4.8 The notified Variation 11 heights for buildings on the three sites were as follows:

- Site A (Site 10) at 30m amsl (or approx 6 storeys) plus discretion for 15% increase (+4.5m);
- Site B (Site 9) at 25.5m amsl (or approx 5 storeys) plus discretion for 15% increase (+3.8m);
- Site C (Site 8) at 17.5m amsl (or approx 3 storeys) plus discretion for 15% increase (+2.6m).

6.4.9 The different height parameters for the various sites provided us with considerable concern and this was also expressed by various submitters and those who presented at the hearing.

6.4.10 Mr. Brooks, on behalf Civic Trust accepted that development was appropriate for the area of Sites A & B but not for Site C, and contended that the height proposed for Site A was appropriate and that the height for Site B should relate to the adjacent Shed 13 (at 15m amsl). Various other submitters presented the view that no buildings should be allowed in the area, or buildings no greater than two to three storeys, and that any new buildings should be similar in height (and scale) to the adjoining heritage buildings.¹

6.4.11 Ms. P Laurenson, MWH on behalf of the NZHPT submitted that building heights should step down on both Sites A & B in respect to the scale and height of the adjacent heritage buildings Shed 13 and the Old Ferry Terminal respectively.

6.4.12 Mr. I Athfield, Architect on behalf of Taranaki & Queens Wharf holdings Ltd referred us to original photographs of this area, showing various buildings aligning Waterloo Quay/Customhouse Quay between the existing Sheds 13 and 21 of some 4-5 storeys in height.

¹ Wellington Waterfront Watch inc. (19); P Swann No.21; Action for the Environment Sub No. 25; F Lee No. 27; RW England Sub No. 35; C Greenwood No. 16; C Palmer No. 36; MG Taylor No. 39.

- 6.4.13 With regard to other matters raised, two submitters² commented that in respect of height, assessments should be made of shading effects, requesting protection of sunlight to the public open spaces from noon to 2pm, as is common in other parts of the Central Area. This is important given the public usage of the area, and the amenity of outdoor spaces provided.
- 6.4.14 We note the existing Central Area sunlight protection provisions in the District Plan apply to identified public spaces such as parks and malls. On the waterfront the Kumutoto Plaza in the North Queens Wharf area adjacent to the new Meridian Building is also identified for such protection. The rules applicable in the Central Area are designed to protect sunlight in some but not all public spaces.
- 6.4.15 New buildings in the North Kumutoto area will have some shading effects and various scenarios of the shading effect of development at Sites B & C (previously prepared by WCC) were presented at the hearing by the Civic Trust. We note no evidence was provided in respect of potential development shading at Site A.
- 6.4.16 We considered the issue of shading and have come to the view that Variation 11 seeks to achieve a reasonable balance between the scale of proposed new development and surrounding public space where access to direct sunlight will be available at different times. One overriding concern has been to ensure that adequate sunlight is provided to the existing Kumutoto Plaza.
- 6.4.17 The Civic Trust also requested the assessment of wind effects. We note this is a matter already covered by the development standards under Rule 13.3.8. All consent applications are required to demonstrate compliance with these wind provisions and we therefore **recommend** that this submission be rejected.
- 6.4.18 Various submissions³ opposed the proposed 15% discretion for building height under the Discretionary Activity (Restricted) processes for development within the North Kumutoto area. Most argued that there should be no discretionary height or alternatively the margin be set at 5%. One submission⁴ supports the provision. In response to questions from the Commissioners, Mr McKay, Council's Reporting Officer, explained that the 15% discretion was similar to rules covering the entire Central Area and was promoted as a method to further encourage building design excellence.

² Civic Trust (18) and the Architecture Centre (45)

³ Submissions 6, 9, 11, 16-19, 21, 23, 24, 27, 29, 36, 38-41, 45, 47 and 49

⁴ Wellington Waterfront Limited (30)

6.4.19 We agree with the majority of submitters in this regard, and in order to establish certainty of any future buildings, we **recommend** the removal of the proposed 15% additional discretionary height allowance contending that design excellence can also be accommodated within the building heights now recommended.

6.4.20 Having considered both spatial and policy evidence, in particular on review of the 'North Queens Wharf Visualisations' Sites 8, 9 & 10 which indicated a stepped form for Site B, we **recommend** that the appropriate height limits (refer Appendix 13 attached) should be as follows:

- **Site A** (Site 10) at 30m amsl (or approx 6 storeys)
- **Site B** (Site 9) at 16m and 25m amsl (or approx 3-5 storeys) stepped at the midpoint of the footprint
- **Site C** (Site 8) at 16m amsl (or approx 3 storeys).

6.4.21 This establishes a reduced height for Site B (and C) in recognition of the sensitive interface with adjacent Shed 13 heritage building (as addressed in the section on Heritage below) and Kumutoto Plaza to the south. In relation to Site A, the height relationship with the adjacent Shed 21 and the Old Ferry Building is considered appropriate considering the footprint separation between these buildings.

6.4.22 The heights recommended on Appendix 13 have also been limited to the extent of the established building footprints, providing further certainty to the extent of future building height, and thus a zero building height would continue to apply to any areas outside the specified building footprint. Due to the inter-relationship between height, building footprint, alignment, and heritage, we have further addressed these matters in sections of this report below.

6.4.23 The revised plan is attached to this recommendation as Appendix 13.

6.4.24 We therefore **recommend**, that overall, the submissions be accepted or rejected in accordance with the above recommendations, which in summary are;

- **Site A** (Site 10) at 30m amsl (or approx 6 storeys) ;
- **Site B** (Site 9) at 16m and 25m amsl (or approx 3-5 storeys) stepped at the midpoint of the footprint;
- **Site C** (Site 8) at 16m amsl (or approx 3 storeys);
- Removal of 15% additional height discretion.

6.4.25 We therefore **recommend**, that overall, the submissions be accepted or rejected in accordance with the above recommendation.

6.5 Building Footprints

6.5.1 A total of 16 submissions were received for the Map shown as Appendix 13 and 2 submissions to the related Rule 13.6.3.1.3. Of these, 11 opposed the proposed building limits⁵ and a further 6 submissions⁶ expressed various concerns about the provisions.

6.5.2 Mr. McKay, Council's Reporting Officer, outlined in his officer's report and also at the hearing that "*The regulatory approach under Variation 11 requires the establishment of clear parameters for the assessment of applications and it is considered that these are provided by the Appendix 13 plan. The retention of the plan is therefore supported.*

The question of the prescribed limits being excessive is another matter. As previously outlined and as detailed in the report entitled "Validity of Redevelopment at North Kumutoto" appended to the section 32 report it is considered that the proposed limits are appropriate and should be retained. None of the submitters have suggested any specific alternative measurements."

6.5.3 Another important urban design consideration noted both in *The Wellington Waterfront Framework* and by Mr. G Blunt, Council's Chief Urban Designer, in the 'Validity of Redevelopment at North Kumutoto' report, and reiterated at the hearing was the key urban design principle of defining open space elements and framing views. *The Wellington Waterfront Framework* noted that "*successful squares are characterised by spatial definition, sunshine, areas of shelter.....*" and similarly "*successful streets and lanes are usually well defined, unified spaces.....and have activity and vitality at their edges*". We were advised, that it is therefore important that the future buildings provide defined edges to open space elements and assist in framing views from the city to the harbour (refer also to considerations of Viewshafts/Views above). The building footprints as shown on Appendix 13, reinforces these key urban design considerations.

6.5.4 The submission from Wellington Waterfront Limited (30) supports proposed Appendix 13, but it has been requested that the plan be appropriately dimensioned. It has also been requested that the building footprints for Site 9 (Block B) north of Shed 13 be amended to reflect the footprint of the building that previously occupied that site.

⁵ submissions 13, 14, 16, 17, 19, 27, 29, 43, 46, 47 and 49

⁶ submissions 18, 25, 31, 32, 34 and 45

- 6.5.5 We agree that the Appendix 13 plan was not entirely satisfactory in its notified form as it is difficult to determine the exact location of the boundaries of the footprint areas by the inclusion of appropriate measurements and references. Accordingly we **recommend** that the submission from Wellington Waterfront Limited on this matter be accepted and that Appendix 13 be amended, as shown in Appendix 1 attached to this report.
- 6.5.6 Mr. McKay advised us that he did not support the request to amend the footprint of Site B as the footprint of the former building on this site is of no direct relevance to the establishment of the District Plan provisions at this time.
- 6.5.7 We consider that the proposed footprint of Site 9 which aligns with Shed 13 on the street frontage, the existing lane on the east side and existing viewshaft lines is appropriate. We therefore **recommend** that this part of the Wellington Waterfront Ltd submission be rejected.
- 6.5.8 At the hearing, the Civic Trust⁷ accepted that development was appropriate for Sites A and B, however argued that building on Site C was inappropriate. Again, in response to questioning from the Commissioners on Site C, Mr. Blunt Councils' Chief Urban Designer, explained the urban design parameters of defining primary open spaces including that of the important waterfront promenade. This notion was also promoted as part of *The Wellington Waterfront Framework*. A number of other submitters⁸ at the hearing requested no buildings at all in this area as North Kumutoto should be open space; again we rely on *The Wellington Waterfront Framework* which envisaged buildings in this area and other statutory plans and strategic documents that preceded this variation.
- 6.5.9 We, having considered the various matters raised in submissions and from the evidence presented at the hearing, **recommend** that the building footprints as notified are generally appropriate (albeit with the inclusion of appropriate measurements), as they respond to accepted urban design principles. As we have noted above in respect to height, the establishment of defined building footprints provides for certainty of any future buildings.
- 6.5.10 The revised plan is attached to this recommendation as Appendix 13.
- 6.5.11 We therefore **recommend**, that overall, the submissions be accepted or rejected in accordance with the above recommendation.

⁷ Submission 19

⁸ Submitters 16, 25, 35, 39

6.6 Heritage

- 6.6.1 Consideration of the effects of future building development, in particular on historic heritage was an important matter in our overall deliberations. All the background material, including *The Wellington Waterfront Framework*, the Section 32 analysis and various Council reports highlighted that the identified building sites would respect the scale of surrounding development and ensure a sympathetic (scale) relationship between new buildings and existing heritage buildings. The matters of heritage had an overall effect on other recommendations made concerning building height and footprints, views, notification matters and the design guides.
- 6.6.2 The historical context of the area was outlined in the 'Validity of Redevelopment at North Kumutoto' report which noted the site has a number of adjacent historic buildings including Sheds 11 and 13 to the south and Shed 21 to the north. To the east of the area, on the waters' edge, is also the historic 'Old Eastbourne Ferry Terminal Building'.
- 6.6.3 This report also identified the heights of Shed 13 at 15m to the apex of the roof, 9m to the eave and for Shed 21, 21m to the parapet of roof.
- 6.6.4 A number of submitters referred to matters of heritage. The New Zealand Historic Places Trust submission (34) requested that full discretion should be retained over development in the North Kumutoto area but if the rule is retained as notified request that historic heritage and view shafts be included as a matter of discretion.
- 6.6.5 Mr. McKay, Council's Reporting Officer, outlined in his officer's report that *"Concerning historic heritage this is now proposed to be covered by stand alone heritage provisions under proposed District Plan Change 43. This change provides for the construction of new buildings, additions to existing buildings and subdivisions on the site of a listed heritage building or object to be considered as a Discretionary Activity (Restricted). As the North Kumutoto area contains two listed buildings the heritage provisions would be activated for new development in the area."*
- 6.6.6 In response to questions at the hearing, we were advised by Mr. McKay that the North Kumutoto area contained a number of 'titles' and that these provisions may in fact be not effective in this regard. Copies of the 'Certificates of Title' were provided at the hearing.

- 6.6.7 Action for Environment (25) and the New Zealand Historic Places Trust (34) both expressed concern about the effects of development under Appendix 13 on heritage buildings and in particular the Eastbourne Ferry Terminal Building. Russell Murray of R & D Architects, who wrote Report on Heritage Values-Kumutoto area, took the view Block C provided an excellent position to be used as an open public space-recommending it should not be built on. Various other submitters presented the view that no buildings should be allowed in the area, or buildings no greater than two to three storeys be allowed and that any new buildings should be similar in height (and scale) to the adjoining heritage buildings.⁹
- 6.6.8 We generally agreed with submitters in so far that the relationship between new buildings and existing heritage buildings is of considerable importance and that our recommendation should provide an acceptable level of protection for them. We also note that the Design Guide provisions require appropriate recognition of the height and bulk of existing heritage buildings and the provision of transitional forms or architectural features that respect these buildings.
- 6.6.9 Ms. P. Laurenson, MWH on behalf of the NZHPT in evidence at the hearing, submitted that building heights should step down on both Sites A & B in respect to the scale and height of the adjacent heritage buildings Shed 13 and the Old Ferry Terminal respectively.
- 6.6.10 As outlined above (Height), the 'North Queens Wharf Visualisations Sites 8, 9 & 10' indicated a building form at Site 9 stepped at the midpoint of the footprint from 2 storeys at the southern end to 4 storeys at the northern end.
- 6.6.11 We also considered the effects on the 'Old Ferry Terminal', however there was little material evidence presented at the hearing to inform our deliberations. We again refer back to preceding reports including *The Wellington Waterfront Framework* that envisaged primary promenades along the waterfront and from the city via the primary viewshaft locations.
- 6.6.12 We again note that the defined footprint separation provided along the waterfront adjacent to the 'Old Ferry Terminal' would be adequate to address any potential future adverse effects.
- 6.6.13 In light of the above we **recommend** that the alignment of building footprints, separations and building height now defined in this overall recommendation,

⁹ Wellington Waterfront Watch No. 19; P Swann No.21; Action for the Environment Sub No. 25; F Lee No. 27; RW England Sub No. 35; C Greenwood No. 16; C Palmer No. 36; MG Taylor No. 39.

incorporates sufficient provisions to ensure that new buildings in the North Kumutoto are designed to respect the surrounding heritage buildings.

6.6.14 We also **recommend** the inclusion of Historic Heritage be a matter of discretion under Rule 13.3.4. as an additional matter for consideration of heritage in any future resource consent application.

6.6.15 We therefore **recommend**, that overall, the submissions in regards to Heritage be accepted or rejected in accordance with the above recommendation.

6.7 Building Mass

6.7.1 Wellington Waterfront Limited (30) identified in their submission that building mass standards could apply to waterfront, when they contended that this was not Council's intention. Mr. McKay confirmed that this was not the intention and noted that, "*it would be impracticable to apply the provisions on large areas of the waterfront*". Mr. McKay recommended to us, that we accept this aspect of the Wellington Waterfront Limited submission and he further provided suggested amendments to the rules to clarify this matter.

6.7.2 We accept Mr. McKay's suggestions, and therefore **recommend** that the rules be thus amended. In addition, we accept this aspect of the Wellington Waterfront Limited submission.

6.8 Viewshafts and views generally

6.8.1 The primary Viewshafts identified within the Operative District Plan extending across the North Kumutoto area extend from Lambton Quay along the Whitmore and Waring Taylor Street alignments. Other views also presently exist from the immediate city area of Waterloo Quay/Customhouse Quay and Ballance Street across the area toward the harbour; however these localised views have not been previously identified within the District Plan.

6.8.2 Mr. McKay, Council's Reporting Officer, outlined in his officer's report that a total of 7 submissions¹⁰ expressed concern about the need to protect viewshafts, and views generally, and in particular the viewshaft from the city along Whitmore Street to the harbour.

¹⁰ Submissions 13, 16, 26, 28, 34 39 and 40

- 6.8.3 The alignment of viewshaft VS4 (Whitmore Street) and viewshaft VS5 (Waring Taylor Street) have been used to define the boundaries of the building footprints as shown in Appendix 13. Any proposed buildings extending into the viewshaft would trigger the implementation of the Central Area viewshaft rules, ensuring these primary viewshafts are appropriately considered and these submissions are accepted.
- 6.8.4 In respect to other views generally various submissions¹¹ requested the limiting of new buildings to maintain and/or increase the existing views out from Waterloo Quay/Customhouse Quay and from Ballance Street and either reduce the proposed building footprints or no buildings at all. Others noted that the existing views from the harbour and beyond back into the city across the existing open area of North Kumutoto were important.
- 6.8.5 Mr. Gordon, in submissions on behalf of Land Lease Ltd (FS49) drew our attention that an encroachment of a building into the Whitmore Street viewshaft is a discretionary restricted activity under the current District Plan. Also that any extension beyond the footprint of the sites A and B, again into the viewshaft; would also be discretionary restricted activity. Mr. Gordon submitted to us that this latter activity status in effect renders the footprint limit meaningless and that any party would not face any greater activity status. We confirmed for ourselves that Mr. Gordon's interpretation of the activity status in regard to the viewshaft was indeed correct.
- 6.8.6 We accept Mr. Gordon's submission. We have addressed the relief sought on this point, in the section of our report titled "Notification and Activity Status".
- 6.8.7 We, having considered the various matters raised in submissions and from the evidence presented at the hearing, **recommend** that it is not necessary to include any further specific viewshaft requirements. We again rely on *The Wellington Waterfront Framework* which envisaged buildings in this area. The proposed alignment of buildings (footprints) is appropriate as they acknowledge viewshaft VS4 (Whitmore Street) and viewshaft VS5 (Waring Taylor Street) and respond to sound urban design principles.
- 6.8.8 We therefore **recommend**, that overall, the submissions be accepted or rejected in accordance with the above recommendation.

6.9 Public Accessibility and Active Edges

- 6.9.1 Many submissions¹² raised issues regarding the proposed provisions requiring public accessibility to the ground floor of buildings and the provision of active edges. These submitters generally oppose the provisions for the reason that the proposed 60% requirement is too liberal and that there should be greater public access to ground floor space. The majority have requested higher limits ranging from 75% - 90%.
- 6.9.2 The Civic Trust (18), Architectural Centre (45) and Mr. M Taylor (39) generally support the provisions.
- 6.9.3 Taranaki Wharf Holdings Ltd (31) and Queens Wharf Holding Ltd (32) oppose the provisions, noting the restrictive nature of the provisions in terms of achieving viable economic use of buildings on the waterfront. It was submitted that the rules will have the potential to provide an over-supply of public orientated space resulting in unsustainable structures and spaces that diminish the social, economic and cultural vitality of the waterfront.
- 6.9.4 K. New (40) comments that the logic for the provision is wrong and that it is not that there is not enough demand for shops on the ground floor of buildings, but that too many buildings are proposed for the waterfront. This issue has been discussed above as generally being outside the scope of our recommendations. Issues relating to the quantum of building development on the waterfront are more properly directed to the Council through the review of the Waterfront Development Plan which has been initiated.
- 6.9.5 We were advised that one of the key principles in *The Wellington Waterfront Framework* is that the ground floor of buildings shall be predominantly accessible to the public. To date the Council has relied on its ownership and management of the waterfront through Wellington Waterfront Ltd to achieve this end. On the whole it appears that this approach has worked satisfactorily although it is clear from our site visit and evidence presented at the hearing that some ground floor space has been difficult to let and there have been vacancies for periods of time.
- 6.9.6 We agree that that ground floor accessibility and the related matter of active edges should be supported by the inclusion of appropriate rules in the District Plan through this Plan Variation process to ensure that significant ground floor space is not privatised and subsequently undermine the aim of achieving a high quality public

¹¹ Submission 16, 21, 25, 35, 39,

environment on the waterfront. This approach provides for greater certainty to the public that the waterfront, at ground level will remain predominantly a publicly accessible space.

6.9.7 In considering the issues raised in the submissions, we became cognisant of the fact that there are a number of problems and deficiencies with the provisions and various matters require further clarification.

6.9.8 Mr. McKay, Council's Reporting Officer, summarised in his report these matters as follows:

"1. The proposed rules do not work as intended. Where buildings are located within identified areas and do not meet the standards or are located outside identified areas then non-compliance with the accessibility and active edge requirements will trigger an application for a Discretionary (Unrestricted) consent for which there can be no presumption for the non-notification of applications. The intent was that all such applications should be a Discretionary Activity (Restricted) with a presumption for the non-notification of applications. This was considered as being appropriate in terms of promoting administrative efficiencies and flexibility for those involved in leasing of tenanted ground floor space.

2. The public accessibility requirement does not acknowledge special situations that might not fully comply with the standard but otherwise achieve the intent of the rule. The brewery in Shed 26 is perhaps a case in point where the public cannot access the brewing area but can view the operation. Another special situation could be buildings that have large footprint areas with interior space that might be difficult to let. This also raises the question of the desirable depth of publicly accessible space from the building frontage.

3. The implementation of the active frontage requirement would conflict with policies and rules for the protection of historic heritage. Many of the existing buildings on the waterfront are listed for heritage protection purposes and are therefore covered by the heritage provisions of the District Plan. It is appropriate for these provisions to be applied for determining what modifications if any should be made to the frontages of listed buildings.

4. The active frontage requirement also does not acknowledge those situations where full compliance might not be appropriate given the nature of the adjacent public space. However, as the intent is to develop all public spaces on the waterfront to a high standard of design over time it is desirable that ground floor

¹² Submissions 5, 13, 15, 16, 18, 19, 21, 24, 26-29, 31-33, 36, 39, 40, 42, 45 and 47-49

frontages complement adjacent public spaces. It might be expected therefore that waivers of the requirement are likely to be rare.

5. There is potential uncertainty about what constitutes the ground floor of buildings. Some existing buildings include colonnades and similar partially enclosed outdoor space and it needs to be made clear what is covered by the provisions. It is considered that the calculation of ground floor area should exclude such areas.

6. There is potential uncertainty as to whether the 60% accessibility requirement applies to the total ground floor area or to individual lease areas or tenancies. The intent in drafting the provision was that the calculation should be based on the total ground floor area again to provide flexibility as to how individual occupancies might be allocated in terms of use. Anomalies could arise by calculating the requirement on the basis of individual leases or tenancies particularly for uses occupying small areas which might have a need for larger storage or staff facilities to which the public would be excluded. It is likely that additional resource consents would be generated by calculating the amount of publicly accessible space on an individual lease or tenancy basis.

7. There are questions about the hours that the public may expect to access the ground floor space. This will vary depending on the use but it is reasonable to expect that most ground floors will be closed outside usual business hours.”

6.9.9 Mr. I Athfield, Architect on behalf of Taranaki & Queens Wharf Holdings Ltd in response to questions from the Commissioners at the hearing provided expert commentary in respect of which locations should importantly provide active edges to engender interface with pedestrians. Mr. Athfield noted that the predominant east-west city to waterfront linkages and the north-south Waterloo Quay/Customhouse Quay and waterfront promenade frontages are the primary route for pedestrians and should certainly provide active edges/accessibility. He also noted that other subordinate routes and the rear of buildings (service and vehicular access areas) are less likely to attract high pedestrian numbers and the active edges/accessibility requirement in these locations could be lessened.

6.9.10 To the extent that the recommendations below address the concerns of Taranaki Wharf Holdings Ltd (31) and Queens Wharf Holding Ltd (32) in respect of public accessibility to the ground floor of buildings and the provision of active edges, we recommend that these submissions be accepted in part. With regard to the submissions on the accessibility requirement it is acknowledged that the 60% threshold may be varied through the given application process for varying building

situations and or location, however we consider that the access requirement is reasonable and would meet the publicly accessible 'test' noted in the Waterfront Framework.

6.9.11 Having giving careful consideration to these issues, we **recommend** that the provisions promoted by this Variation and the proposed rules and amendments to definitions regarding ground floor accessibility presented at the hearing by Mr. McKay, should be adopted as this was an important and primary objective underlying the adoption of *The Wellington Waterfront Framework* providing that the future waterfront area is retained as a vital and vibrant public space.

6.9.12 We therefore **recommend**, that overall, the relevant submissions be accepted or rejected in accordance with the above recommendation.

6.10 Public Open space

6.10.1 Several submitters were concerned at the potential loss of open space that would result as a consequence of the Variation 11 proposed provisions.

6.10.2 Mr. Brooks, on behalf of Wellington Civic Trust (**18**) paid tribute to the planned open spaces already created, namely the Kumutoto Plaza and the potential for such places to be well patronised and enjoyed. However, the Trust had concerns in regards to the shading of public areas from the proposed building sites. In particular, the Trust was concerned about a building on Site C and potential shading it may create. The Trust was of the view Site C had great potential as a dedicated open space and needed careful consideration.

6.10.3 Mr. Lee (**25**) from 'Action for the Environment' expressed concern of more public open space being covered with buildings stating that there was no special need for them and that it would close down the options for future generations. Mr. Palmer (**36**) stated Wellington City lacked recreational areas and more would be lost with this Variation.

6.10.4 We reviewed the 'Validity of Redevelopment of North Kumutoto Area' report prepared by Mr. Blunt and note that the North Kumutoto Area is approximately 0.83ha of open space, dominated by sealed car parking spaces. In response to questioning, Mr. McKay advised us that redevelopment of the waterfront area in a wider sense, proposes 65% of the total land available developed into public open space. Mr. McKay further advised us that the North Kumutoto precinct, as set out in Variation 11, proposes approximately 50% of its land area as public open space.

- 6.10.4 We note that *The Wellington Waterfront Framework 2001* established the vision and guidelines for public open space in this precinct (referenced as North Queens Wharf). The Framework states this area should have a stronger sense of city form with a higher proportion of buildings than other parts of the waterfront. The character of future open spaces in this area is described as squares and lanes, sheltered routes, views in and out and connections between other spaces.
- 6.10.5 We have, in part, already addressed this issue under building footprints above. Nonetheless, the public open space issue is one that we also consider needs airing and forms part of our overall view in regard to the Variation and hence our recommendations.
- 6.10.6 From the evidence and information presented to us, it is our view, the debate of the Kumutoto precinct as simply a planned public open space is over. The publically accepted vision of a combination of buildings and open space in this precinct is acknowledged.
- 6.10.7 We understand the wider waterfront area will have considerable areas of outdoor public open space. However, the North Kumutoto area is meant to link actively and visually with the CBD, have a more intensive built environment, and provide buildings that promote activity and encourage people into the area.
- 6.10.8 We had some empathy for the Wellington Civic Trust's view that Site C should be held as open space, with its shape and closeness to the water edge. We did not receive evidence at the hearing on its 'essential nature' as a building site nor of its potential, as a much needed open space. We did receive material with differing professional views in background papers, and note that Council considered these aspects in the formulation of Variation 11.^{13,14}
- 6.10.9 *The Wellington Waterfront Framework* states there will be two large green parks planned on the wider waterfront, one at Chaffers and the other at Frank Kitts Park. There is no such vision of a large park at Kumutoto.
- 6.10.10 We note that Mr. Blunt in the 'Validity of Development at North Kumutoto' Report stated that a building would define a landside promenade edge with potential for protection and sheltered spaces created. Mr. Blunt assessed the Site C with the following remarks;

¹³ Murray, Russell Report on Heritage Values- Kumutoto Area

¹⁴ Blunt, Gerald Validity of Redevelopment of North Kumutoto Area Report reference to Deyanna Popova page 10

*'[in reference to Site C] As an open space it is neither too large nor too small to make work. It has no built edges, and it is not big enough to have its own identity or function, this in comparison to the Kumutoto Plaza, which has two strong built edges ...'*¹⁵

6.10.11 Mr. Blunt goes on to note that, "A new building here, would make use of a space described as a classic; space left over after planning – S.L.O.P". A building would provide occupation, shelter and an edge to the Kumutoto Plaza and an edge to the waterfront promenade.

6.10.12 Open space provisions of Variation 11 can also be viewed in conjunction with the policy of publicly accessible ground floor areas and active edges of buildings to add interest and vitality. In addition, it is proposed that any new buildings be assessed on their relationship with the public space around them.

6.10.13 We recognise the need for sheltered, safe, and vibrant open space along the waterfront with options according to weather, time of year and day. However, after careful consideration of the open space issues, we **recommend** three building sites are appropriate.

6.10.14 We therefore **recommend**, that overall, the submissions be accepted or rejected in accordance with the above recommendation.

6.11 Notification and Activity Status

6.11.1 From our analysis of the submissions and evidence presented to us, a major issue of concern to many submitters was in regard to whether or not any resource consent application for development in the North Kumutoto Area would be treated on a notified or non-notified basis.

6.11.2 Mr. McKay, Council's Reporting Officer, explained in his report the situation that existed prior to the notification of Variation 11, which was,

'Under the Operative Wellington District Plan all building development and the development of open space on the waterfront is a discretionary activity (unrestricted).'

¹⁵ Blunt, Gerald, Validity of Redevelopment of North Kumutoto Area Report page 15 - 16

6.11.3 Mr. McKay's report also notes;

'From August 2001 when the former District Plan Variation 22 was notified, specific objectives, policies and rules have applied to the waterfront area. A deliberately strict regime was imposed requiring all new building development and the development of open space to be assessed as a Discretionary (Unrestricted) Activity. A key provision in this regard was the zero height limits which were designed to ensure that no building development would occur on the waterfront without the opportunity for public involvement... To date all developments have continued to be assessed as full discretionary consents on a case by case basis and this has provided the opportunity for public participation in the decision making process.'

6.11.4 We note that these have been the provisions in the District Plan and public expectation to date. We were also advised that these provisions were introduced until more detailed provisions would be introduced. Variation 11 proposes these more detailed provisions in the District Plan and is part of the two stage process as set out in *The Wellington Waterfront Framework* which we have referenced above.

6.11.5 In summary, Variation 11 as publicly notified, classified any proposed development within or outside the building footprints or within the 15% additional height provision as a Discretionary Activity (Restricted) with a notification/service provision that such applications would not be publicly notified (Rule 13.3.4A). In the case where the 15% additional height provision was breached, then the activity status was elevated to Discretionary Activity (Unrestricted) (Rule 13.4.7). This rule was silent on a notification/service provision.

6.11.6 There were 38 submissions¹⁶ opposed to the new provisions, focussing on Rule 13.3.4A and the development standards of Rule 13.3.8. One submission from the Historic Places Trust (34) also opposed the wording of Rule 13.3.4. Wellington Waterfront Ltd (30) supported this provision in the rule.

6.11.7 The submissions received on Rule 13.3.8 were concerned about what assessment occurs when standards are not met. In regard to these matters, we have addressed the standards of height, footprint and heritage separately in this report. In this section of our report we have focused on the notification issues and the associated activity status.

6.11.8 The submitter's primary concern was that all resource consents in the North Kumutoto area and indeed the entire waterfront should be publically notified. In much of the evidence put before us, it was argued that the processes for any building

¹⁶ Submissions 1-6,8-13,15,16,19,20,22,25-29,33 and 39-49

development should be transparent and provide for full public input. Both submitters and those presenting evidence wanted the right of appeal to the Environment Court upheld and those who were concerned at the Council's initiative and believed this process and template may continue around to other parts of the waterfront. In summary the views expressed to us were that it was not the height or footprint itself that was the focus, but rather the trigger a Discretionary Activity (Unrestricted) status with the associated public notification of any such application that was supported.

6.11.9 Throughout the hearing we heard and were presented with material setting out the history of this public involvement expectation – from Variation 17, *The Wellington Waterfront Framework*, Variation 22, Plan Change 48 and now the provisions of Variation 11 and District Plan.

6.11.10 We were made aware throughout the hearing that after Variation 17, the Council and community needed to build trust by involving the public on all developments on the waterfront area. This became a clear priority in *The Wellington Waterfront Framework* and contained in the operative District Plan. As the Wellington Civic Trust (18) pointed out, quoting from Chapter 12 of the District Plan's introduction;

“an important consideration in any development of the waterfront is that it is predominantly a public area in public ownership. Thus the Council is committed to facilitating public engagement on decisions relating to waterfront development”.

6.11.11 We have already set out in this report our findings as to the significance of *The Wellington Waterfront Framework* in regard to both its recognition of development in the North Kumutoto area and two stage planning process. We do not propose to repeat that again.

6.11.12 However, in line with those findings we agree that Variation 11 is in itself a public process, and that it is the stage where the Council and the community set the policies, rules and standards for this precinct and recognise there has been a wide and thorough consultation on the whole waterfront already.

6.11.13 The choice and judgement is whether to impose a Discretionary Activity (Unrestricted) status, with the associated implication of public notification, for each resource consent or to accept in this precinct specifically, there is enough agreement or commonality to accept there will be buildings with appropriate standards.

6.11.14 The Wellington Civic Trust and others point to an expectation of public engagement quite rightly is in the current plan.¹⁷ We question whether the Council and wider community need to go back to the drawing board each time, except that there is a clear expectation that there will be buildings on the waterfront in this area.

6.11.15 We asked submitters at the hearing if they felt the public should be involved in design issues in detail, and without exception the submitters did not view this as desirable.

6.11.16 There is another important parallel process to be acknowledged, that is not part of the statutory RMA process but is a process nonetheless, with public involvement and engagement.

6.11.17 We understand that subsequent to the Framework being adopted in 2001, the Council set up the Wellington Waterfront Ltd and established a Waterfront Sub-Committee to guide development on the waterfront. As part of this, much has been done with development on the overall Waterfront, including in the planning and scoping for potential development in the North Kumutoto area. This process has involved producing public documents, public feedback, display models and artist impressions, and a design competition that gives direction but also engenders public involvement. We were given copies of:

- Draft North Queens Wharf Brief – Waterfront Development Sub-Committee June 2002.
- North Kumutoto Sites 8, 9 & 10 Design Competition – Design Brief.
- North Queens Wharf Visualisation Sites 8, 9 & 10, Report by Boffa Miskell Ltd, July 2008.
- Winning Entry to the North Queens Wharf Design Competition

6.11.18 We also understand, as we write this recommendation, the Wellington City Council is seeking feedback and public submissions on the waterfront again, through local government consultation processes.

We understand this is not the same as a full statutory process under the RMA, with rights to appeal to the Environment Court and therefore may not satisfy many submitters.

6.11.19 Having considered all of the above in regard to the notification issue, we are of the view that the community already anticipated buildings in this particular area for a number of years, and this should now be reflected in the District Plan.

¹⁷ Chapter 12 Introduction and Policy 12.2.8.8

6.11.20 We accept the current District Plan and the submissions on the Variation reflect an expectation of public engagement. We consider this expectation is met by;

1. Variation 11 statutory public process setting standards and rules for the precinct.
2. Involvement in the public spaces or where a building proposal requires notification and does not meet the rules and standards for North Kumutoto.
3. A more flexible non- statutory Civic process described above.

6.11.21 In order to provide certainty, to allow buildings of a certain height and within a certain footprint as detailed on the map in Appendix 13 to proceed through the consenting process as a Discretionary Activity (Restricted) on a non notified basis, under prescriptive standards. Building proposals outside these standards would be assessed carefully on effects and more likely to be notified. The explanation by Mr. McKay in his report where he comments on submissions on Rule 13.4.7, reflects our conclusion on the notification issue, he states;

'Rule 13.4.7 is an existing provision in the District Plan which provides for all development on the waterfront that is not a Permitted, Controlled or Discretionary Activity (Restricted) to be assessed as a Discretionary Activity (Unrestricted). In particular this ensures that building proposals within the zero height limit areas will be subject to notification. In light of the new rules under Variation 11 to provide for development in identified areas, (North Kumutoto) the proposed additions to Rule 13.4.7 are to make it clear that new buildings or structures outside an identified area or development which does not comply with the specified standards will be assessed as a Discretionary Activity (Unrestricted). As there is no express provision for the non-notification of Discretionary (Unrestricted) applications they are more likely to be publically notified.'

6.11.22 We therefore **recommend** that rules in the Variation be amended to reflect the above conclusion, which, put simply is Discretionary Activity (Restricted) within the building footprint and height limits shown in Appendix 13 (as amended) without the need for public notification and do not need to be served on affected persons; and Discretionary Activity (Unrestricted) for proposals that extend outside the building footprint and height limits recognising that such applications are more likely to be notified. We further **recommend**, that overall, the submissions be accepted or rejected in accordance with the above recommendation.

6.12 Design Guidelines

- 6.12.1 Various submissions¹⁸ have raised matters relating to the North Kumutoto Design Guide, of those two submitters¹⁹ requested that the existing Waterfront Framework should be retained as a design guide. Mr. McKay, Council's Reporting Officer, outlined in his officer's report that the Waterfront Framework has status as Council policy only, but it is not a design guide that can be applied through the District Plan. This has been confirmed by the Environment Court in the *Hilton* case.
- 6.12.2 E. Cook (**48**) supports a design guide that would recognise the need for outstanding design of new buildings. To the extent that the proposed North Kumutoto design guide fulfils this aim the submission was supported by Mr. McKay.
- 6.12.3 Although supporting the proposed design guide the submission from the Architectural Centre Inc (**45**) contended that regulatory controls in the District Plan such as design guides are crude instruments and cannot on their own determine design excellence. Design guides have in the main worked well in Wellington City together with other methods to raise the quality of building design. As noted by the submitter, appropriate urban design and architectural expertise is required to promote good design and advocated for an enhanced role for the Technical Advisory Group (TAG).
- 6.12.4 Although an important issue, this is not a matter that can be addressed through the Variation 11 process. The future role of TAG should more properly be considered as part of the review of the Waterfront Development Plan that is currently underway.
- 6.12.5 Mr. M Taylor (**39**) has made a range of comments on specific aspects of the proposed design guide. With regard to Guideline G2.1 the submitter suggests that this contradicts the introduction to the design guide. Guideline G2.1 refers to development respecting neighbouring buildings and having a consistency of form whereas the introduction states that there is an infinite range of design solutions for achieving development that respects the North Kumutoto location. We consider that there is not a contradiction between these provisions as they are referring to design solutions in general while G2.1 promotes design consistency between developments in the North Kumutoto area. Design consistency can be attained without necessarily compromising the freedom or flexibility to achieve individual design solutions.
- 6.12.6 The submitter opposes guideline G2.3 noting that this provision implies that buildings may, or perhaps will exceed the height limits. We accept this submission

¹⁸ Submissions 13, 18, 27, 37, 39, 45 and 48

and refer to our recommendation above in regard to building height and building footprints. We note that buildings proposed above the specified height limits and footprints (identified on Appendix 13) are now to be assessed as a Discretionary Activity (Unrestricted), so to this extent guideline G2.3 is recognising possible future development scenarios. As absolute building heights are now specified in the North Kumutoto area, this guideline is still appropriate.

- 6.12.7 Guideline G3.7 refers to the illumination of buildings and the necessity to conform to the waterfront lighting strategy and concern regarding light pollution. Mr McKay, Council's Reporting Officer outlined in the Officers Report that the District Plan does already contain provisions in the Central Area that are relevant to the submitters concerns but these are directed at protecting the amenities adjacent residential areas from excessive lighting. As guideline G3.7 is more to do with the issue of architectural lighting to enhance the features of buildings after-dark and this is unlikely to be an issue from a pollution point of view.
- 6.12.8 With regard to guideline G4.3 relating to vehicle parking the submitter notes that parking should be discouraged. To the extent that both the Waterfront Framework and the District Plan identify the waterfront primarily as a pedestrian space this submission is supported. However, it is acknowledged that car parking may be required and provided in particular instances. Where this occurs, we accept that Guideline G4.3 provides for a preferred means of implementation.
- 6.12.9 The submitter opposes Guideline G6.1 which requires that the ground floor of buildings which are predominantly accessible to the public support adjacent public spaces. The question of tightening the provision is perhaps more related to the rule and associated standard for public accessibility which has been the subject of a further 21 submissions. These submissions have been discussed above under "Public Accessibility/Active Edges".
- 6.12.10 Finally, submissions 13 and 18 comment that the design guide should be reviewed or rewritten to remove ambiguities and to include more precise language and plan language definitions. No specific amendments were suggested, therefore we reject these submissions.
- 6.12.11 We **recommend** that on balance the proposed Design Guides are in line with our overall recommendations above and overall the submissions be accepted or rejected in with the above recommendation.

6.13 Parking Provisions

6.13.1 The Wellington Architecture Centre (45) made a submission that the waterfront area had sufficient parking provision and a reduction should be considered. Mr. McKay in his Officer's report advised that under *The Wellington Waterfront Framework*, the progressive removal of surface car parking is a key principle and under the District Plan there is no requirement to provide parking. Variation 11 does not propose any additional requirements for car parks and future new building may cover current surface car parks. To this extent the concerns of the submitter are addressed and we therefore **recommend** that this aspect of the submission be rejected.

7. CONCLUSION

- 7.1 In this report we have set out the identified scope and issues of Variation 11 as proposed by Wellington City Council. We have based our considerations on our understanding of all the material presented to us, our site visits, the Council officer's report, the submissions and further submissions, and evidence presented at the hearing. In accordance with relevant provisions of the Act we have addressed the issues, balanced competing arguments and have made recommendations accordingly.
- 7.2 The format used in our report is based on key planning matters raised in the Variation. For clarity we have addressed these in discrete sections but in reality all matters are closely inter-related.
- 7.3 The Variation provides for the development of the North Kumutoto area and introduces provisions across the wider waterfront on ground floor public accessibility and active edges.
- 7.4 We also consider that this Variation will meet the objectives of the District Plan and in turn meet the over arching requirements of the RMA.
- 7.5 In summary, we have recommended the reduction in height limits including the removal of the 15% discretionary height limit allowance and retained the building footprints along with the requirement for 60% ground floor public accessibility and active edges.
- 7.6 We have also recommended that future development proposals, that are within these prescribed limits, will be assessed as Discretionary Activities (Restricted); other proposals outside these parameters will be assessed as Discretionary Activity (Unrestricted).

7.7 Having regard to all the foregoing we **recommend** that the Council approve District Plan Variation 11, subject to the amendments contained in this report and in the attached consequential amendments to the District Plan.

7.8 Finally, we encourage the Council to consider the non statutory suggestions raised during the hearing. These include;

- continue the use of independent professional design specialists, such as the TAG group to actively peer review design matters for future development in the North Kumutoto area;
- afford greater consideration to the impacts of development on the surroundings of heritage buildings during the next District Plan review.

DATED AT WELLINGTON THIS 2 NOVEMBER 2009



Pamela Peters – Independent Commissioner (C)



Neil Penney– Independent Commissioner



Mark St. Clair– Independent Commissioner