

1 May 2008

File: WGN080117 [26385] [26386] [26387] and WGN080120 [26390] [26391] [26392] [26393]

IN THE MATTER OF The Resource Management Act 1991

AND Application for resource consents made pursuant to
Section 88 of the Act -

TO Wellington Regional Council:

 WGN080117 [26385] [26386] [26387] and WGN080120
[26390] [26391] [26392] [26393]

BY Capital Wharf Limited and Wellington Waterfront Limited

IN RELATION TO An application to redevelop the Overseas Passenger
Terminal building and strengthen the Clyde Quay Wharf
and to undertake associated activities in the coastal marine
area.

AT The site is located in the coastal marine area at the Clyde
Quay Wharf, Herd Street, Te Aro, Wellington; between
the approximate map references map reference NZMS260:
R27;2659539.5989414 and NZMS260:
R27;2659573.5989159.

Decision of Hearing Commissioners

HEARING COMMISSIONERS: Cr Sally Baber (Chair)
David McMahon
Cr Prue Lamason

HEARING DATES: 18-21, 25-28 February 2008 and 3-4 March 2008

DATE OF DECISION: 1 May 2008

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1. Introduction

Pursuant to Section 88 of the Resource Management Act 1991 (the Act) Capital Wharf Limited (CWL) and Wellington Waterfront Limited (WWL) applied for resource consent to redevelop the Overseas Passenger Terminal building and strengthen the Clyde Quay Wharf, and to undertake associated activities solely within the coastal marine area (CMA).

The applicant required consent from Greater Wellington Regional Council (GWRC) for six discretionary activities and one controlled activity under the Regional Coastal Plan (RCP). However, as discussed in section 6.1 of this decision, the application has been considered as if all the activities are full discretionary activities.

The application that was lodged, and subsequently notified, sought consent for seven coastal permits covering activities such as the disturbance and occupation of the seabed, construction of structures, and the potential discharge of contaminants to the CMA.

The application was heard by a panel which comprised the three Commissioners listed on the cover sheet of this decision. All Commissioners had delegated authority from GWRC to hear and jointly make a decision on the application.

The Commissioners visited the Clyde Quay Wharf environs on Friday 8 February 2008, prior to the hearing commencing.

The hearing commenced on Monday 18 February 2008 and concluded with the applicant's right of reply on Tuesday 4 March 2008. Additional visits were undertaken during the hearing. The hearing was adjourned on Tuesday 4 March 2008 in order for further visits to be undertaken as a result of evidence provided at the hearing. These were to assess impacts on views (amenity values) from residences of two submitters in the Chaffers Dock complex; the District Plan Viewshafts along Chews Lane/Harris Street, Hunter Street, and Willeston Street; and views from Queens Wharf, McFarlane Street and Oriental Bay.

Following these site visits, the Commissioners met for two days on 10-11 March 2008 to consider the evidence. During that time they determined that they had sufficient information to make a decision and subsequently closed the hearing on Tuesday 11 March 2008. The Commissioners' decision was reached on the same date although the Commissioners did meet again on 31 March 2008 to consider and edit an early draft of the written decision. Final editing, including the review of conditions, occurred subsequent to that date. The final version of the decision was approved by the Commissioners on Monday 14 April 2008.

In addition to the evidence provided at the hearing and oral submissions, including visual aids such as power point presentations, photo montages and a 3-D model, were tabled at the hearing, the Commissioners took into account all of the documentation provided with the application, the GWRC officer's S42A

report, and the comprehensive summary of the written submissions prepared by GWRC officers. Full copies of all submissions lodged in regard to the application were available to the Commissioners.

The decision to **GRANT** the seven consent applications is the unanimous decision of the Commissioners.

2. Background

2.1 Statutory jurisdiction

The proposal falls wholly within the coastal marine area, and as such falls under the jurisdiction of GWRC as the sole consent authority. However, Wellington City Council (WCC) has an overall responsibility for the development of the Wellington Waterfront area. This, along with some statutory linkages between the Regional Coastal Plan (RCP) and the operative District Plan for the Wellington District (DP), provided justification for input from WCC officers. This is a distinguishing aspect of this application because it raised a number of land use related effects to be considered in what is essentially a group of regional coastal permit applications.

The site is owned by Wellington Waterfront Limited (WWL). WWL is a council controlled organisation owned by WCC. As the Implementation Agency for waterfront development, WWL is responsible for the day-to-day operational management of the waterfront, which until April 2003 was known as Lambton Harbour Management Limited (LHML).

The second entity that has responsibility for the development of the waterfront is the recently disbanded Waterfront Development Sub-Committee (WDSC) of the WCC. Its role included development of performance briefs for individual areas of the waterfront, development and monitoring of annual work plans for waterfront projects, and consulting the public regarding development plans for the waterfront. Though now disbanded, the WDSC was still a valid statutory entity for the formative stages of this project and hence the Commissioners have referred to their input at the appropriate junctures.

In April 2001 the WCC (with the input of the WDSC) adopted the Wellington Waterfront Framework (WWF). This document sets out the vision, values and principles that guide the development of the waterfront. The WWF was referred to extensively during the course of the hearing and consideration of its function and weighting alongside the various statutory documents was a pivotal part of the Commissioners' deliberations. More information on this non statutory document is included in sections 6.2.3 and 7.1 of this decision.

The WDSC has a Technical Advisory Group (TAG), which is a group of independent design professionals appointed by WCC to provide technical design advice on waterfront proposals and to monitor consistency of proposed developments with the WWF. As is elaborated upon later in this decision, representatives of TAG were present during the hearing having contributed to the GWRC Officers S42A Report and were called as witnesses to speak to the relevant sections of that report. The Commissioners found this useful as it

provided important information on the evolution of the project as well as allowed the Commissioners to question these independent design professionals on how the overall design ‘measures up’ against the WWF and the Design Brief. Further discussion on this is contained under the assessment of “long term effects” later in this decision.

2.2 Development of the proposal

In April 2004, the WDSC approved a design brief prepared by TAG for the redevelopment of the Overseas Passenger Terminal and wharf site.

Following the development of the design brief, WWL then sought expressions of interest for developing the site. Expressions of interest were received from 29 parties. WWL sought proposals from six parties that had been short listed from the 29. Nine proposals were received from the six parties, including a proposal from Willis Bond. These proposals were put to a panel consisting of WWL (Board and management), TAG and WCC officers. The panel selected three parties to continue in the process.

These three parties were given the opportunity to revise their proposal in light of comments made by TAG and the outcomes of workshops focussed on ground floor uses. Revised proposals were submitted to the panel in March 2005 and the Willis Bond proposal was selected. Over the following two years a round of public consultation on the proposal was held and due diligence was carried out on the site. After negotiations between Capital Wharf Limited (a special purpose company incorporated by Willis Bond) and WWL, a Development Agreement (which authorised the lease of the site to CWL) was reached in July 2006, allowing resource consents to be sought for the proposal.

3. The proposal

3.1 Site description

The site is located on Clyde Quay Wharf at the end of Herd Street, Te Aro on the south side of Lambton Harbour.

Clyde Quay Wharf as it stands today is a product of two separate construction phases, a concrete wharf was built in 1907 and a timber extension completed in 1964. The wharf and wharf edge are listed in Appendix 4 of the Regional Coastal Plan for the Wellington Region (RCP) as features of historic merit.

During the extension of the wharf in the 1960’s the Overseas Passenger Terminal (commonly referred to as the OPT) was also constructed to receive passengers arriving and departing via sea on cruise ships.

The Chaffers Marina adjoins the wharf to the west. The recently redeveloped Herd Street and Chaffers Dock apartment buildings are located to the south west of the wharf and are separated by the waterfront promenade. Herd Street extends from the wharf to the south to meet Oriental Parade. Car parking areas occupy either side of Herd Street. Waitangi Park is situated to the south of the

Herd Street and Chaffers Dock apartment buildings. Southeast of the application site is the smaller Clyde Quay Marina.

Much of the vicinity of the application site is occupied by public open space. This space includes Waitangi Park and the promenade which extends along the majority of Wellington City's waterfront from Kumutoto Wharf to Oriental Bay. The public space continues around the Clyde Quay Wharf. On the wharf the promenade is used for both pedestrian and vehicle access and a range of recreational activities, including running, cycling and fishing. The remainder of the wharf promenade is primarily occupied by car parking areas.

In addition to the uses already outlined, Clyde Quay Wharf and the OPT building accommodate a variety of commercial uses. These include:

- The Chaffers Marina office, storage lockers, toilets/showers and a portion of the allotted car-parking are situated within the OPT building or on the wharf.
- The OPT building currently houses a function centre as well as a number of commercial operations, including a number of maritime-related businesses of varying size.
- The eastern edge of the wharf is used for the laying up of vessels that are not in active use.
- "The Enormous Crocodile" hires multi-seat bicycles from a shed at the southern end of the wharf.

The wharf and its surrounds form the eastern boundary of the Lambton Harbour Development Area (LHDA) as defined in the RCP and the Lambton Harbour Area (LHA) identified in the Operative District Plan for the Wellington District (DP). The LHDA only applies to the CMA, and stretches from the Overseas Passenger Terminal to the south along the waterfront to Tug Wharf in the north. This area does not form part of the commercial port area, which begins at Waterloo Wharf and continues north to encompass Aotea Quay wharf and the interisland ferry terminals. The LHA encompasses the land adjacent to the LHDA, and the wharf structures that are located in the CMA. Essentially the LHA and the LHDA are contiguous areas which partially overlap and are managed under two separate planning regimes by two separate authorities- GWRC and the Wellington City Council.

3.2 Overview of the Proposal

The proposal involves the refurbishment of the Clyde Quay Wharf. The wharf will be strengthened to meet both the current Building Code requirements and the Earthquake Prone Buildings (EPB) design standards. The wharf will also be seismically separated from land.

The refurbishment of the wharf will have the following physical features:

- A lower level jetty extension at the northern end;

- An under-wharf car-parking level that extends approximately 2/3 of the length of the wharf. A ramp will form the entrance of the sub-wharf level at the southern end of the wharf. The sub-wharf level will also extend into the intertidal zone; and
- A wharf cut-out at the southern end of the wharf.

The proposal also involves the redevelopment of the OPT building, including the demolition of the majority of the existing building and the construction of a new larger building. The redeveloped building will have the following physical features:

- An increase in width of the existing building footprint along the eastern side of the wharf and in length at the northern and southern ends of the wharf;
- The height of the proposed building varies along its length with the greatest heights being approximately 18m above wharf level at each end. The height along the central sections varies between 14 and 15m above wharf level;
- There are two cross links proposed in the building between the east and west promenades, at even spacing along the building. The northern cross-link is to allow access for both pedestrians and vehicles, while the southern cross-link is for pedestrian access only; and
- The exterior of the proposed building continues the nautical theme of the original building and is to retain a number of features from the existing building, where possible. These include the spire and much of the roof shape.

The wharf level is to be used for cafés/restaurants at the southern end with retail/maritime commercial and office tenancies such as marina tenancies toward the northern end. A public deck at mezzanine level is proposed at the northern end with further café/restaurant or commercial tenancy proposed in this area. The upper levels are generally proposed to house residential apartments and the sub-level deck is to be dedicated solely to tenant car parking.

Tenant car parking is proposed at sub-wharf level and at wharf deck level within the building at the north end. The proposed arrangement for parking on the wharf includes the provision of servicing spaces for commercial activities, marina parking spaces, mobility cardholders' spaces and taxi spaces.

The remaining wharf area, including the lower level jetty extension will be public space.

4. Consultation and notification

4.1 Consultation

The applicant consulted a number of parties affected by or with an interest in the proposal prior to submitting their application. These included the public (through an open day in May 2006 and the WDSC meeting of June 2006), marina berth holders, current OPT tenants, CentrePort and the Mt Victoria Residents Association. The applicant also consulted with the Wellington Tenth Trust and sought and attended a series of pre-application meetings with GWRC.

Some submitters felt that the applicant had undertaken inadequate consultation regarding their proposal. The Commissioners acknowledge the frustration felt by some submitters in this regard, and have commented further on the matter in section 7.7.3 of this decision. Further to this the Commissioners note that consultation is not a mandatory requirement of the Resource Management Act 1991.

4.2 Notification and submissions

In accordance with Section 93 of the Act, the application was publicly notified in the Dominion Post on Saturday 13 November 2007. In addition, two signs were placed around the site, and notice of the application was served on 124 affected/interested parties.

206 submissions were received, of which 23 arrived after the close of submissions. Of the submissions:

- 131 were in support or conditional support;
- 69 were in opposition, and
- 6 neither supported nor opposed the application.

5. The hearing

5.1 Context

Following on from introductions by the Chair covering procedural and administrative arrangements for conducting the hearing, the reporting officer (Mr Jason Pene) gave a summary of the application. Mr Pene's presentation at this point was solely a factual presentation and enabled the Commissioners to gain an understanding of the nature of the proposal on which Mr Pene and his advisors had based their assessments and recommendations. The Commissioners did note that Mr Pene had outlined eight areas of further information that he and the other advisors required. The Commissioners return to this later in this section of the decision.

Following that contextual scene setting exercise, the chair completed a procedural matter relating to the acceptance of late submissions. The Commissioners discussed the matter of late submissions prior to the commencement of the hearing and agreed to accept the late submissions,

pursuant to Section 37(1)(b) of the Act, as they were made in the correct manner and form, they did not raise any new issues, and their acceptance wouldn't disadvantage the applicant or any other party.

The Commissioners stated their position on the late submissions at the commencement of the hearing on 18 February 2008. No party objected to that ruling.

During the course of the hearing one submitter- Paul Wavish -withdrew his submission during the hearing.

5.2 Evidence heard

5.2.1 Applicant's case

The applicant presented their case, which involved presentations from the following witnesses:

- Duncan Laing – Legal counsel for the applicant;
- Mark McGuinness – Willis Bond;
- Ian Pike – Wellington Waterfront Limited
- Ken Scadden – Historian
- Ian Athfield – Architect
- John Hardwick-Smith – Architect
- Richard Sharpe – Earthquake engineer
- Stuart Palmer – Geotechnical engineer
- Adam Thornton – Structural engineer
- Peter McGuinness – LT McGuinness Construction
- Allister Adams – Infrastructure engineer
- Megan Wraight – Landscape architect
- Keith Hogan – Advisor on marinas
- Nigel Lloyd – Acoustic consultant
- Neil Jamieson – Wind consultant
- Dr Jeremy Helson – Marine biologist
- Richard Galloway – Traffic engineer
- Michael Copeland – Economist
- Deyana Popova – Urban designer
- Adam Wild – Heritage architect
- Alistair Aburn – Planner

As is apparent from the above list of witnesses, the applicant's case included architectural, heritage, engineering, environmental, economic, landscape, urban design and planning assessments. Several of the witnesses, notably Mr Hardwick-Smith, Mr Wild, Mr Hogan, Mr Palmer, Mr Jamieson and Mr Galloway addressed key issues raised by Mr Pene in his officer's report (as mentioned earlier) including some areas of further information that Mr Pene had identified as being appropriate to present at the hearing. Further information on the proposal presented by the applicant at the hearing is detailed in section 5.5 of this decision. Several witnesses addressed issues raised by the submitters.

Counsel for the applicant made the following points on the matters which he identified as key issues for the application:

- The extent of effects on the natural character of the area and whether this is an appropriate development for this site;
- The impacts on public access to the wharf;
- Whether there will be significant impacts on coastal process and ecosystems;
- Whether the development is consistent with the Wellington Waterfront Framework;
- The impacts on landscapes and urban form;
- The extent to which heritage features are affected and the appropriateness of the development in that context; and
- Impacts on the Chaffers Marina

He also identified the key planning issues to be addressed by Mr Aburn. He submitted that Mr Aburn's evidence would show that:

- Overall the proposals are consistent with and contemplated by the relevant statutory documents;
- The overall effects of the proposal are no more than minor;
- Any residual effects can be dealt with through appropriate consent conditions;
- There are a significant number of positive effects, and
- The matters raised by submitters do not warrant the application being declined

In summary for the applicant's case Mr Laing submitted that the Commissioners should grant the application on the basis that the proposal was not only consistent with the purpose and principles of the Act but also represented sustainable management of the environment.

5.2.2 Submitters

Following the presentations from the applicant's witnesses and associated questioning, submitters were invited to speak in support of their submissions. 17 submitters were heard by the Commissioners. Some submitters made a presentation on their own behalf, whilst others represented organisations, commercial operations or interest groups. The Commissioners heard the following:

- Charles Finny (Wellington Chamber of Commerce);
- Tony Clarry;
- John Spry;
- Bruce Bennett;
- Keith Flint;
- Sir Michael Fowler;
- Con Anastasiou;
- David Gascoigne;
- Andrew Beatson (Chaffers Marina Limited and Chaffers Marina Holdings Limited);
- Pauline Swann (Waterfront Watch);
- Colin Blair and John Prendergast;
- Rosemary Bradford;
- Jillian Campbell-Board;
- Bill Cooper;
- Clive Lewis;
- Dennis Foot and Daryl Cockburn; and
- Helene Ritchie

In addition, one submitter, A M Russell, tabled their presentation as they could not attend the hearing.

Those submitters in support of the proposal were concerned with the current state of disrepair of the wharf and OPT building. The main thrust of their presentations was that the proposed development will rejuvenate the Clyde Quay Wharf and OPT area. They considered that it will add vibrancy and vitality to area.

For the submitters in opposition concerns centred on the following aspects:

- The increase in bulk and height of the proposed building and the associated impacts on views and the urban form of the area,
- The type of development was inappropriate for this area,
- The development will decrease the public space available along the waterfront;
- The construction associated and ongoing effects on the marina are more than minor;
- The proposal will involve the removal of part of the wharf and the entire existing OPT building which will result in more than minor impacts on heritage values; and
- The potential conflict with pedestrian users and the vehicle traffic along the promenade.

In summary, the submitters in opposition considered that the proposal had more than minor adverse effects on the environment and was inconsistent with

the provision of the relevant planning instruments. On that basis the submitters in opposition sought the application to be declined.

Andrew Beatson appeared on behalf of Chaffers Marina Limited and Chaffer Marina Holdings Limited. Towards the end of the hearing he presented a deed of agreement which had been reached between WWL and the Chaffers Marina companies. The content of the agreement is discussed further in section 7.2 of this decision. Mr Beatson advised the Commissioners that the agreement was for their information. He advised that the agreement had satisfied the concerns of the Marina companies, and that they would accept the decision of the Commissioners providing it did not impinge on that agreement but that the Chaffers Marina companies were not withdrawing their submissions.

5.3 GWRC reporting officer and advisors

At the close of the presentations by the submitters and associated questioning, the Commissioners then heard from several of the advisors to the reporting officer. The advisors who presented were:

- Matthew Borich – Consultant noise adviser; and
- Dr Alexandra Teague – Consultant heritage adviser.

In addition, the following advisors were present to answer questions from the Commissioners:

- Steven Spence – Consultant traffic engineer; and
- Graeme McIndoe and John Mellish – TAG

Following on from those the following then presented:

- Mary O’Callahan – Consultant planner; and
- Jason Pene – reporting officer

Also, Mr Pene and Ms O’Callahan advised the Commissioners that Mike Donn, wind consultant could not be present at the hearing; however, he did review the evidence presented by the respective witness for the applicant, and could be contacted, if required.

With the exception of Mr Pene and Dr Teague, all officers confirmed their original positions.

Dr Alexandra Teague, after hearing evidence provided by the applicant at the hearing, moderated her initial position. The main conclusion reached in her evidence presented at the hearing was that she could still not support the project from a heritage conservation methodology point of view as it still does not constitute a heritage conservation project. However, she noted the changes suggested by the applicant (described in section 5.5 of this report), have the potential to introduce some heritage component into the development which she assessed as a positive outcome.

Ms O'Callahan provided an assessment of the proposal against the relevant District Planning instruments to Mr Pene. In her original assessment Ms O'Callahan identified four points where further information on the proposal was required. After hearing evidence provided by the applicant at the hearing she advised the Commissioners that that information satisfactorily addressed her points. As such, she concluded that any adverse land use effects arising from the proposal will be minor or can be mitigated by appropriate conditions of consent. In addition she added that the use of this site for residential and associated uses is consistent with the DP and the WWF; the level of heritage protection achieved is satisfactory; and the city's broader urban development and waterfront objectives will be achieved through the proposal.

Mr Pene had originally concluded in his S42A officers report that he did not consider that issues, particularly in the areas of significant adverse effects had been adequately addressed in information provided by the applicant at that time and identified the following areas where additional information and further details needed to be provided by the applicant at the hearing:

1. *Details of possible heritage fabric of the Clyde Quay Wharf and OPT building that can be retained or reused within the development in order to mitigate the adverse effects on heritage values;*
2. *A confirmation of the key maritime-related businesses that provide support to the marina referred to in the Marina Operations Assessment (MOA) attached to the application and details of how these businesses are to be temporarily accommodated during construction;*
3. *Details of the trolley access system proposed to aid access to the marina during the construction period;*
4. *Details of maritime-related businesses that provide support to the marina, (including but not necessarily limited to those key businesses outlined in the MOA), that will be retained within the development in order to mitigate the effects on the marina of the loss of other such businesses;*
5. *Details of an assessment of the liquefaction hazard of the site made by a suitably qualified engineering geologist;*
6. *Details of measures to avoid, remedy or mitigate adverse wind effects on the eastern promenade in the vicinity of the pedestrian/vehicle cross link at the northern end of the proposed development;*
7. *The details of the measures proposed to ensure that taxi access to the wharf is restricted to that required for the pick-up and set-down of passengers only and that taxis do not remain on the wharf for other purposes (i.e. that the wharf is not used as a taxi stand); and*

8. *Photo montages for Viewshafts 10 (Hunter Street), 11 (Willeston Street) and 12 (Chews Lane/Harris Street) identified in the WCDP that include the proposed development.*

On the basis of this and as the proposal stood at that point, Mr Pene considered that the granting of the resource consents would not be consistent with the purpose and principles of the RMA and he recommended that the application be declined.

After hearing the evidence presented at the hearing. Mr Pene in his response, considered that the applicant's responses to the additional information and further details requested in his officer's report sufficiently addressed those matters. In addition, he added that, as a result the adverse effects of the proposal that are potentially significant will be mitigated to an appropriate extent by the further detail and amendments to the proposal that have been provided by the applicant at the hearing; and the suggested conditions of consent. He also added that this reduces the level of inconsistency with the relevant policy provisions.

Mr Pene went on to conclude that:

Weighing the potential benefits of the proposal against the real and potential adverse effects and the inconsistencies with statutory policy provisions, I believe that, on balance, the proposal now constitutes "sustainable management" of natural and physical resources as described in Part 2 of the RMA. I therefore consider that, provided the suggested conditions are accepted, it is consistent with the purposes and principles of the RMA to grant these resource consents.

As such Mr Pene's final conclusion was to modify his original recommendation that consent be declined to the application. He therefore recommended that consent be granted and suggested some additional conditions based on comments of the advisors. He also responded to the draft of conditions submitted by the applicant.

5.4 Right of reply/Hearing closure

Following on from Mr Pene's response Mr Laing presented the applicant's right of reply. The right of reply covered various issues that were raised during the hearing. He responded to general issues raised during the hearing and then to specific issues raised by the submitters. With the exception of Dr Teague, Mr Laing agreed with the recommendations of the reporting officer and advisors.

With reference to Dr Teague's evidence, Mr Laing accepted that Dr Teague's ultimate conclusions and other comments are of assistance to the Commissioners and are reflected in the amended proposed conditions. He noted it was unfortunate that Dr Teague did not refer to or take any explicit account of the current condition of the wharf/OPT building or provide a balanced assessment in light of this fact.

At this point the hearing was adjourned to allow the Commissioners to determine whether they had sufficient information to make a decision.

During deliberations the Commissioners determined that they had sufficient information to make the determination detailed in this decision and subsequently closed the hearing.

Given the volume of information provided to the Commissioners at the hearing the Commissioners consider it is useful to provide a summary of that information and any resulting amendments to the proposal. This information is detailed in the following section.

5.5 Further information provided at the hearing

The additional information provided by the applicant, the reporting officers and submitters during the hearing generally falls into the following topics:

Heritage

In his S42A report Mr Pene had requested further details of possible heritage fabric of the Clyde Quay Wharf and OPT building that can be retained or reused within the development in order to mitigate the adverse effects on heritage values. In response, John Hardwick-Smith of the applicant's architect Athfield Architects Limited provided a Heritage Values Retention Schedule in his evidence. The schedule assessed the proposal against the elements identified and the values attributed to those elements by Chris Cochran in his March 2004 OPT Heritage Values assessment report. The retention schedule detailed how the proposal will affect those elements and whether those elements will be lost, retained, rebuilt or reinterpreted. Mr Hardwick-Smith also advised that the fendering around the wharf will be retained in the development.

In addition, the applicant's structural engineer Adam Thornton talked to the structural drawings attached to his evidence regarding the heritage elements of the wharf structure; in particular the lattice cross bracing of the 1907 wharf which lies under the current wharf deck and wharf fendering. Mr Thornton highlighted how the lattice cross bracing could be retained or protected in the construction of the sub-wharf level and that the lower level jetty can be constructed without affecting the fendering in that area.

These points were also reiterated by the applicant's heritage expert Adam Wild. Mr Wild also advised that a conservation architect will continue to provide expert input into the detailed design process, with a focus on identifying further heritage elements that can be retained and re-used in the project.

Effects on the marina

Mr Pene in his S42A report requested details on various aspects of the marina operation both during and post construction. This included the following:

- Details of temporary accommodation of marina support facilities and associated businesses currently operating from the OPT building;
- The proposed trolley access system to aid access to the marina during the construction; and
- The retention of marina related businesses within the proposed development after construction.

Some issues for the marina were covered by an agreement tabled during the hearing, which is covered in section 7.2 of this decision. Further information provided by the applicant on the other matters not covered by the agreement was:

- Mr Laing provided the Commissioners with a map showing the location of storage lockers for marina berth holders during and after construction;
- Mr Hogan provided information on the use of trolleys to assist marina berth holders to transport loads to their berth, also suggesting the numbers and type of trolleys required. Mr Peter McGuinness advised that cranes would be available for marina berth holders to lift heavy loads to their berths during construction.
- Mr Pike advised, that WWL is in consultation with existing tenants with regards to relocating them within the redeveloped OPT building. For those who agree to relocate, WWL will provide temporary premises in close proximity to the area until the development is complete. Mr Pike provided an indicative map to his evidence showing an option for the relocation of businesses during the works.

Natural hazards

In response to questions from Commissioners, the applicant's geotechnical engineer Stuart Palmer provided an assessment of the liquefaction hazard of the site. The assessment concluded that the soils beneath the wharf have a low potential for liquefaction, whereas the soils of the land adjacent the wharf have a potential to liquefy as a result of severe earthquake.

Wind

In response to the report by Mike Donn, the applicant's wind expert Neil Jamieson summarised the matter of providing wind mitigation on the eastern promenade in the vicinity of the pedestrian/vehicle cross link at the northern end of the proposed building. He described this as "*more desirable than imperative*" and that any potential measure to mitigate wind speeds in that area would conflict with other aspects of the design such as traffic and pedestrian access. However, Mr Jamieson acknowledged that it is a matter which could be addressed to the most extent practicable during the detailed design phase of the project.

Mr Hardwick-Smith reiterated Mr Jamieson's points regarding the potential conflicts which arise in formulating a mitigation measure in that area. He also concluded that the detailed design phase could focus on a solution.

Traffic

In response to matters raised by Mr Spence the applicant's traffic engineer Richard Galloway amended the proposed Traffic Management Plan, to include provision for two spaces for use by nominated taxi companies in the evenings only.

Noise

As a result of questioning by the Commissioners and based on the report prepared by Mr Borich, WCC's noise advisor, the applicant's noise consultant Nigel Lloyd advised that the applicant will develop a Night Time Construction Management Plan for the project and Mr Laing provided a condition to address this. This plan includes procedures to notify neighbouring residences of upcoming night construction work.

Vibration

At the request of Commissioners, Mr Laing re-called Mr Thornton to provide additional evidence regarding vibration associated with construction works. Mr Thornton concluded that vibration caused by piling activities is unlikely to affect neighbouring buildings. He advised that the methodology to be employed is widely used throughout the CBD when new buildings are constructed. He stated that compaction of the ground (as was required during construction of Te Papa) did not apply to the wharf re-piling as the geology was original and stable.

Viewshafts

Responding to a request from Ms O'Callahan and Mr Pene the applicant provided photo montages during the hearing for Viewshafts 10 (Hunter Street), 11 (Willeston Street) and 12 (Chews Lane/Harris Street) identified in the DP that include the proposed development.

The applicant's planner Alistair Aburn concluded that any impact on the identified viewshafts is extremely minor and does not impinge on the focus point of those shafts which is St Gerard's Monastery and the embankment below it.

Other information

Other information was provided during the hearing either to answer questions of the Commissioners or to give background information to the proposal. Of particular note were the following:

- Mr Pene tabled a revised Environmental Noise Report from Mr Borich;

- Mr Anastasiou provided the Commissioners with a copy of the Lambton Harbour Limited – Chaffers Marina licence dated May 1993 and the Environment Court Case Canterbury Museum Trust Board v Christchurch City Council ENVCC059/06 for their reference;
- Mr Hardwick-Smith provided a revised set of application drawings to replace those provided in the application.

The Commissioners wish to record that, the provision of certain information was, in the main, anticipated to be provided during the hearing in response to a number of requests by the reporting officer and advisors and/or in response to matters raised in submissions. During the hearing, the applicant also provided information at the request of the Commissioners.

More importantly, the Commissioners record that none of the new information or amendments had the effect of extending the application envelope. As such, it is the Commissioner's view that no person was disadvantaged by the provision of the amendments or the further information.

6. Statutory provisions

This section sets out the legal framework that was used by the Commissioners to make a decision on the application.

6.1 Statutory criteria

The following resource consents are required under Sections 12 and 15 of the Act:

- WGN080117 [26385] Coastal permit for the redevelopment of the existing Overseas Passenger Terminal building (including partial demolition, additions and alterations) and its use for cafes/restaurants, retail, gallery and other public uses, residential apartments, and car parking; for the construction of an under-wharf deck to be used for private parking; for the refurbishment, strengthening, repair and refurbishment of the Clyde Quay Wharf (including partial demolition, additions and alterations) and for the maintenance of each of these structures;
- WGN080117 [26386] Coastal permit to disturb the foreshore and seabed, in connection with the strengthening, repair and refurbishment of the Clyde Quay Wharf; the redevelopment of the Overseas Passenger Terminal building and the construction of an under-wharf deck;
- WGN080117 [26387] Coastal permit to discharge contaminants to the coastal marine area, in connection with demolition and construction activities associated with the redevelopment of the Overseas Passenger Terminal building, the strengthening, repair and refurbishment of the Clyde Quay Wharf and the construction of an under-wharf deck;
- WGN080120 [26390] Coastal permit for the strengthening, repair and refurbishment of the Clyde Quay Wharf (including partial demolition,

additions and alterations) and its use for car parking and as public open space; for the construction of a lower-level jetty extension and storage lockers; and the maintenance of each of these structures;

- WGN080120 [26391] Coastal permit to occupy the land of the crown in the coastal marine area with a lower-level jetty extension of the Clyde Quay Wharf;
- WGN080120 [26392] Coastal permit to disturb the foreshore and seabed, in connection with the strengthening, repair and refurbishment of the Clyde Quay Wharf (including piling works) and the construction of a lower level jetty and storage lockers; and
- WGN080120 [26393] Coastal permit to discharge contaminants to the coastal marine area, in connection with demolition and construction activities associated with the strengthening, repair and refurbishment of the Clyde Quay Wharf (including piling works) and the construction of a lower level jetty and storage lockers

The Commissioners acknowledge that the coastal permit WGN080120 [26391] relating to the occupation of the CMA with a lower-level jetty is a controlled activity under the RCP. However, the Commissioners concur with the Mr Pene that each of the applications is to be considered on the basis that they are all full discretionary activities.

In giving consideration to the proposal, the Commissioners had regard to Section 104 of the Act; subsection (1) of which states:

When considering an application for resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to –

- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (b) *any relevant provisions of –*
 - i. *a national policy statement,*
 - ii. *a New Zealand coastal policy statement,*
 - iii. *a regional policy statement or proposed regional policy statement;*
 - iv. *a plan or proposed plan; and*
- (c) *any other matters the consent authority considers relevant and reasonably necessary to determine the application.*

Part 2 of the Act sets out the purpose of the Act, which is to promote the sustainable management of natural and physical resources, and in Sections 6, 7 and 8 sets out matters that consent authorities should consider when exercising their functions under the Act.

The Commissioners also had regard to Sections 105 and 107 of the Act, which raise matters relevant to the grant of certain discharge permits (including coastal permits).

6.2 Planning instruments and other matters

In making their decision on the application the Commissioners had regard to the following instruments and documents:

National

- The Foreshore and Seabed Act 2004
- The New Zealand Coastal Policy Statement 1994

Regional

- The Regional Policy Statement for the Wellington Region 1995
- The Regional Coastal Plan for the Wellington Region 2000

District

- The Wellington City District Plan (the Operative District Plan) 2000
- The Wellington Waterfront Framework 2001

The Commissioners considered the Foreshore and Seabed Act 2004 and the Wellington Harbour Board and Wellington City Council Vesting and Empowering Act 1987 and concluded that no issues arise under these pieces of legislation.

6.2.1 National planning instruments

New Zealand Coastal Policy Statement

The current NZCPS was issued on 5 May 1994, and provides general principles and policies, rather than specific directives, for the management of the natural and physical resources within New Zealand's coastal environment.

The purpose of the NZCPS, as stated in Section 56 of the Act, is '*...to state policies in order to achieve the purpose of this Act in relation to the coastal environment of New Zealand.*'

In terms of the above, the Commissioners noted that the NZCPS provides the umbrella framework for the production of (and consideration of) the regional and district planning instruments dealing with the coastal marine area and its interface with land use activities.

6.2.2 Regional planning instruments

The relevant regional planning instruments are the Regional Policy Statement (RPS) and the Regional Coastal Plan (RCP) for the Wellington region, which are both operative.

Regional Policy Statement

The RPS is an overview document that outlines the resource management issues of significance to the region and provides a policy framework for managing the natural and physical resources of the region in a sustainable manner. As alluded to, the Commissioners were advised that the RPS sits beneath the central government instruments (for example, the New Zealand Coastal Policy Statement). The regional plans assist the Regional Council to fulfil the policies of the RPS.

Chapters 7, 10 and 11 of the RPS, The Coastal Environment, Landscape and Heritage and Natural Hazards respectively, are of particular relevance to this application and are considered in more detail later in this decision.

Regional Coastal Plan

The RCP addresses activities relating to the use of the CMA, the use of coastal water and the discharge of contaminants into the CMA (except those that are discharges to land that then enter water). It is operative within the CMA of the Wellington region. The landward (or inner) boundary of the CMA is defined in the RCP as the line of mean high water springs; the seaward (or outer) boundary is the outer boundary of the Wellington Region as defined in SO35951 (approximately 12 nautical miles from the coast).

Chapters 4, 6, 7 and 10 are of particular relevance to this application. Chapter 4 contains general objectives and policies for the CMA, whilst chapters 6, 7 and 10 contain more specific objectives, policies and rules relating to structures, disturbance of the seabed and discharges to the CMA respectively.

Chapter 18 of the RCP addresses cross boundary issues, including circumstances where an activity occurs within the CMA, but the effects are experienced in a district. One of the processes suggested to deal with such issues is to seek a consistent approach between plans dealing with the control of such activities. In this instance this directs the consent authority to also consider the relevant provisions of the District Plan for the Wellington District.

In terms of the cross-boundary matters the Commissioners acknowledge the submission of a document by the applicant during the hearing which highlights all of the cross boundary references contained in the objectives and policies of the RCP.

6.2.3 District Plan provisions

Operative District Plan for the Wellington District

The DP promotes the sustainable management of natural and physical resources in Wellington City district, and defines areas on the basis of character. The DP does not have any direct jurisdiction over the CMA. Therefore, the development is not directly subject to the rules of the DP, but as discussed both above and below there are statutory linkages to the DP which need to be recognised. In addition, it is noted that the proposed site is located

adjacent to the Central Area (as described in the DP), which includes the Lambton Harbour Area, but excludes the CMA.

Chapters 12 and 13 of the DP contain the objectives, policies and rules that are relevant to the Central Area. Many of these are relevant to the assessment of this application, including those that make specific reference to development in the Lambton Harbour Area.

Wellington Waterfront Framework (WWF)

As discussed in Section 7.1.1. of this decision the WWF is referred to in the District Plan.

WCC established the Waterfront Leadership Group to recommend a framework for the future development of the Lambton Harbour Area. Following consultation with the public and other WCC departments the WWF was adopted by WCC on 3 April 2001 as its policy for Wellington's waterfront.

The WWF provides a vision for the future of Wellington's waterfront. It establishes themes, values and objectives that any future development should take into account and it also provides a framework for urban design.

Wellington City District Plan Variation 22 – Lambton Harbour Area was proposed in August 2001. Its purpose was to incorporate references to the WWF in the DP rather than incorporating it into the DP as a Design Guide. The WCC decision to adopt Variation 22 was issued in 2004 after resolution of appeals to the Environment Court against Variation 22.

The weight accorded to the WWF by the Commissioners whilst making their decision is discussed in section 7.1.1 of this decision.

7. Section 104 evaluation

This section is the Commissioners' evaluation of the principal issues associated with the proposed development, as required under Section 104(1) of the Act. It considers the actual and potential effects on the environment of allowing the proposed activity, together with the relevant provisions of the statutory and non-statutory resource management instruments.

7.1 Wellington Waterfront framework

7.1.1 Wellington Waterfront Framework Process

The majority of the witnesses who appeared at the hearing (whether as submitters, on behalf of the applicant, or on behalf of GWRC) made reference to the WWF. All agreed that it was of relevance to the proposal, but there was no clear agreement on how much weight it should be accorded.

The Commissioners questioned many witnesses regarding their view on the statutory relevance of the WWF to this proposal. These views ranged from

placing the WWF at the pinnacle of the tests to be satisfied through to merely considering the Waterfront Framework as a generic policy guide.

Mr Aburn, in response to questions from the Commissioners, acknowledged that the WWF was not developed by RMA process but concluded that it is absolutely relevant matter to determine the application.

Mr Anastasiou also acknowledged that it did not go through the same process as the DP or the DP Change and had been instead incorporated by reference into the DP and by derivative into the RCP. Mr Anastasiou considers rules and plans have the force of a regulation and concluded that whichever way it is looked at, the WWF is a relevant and necessary document to determine the application.

7.1.2 Discussion on, and evaluation of weighting for Wellington Waterfront Framework

The Commissioners believe the WWF could be described as a design guide in the very broadest sense of those words. It provides a very high level overview (developed in 2001) as to how the waterfront could look in the future. It does not, however, provide the level of detail normally associated with Design Guides in the meaning used in the DP.

It is not a Design Guide within Part Two of the District Plan. Although there are some references to it under Policies, it has not been embedded into Part Two.

The Commissioners noted that the WWF in its current form is particularly light on detail relevant to this site. The main reference being to the OPT as a heritage building in a table of the *Main Characteristics for Each Area*. On the other hand the Clyde Quay Wharf structure below the terminal is referred to in the RCP where it has heritage importance. Accordingly, that issue can therefore be dealt with under the provisions of the RCP.

The RCP under Policy 4.2.42 provides for objectives and policies within an adjoining District Plan to be assessed. Policy 4.2.45 sets out 7 criteria. The Commissioners therefore took the Policies and Objectives relating to the Lambton Harbour Development area into account.

Therefore, on the status of the WWF in relation to the OPT proposal, the Commissioners unanimously concluded that it is a document which can be considered under Section 104(1)(c) of the Act as it does have some relevance to development of the area, but as it does not form part of the District Plan it is, therefore, not a statutory document and should not be accorded great weight.

The Commissioners conclude that its decision to consider the WWF under Section 104(1) (c) of the Act is appropriate and that the weighting afforded it is at the lowest end of the scale in comparison to statutory documents such as the RCP and DP.

This conclusion was reached unanimously by the Commissioners prior to the release of the Environment Court Decision on the Hilton Hotel application for the Queens Wharf Outer T.

7.2 Overview of potential and actual effects

Before assessing the actual and potential effects the Commissioners considered it important to record some of the matters that they did not/were unable to take into account when assessing the nature of the environmental effects. In particular two matters – the permitted baseline and a side agreement between the Applicants and one of the submitters – fall into this category.

Permitted baseline

In considering the actual and potential effects of the activity on the environment, the Commissioners took into account Section 104(2) of the Act, and decided that there is not a permitted baseline with regard to effects that can be applied to this proposal. With regards to this proposal, the Commissioners note advice that no extension, addition or alteration to the wharf structure or construction associated discharges to the CMA is allowed without resource consent.

Notwithstanding the above, the Commissioners did acknowledge that even without the current proposal the poor state of the existing wharf and OPT are such that substantial upgrading of these structures would be required under the EPB provisions of the Building Act within the next 5-15 years. Moreover, such upgrades will inevitably have short term construction effects and long term heritage effects. Whilst the Commissioners quickly acknowledged that such upgrades would also require resource consents and therefore cannot be attributed any permitted baseline weight, the levels of effects associated with the upgrades, particularly the wharf, do provide a baseline of sorts in which to consider both the construction related and operational effects of the OPT proposal.

Deed of agreement

During the hearing a number of issues before the Commissioners were part of separate discussions between the Chaffers Marina companies and the applicant. These discussions resulted in an agreement being signed between the parties in relation to a range of matters, including during construction parking, storage and amenities for the marina, as well as post construction parking provisions. All these matters are relevant to this hearing and were raised by Mr Pene as matters requiring further information.

Mr Beatson, as counsel for the Marina companies, provided a signed copy of the Agreement to the Commissioners. While the Commissioners placed no weight on it they did scrutinise its content and considered that it does concur with the Commissioners conclusions on those matters and conditions of consent which they might have placed if the agreement had not existed.

The Commissioners have concluded that the agreement is binding on the signatories and those matters which are addressed therein are no longer matters on which the Commissioners need to make a decision.

Grouping of effects

The Commissioners have considered the actual and potential environmental effects of the proposed development under the following headings:

- Positive effects – in terms of economic and other infrastructural benefits that may accrue from the development, and
- Adverse effects - which in turn have been divided into two categories: short-term effects (those that occur whilst the site is under construction) and the long-term effects (those resulting from the ongoing use and operation of the development).

7.3 Positive effects

Section 3(a) of the Act states that the term “*effect*” includes any positive or adverse effect. The Commissioners agreed that there were potential positive effects that result from the proposal. However, and as outlined below, they considered that only some of these were of direct significance to the matter before them.

Economic benefits

The Commissioners generally agree with the evidence provided by Mr Copeland. In particular, they acknowledge the not insubstantial economic benefit to Wellington City ratepayers as the applicant’s proposal will relieve WCC and WWL of the costs they would otherwise incur in meeting the deferred maintenance costs to maintain the integrity of both the wharf and the OPT building.

In addition, Mr Copeland stated that the proposed activities associated with the redevelopment can be expected to increase activity and greater public use of the site contributing positively to the economy.

The Commissioners note that it was accepted by most parties that doing something would have greater positive economic benefit than doing nothing. However, the Commissioners conclude, as Mr Copeland himself acknowledged during questioning, that the economic benefits likely to derive from the development, whilst partially derived from the mix of residential and commercial activities, are not predicated on the particular design of the development before them. In other words, an alternative design, with arguably (in the view of submitters at least) less visual impact or less disruption to the OPT may produce similar economic benefits without the magnitude of potential adverse effects. For this reason, and other than in respect to the privatisation of public expenditure on the wharf, the Commissioners did not afford significant weight to the economic benefits of the proposal.

Increase in quality of open space

The Commissioners note that although there is an encroachment of the proposed building on the existing public space on the eastern side of the site (as detailed in section 7.6.5 of this decision), further public amenity areas are to be provided. Two important aspects of this are in the form of the lower-level jetty extension and mezzanine deck in the proposed building.

Notwithstanding these encroachments, the Commissioners agree with Ms Popova's conclusions that the proposal will contribute positively to its immediate and wider context by providing publicly accessible ground floor activities that will enhance the vitality of the locality.

Strengthening and repair of the wharf

The Commissioners consider that this is a side benefit of this proposal. This is derived from the fact that strengthening of the wharf is not a unique aspect of this proposal given the current poor state of repair of the structures. In comparison, if there was no proposal to develop the site, work is required on the wharf to meet current building standards. Alternatively, strengthening of the wharf will need to be undertaken under any other proposal to redevelop the site.

The Commissioners note that the only positive effect associated with the strengthening of the wharf under this proposal, relate to the economic benefit described above that the costs of strengthening will be borne by the applicant and not the ratepayer.

Design of building

The design of the building has been raised as a positive effect by some parties. The TAG assessment of the proposal states "this proposal is highly resolved architecturally and makes a well-considered response to the Design Brief". Submitters in support of the proposal talked about the sympathetic design of the building which reflects the shape and form of the existing building.

Some parties stated that the design of the building will not only encourage but also provide opportunity for greater activity and public use of the site. Ms Popova considered that the proposal will add another layer to the existing activity patterns within this part of the waterfront and will attract more visitors and thus enhance the vitality of the city as a whole.

In addition some parties considered the design will lead to increased security on the wharf. Ms Popova stated that residential apartments above will further improve the safety of the area in terms of natural surveillance.

The Commissioners consider that the design of the building contributes positively towards these aspects and results in an improvement on the current situation, but that this is a side benefit of this proposal.

7.4 Adverse effects

7.4.1 Overview

The actual and potential adverse effects resulting from the proposal can be separated into two main categories: those associated with the construction phase, and the long-term and operational effects of the development.

The construction effects are limited in nature and relate to:

- Effects associated with construction traffic,
- Construction noise and vibration
- The effects on Chaffers marina resulting from the works.
- Effects on coastal water and ecology

The long-term and operational effects are greater in number and include:

- Heritage
- Bulk, height and urban form
- Traffic
- Visual amenity
- Public access, open space, and landscape design
- Natural hazards
- Effect on Port activity
- Wind
- Noise
- Sunlight/ shading and lighting

The Commissioners judge the adverse environmental effects to be potentially significant due to the scale and nature of the proposal. Therefore the Commissioners had to consider the degree to which these effects could be adequately avoided, remedied or mitigated. Those matters are addressed individually in the next section of this decision.

7.5 Construction related effects

The Commissioners have attached the construction programme timeline as an Appendix 1 of this decision for easy reference.

7.5.1 Construction traffic

Evidence

Richard Galloway (Traffic Engineer, Traffic Design Group) and Peter McGuinness (LT McGuinness Construction) provided evidence on behalf of the applicant on this matter. This evidence was reviewed and commented on by Steve Spence (Chief Transportation Engineer, Wellington City Council) on behalf of GWRC.

Evaluation

There was general agreement at the hearing that the volume of traffic, especially heavy vehicles, using the area is expected to increase during the two and a half year construction period. However, there was no agreement as to whether this will create potential conflict with pedestrians and other vehicles using the area. The following are the specific areas of concern which were raised by submitters and which Commissioners focused on:

- The promenade at the southern end of the site;
- Herd Street and Chaffers Dock apartments;
- Chaffers marina;
- Herd St and Oriental Parade intersection and Waitangi Park playground; and
- Oriental Parade.

The promenade at the southern end of the site

There is potential for conflict with users of the promenade at the southern end of the wharf during construction. The Commissioners heard evidence from submitters, including Mr Clarry and Mr Bennett who expressed concerns regarding the safety of those using the promenade, in particular from cyclists and other users such as skateboarders who generally travel at greater speeds.

The Commissioners note that the applicant acknowledged that construction associated traffic movements will increase to three to four movements per hour during peak times which will potentially lead to increased opportunity for conflict between construction vehicles and users of the promenade at the southern end of the wharf. However, when these numbers are put into the context of existing traffic movements, the increase could not be considered significant. This was not disputed by Mr Spence and is accepted by the Commissioners.

In addition, the Commissioners note that there is also the potential to use the walkway to the south of the Herd Street and Chaffers Dock apartment buildings adjacent to Waitangi Park as an alternative route during the construction period to avoid conflict with construction traffic at the southern end of the site. The Commissioners particularly endorsed this option as it would provide unimpeded through-route access to or from Oriental Parade.

The Commissioners note that pedestrian/other user conflicts applied during renovation of the Herd Street Post Office building and the construction of the Boathouse annex (now jointly known as Chaffers Dock apartments) and would apply to any redevelopment of the Clyde Quay Wharf to a greater or lesser degree. They consider that with the conditions of consent imposed the situation is manageable.

Taking all these matters into account the applicant suggested an amendment to the Construction Management Plan (CMP) condition at the hearing to include a

requirement to provide further details on the management of construction traffic during the works. These include details of the following:

- Peak pedestrian times articulated trucks will avoid;
- Procedures for the supervision of the site entrance and arrival and departure of vehicles;
- On site parking arrangements;
- A process for monitoring traffic movements on Herd St during the works; and
- The identification of temporary pedestrian routes.

The Commissioners consider that with these changes the details provided in the CMP regarding the management of construction traffic will adequately minimise the opportunity for conflict with construction vehicles during the works and mitigate the concerns of submitters.

On the remaining promenade issues, the Commissioners consider that the details provided in the CMP regarding the management of construction traffic will adequately minimise the opportunity for conflict with construction vehicles during the works. The requirement for certification of the CMP prior to works commencing and also the opportunity for ongoing review of the CMP was considered by the Commissioners to be sound planning practice.

Herd Street and Chaffers Dock apartments

The Commissioners consider that the works will not impact on the ability of residents to access the Chaffers Dock Apartments car park. In addition Commissioners were assured by Mr Pike and Mr Galloway that there will be no alteration to the car parking arrangements for vehicles servicing the building and public visiting the area.

Parking for the residents of the Herd Street and Chaffers Dock apartments is provided for via an underground car park with an entrance onto Herd Street. Parking is also provided for to the east of the building adjacent to Herd Street for vehicles servicing the building and public visiting the area.

Chaffers Marina

On this issue, and for the record, the Commissioners noted that, aside from the submissions from Mr Anastasiou, the Commissioners were not presented with any evidence on the parking issues originally raised by the marina companies. Instead the provision of parking for Chaffers Marina berth holders during the construction phase is an aspect covered by the Agreement presented by the Chaffers Marina companies at the hearing. Parking will be provided for the marina berth holders in the areas surrounding the marina. These areas are shown on the maps provided as an Appendix to the 'Agreed Terms' section of

the Agreement during the construction phase. It also provides areas for the loading and unloading of boat gear for marina berth holders.

The Commissioners consider that this arrangement satisfactorily avoids any impacts on the parking and servicing requirements of the marina during the construction phase and that these matters are no longer matters for the Commissioners to make a determination upon.

Herd St and Oriental Parade intersection and Waitangi Park playground

There was general agreement between the parties that there will be potential delays at this intersection in the short term. However, this would apply to any re-development of this site. While the construction period of up to two and a half years will be perhaps longer than some other possible developments for this site the Commissioners do not consider that this is unreasonable. They also note the applicant's response that refurbishment of the Herd St Post Office and construction of the Boathouse annex had similar impacts which were able to be managed appropriately and safely.

Some submitters, including Mrs Swan and Ms Ritchie, were concerned about child safety at the intersection given its proximity to the playground on Waitangi Park. Evidence was given by both traffic experts at the hearing that traffic to and from the site would be controlled. The Commissioners expect that as the park is specifically designed for younger children that they would, in fact, be appropriately supervised when visiting the area. In addition this issue would apply to any redevelopment of this site, and is a short term situation.

Oriental Parade

The Oriental Bay Residents Association was concerned about increased traffic along Oriental Parade (and the wider roading network) during the construction phase. Mr Galloway stated that Oriental Parade is a route currently used by heavy vehicles travelling through the city given constraints on heavy vehicles using the Mount Victoria tunnel, and that the increase would be negligible.

Based on evidence from Mr Galloway and Mr Spence, which was uncontested by any other experts the Commissioners consider that the addition of the construction traffic to Oriental Parade will be minimal given the high loading the road currently accommodates. Again this is likely for any development of this site.

Summary

Overall, the Commissioners conclude that effects of additional construction traffic on those areas identified as being of concern will be minimal. The Commissioners consider that the CMP can satisfactorily address the majority of the issues associated with construction traffic. However, the Commissioners consider that is appropriate to make the CMP as robust as possible given the probable two and a half year duration of the works. Given this, they have amended the CMP consent condition to ensure that the plan is regularly

reviewed and any updates be made as necessary. This will ensure that the effectiveness of the CMP is monitored during the construction phase.

7.5.2 Effects on public access to the CMA during construction

Evidence

Ian Pike, Adam Thornton and Peter McGuinness (LT McGuinness Construction) provided evidence on behalf of the applicant on this matter.

Mr McGuinness advised that the construction works associated with the proposal will result in the closure of the entire Clyde Quay Wharf to the public for the period of construction. The period of construction is estimated to be up to two and a half years and the public will not be able to access the wharf for this duration.

Evaluation

The Commissioners note that the wharf does not generally act as a through route between destinations for the public, but rather as a destination in itself. As such the closure of the wharf will not affect the transit of the public. They consider there are other places available along the waterfront and in the area to utilise public space.

The Commissioners consider that the construction period is a reasonably significant; however, such restrictions are to be expected with construction projects of the scale of this proposal for health, safety and security reasons. The temporary restriction to public access is consistent with other development projects along the waterfront

7.5.3 Construction noise and vibration

Evidence

Several submitters, particularly those in nearby apartments at the Chafers Dock complex and even further afield along Oriental Parade, raised concerns regarding noise effects associated with the construction period, particularly in relation to pile driving and night time operations.

The Commissioners were advised that control of noise from activities in the CMA has recently been subject to the introduction of noise rules into the RCP via Plan Change 1. These align with the Central area noise provisions introduced via District Plan Change 3. These provisions will apply to the site.

With respect to noise effects from construction noise there are two relevant 'controls' outside of the RCP. Firstly, the applicant has an obligation under section 16 of the Act to utilise the best practicable option to ensure that emission of noise from the construction site does not exceed a reasonable level. Secondly, there is a New Zealand Standard (NZS 6803:1999) that is specific to construction noise.

The applicant provided a noise assessment with the application by Acousafe Consulting and Engineering Limited. Nigel Lloyd presented evidence at the hearing regarding noise. Peter McGuinness, construction contractor and Adam Thornton (regarding vibration), engineer to the applicant provided evidence at the hearing regarding details on noisy activities and the mitigation measures to be employed.

Matthew Borich reviewed the application on behalf of GWRC and provided evidence at the hearing. He considered that the adverse noise effects associated with construction could be appropriately addressed by way of consent conditions.

The construction works will generate noise which may have an adverse effect on users of the waterfront (both those using the adjoining Chaffers Dock Apartment building café venues and those using the open spaces) and neighbouring residential buildings. Mr McGuinness and Mr Thornton stated that the main sources of noise during the construction works will be from piling, concreting and general construction/demolition activities. The main source of vibration noise will result from piling activities. They also advised that the construction, in particular of the sub deck car park, was constrained by tidal conditions, which will result in some construction activities occurring during night time according to the tidal conditions.

Mr Borich, Mr Pene and the applicant have suggested conditions regarding construction noise. These included:

- The requirement that construction work is to be carried out in accordance with NZS 6803:1999;
- The formation of a Construction Noise Management Plan (CNMP);
- The restriction of pile driving activities to certain days and hours;
- The mitigation of noise from pile driving by use of a sacrificial dolly;
- The submission of a Night-time Construction Management Plan (Night-time CMP) for concreting work;
- The monitoring of night time concreting work; and
- A process for managing vibration complaints.

In addition Mr Borich advised the high standard of insulation of the Chaffers Dock Apartments will enhance their internal protection from noise.

Evaluation

The Commissioners note that both the reporting officer and the applicant are in agreement with the conditions. As such, and again in the absence of any concrete challenge to these conditions, the Commissioners conclude that the conditions are generally an appropriate and effective method of mitigating

noise effects during a reasonably long construction period. In particular the Commissioners concur with the two fold approach to noise management through both a generic NMP and a night time NMP. The particular observations of the Commissioners regarding the construction management plan for noise are as follows:

- The Commissioners consider a CNMP covering these requirements satisfactorily addresses the majority of the issues associated with construction noise. However, there will be occasions where there will be noise emissions from the construction site which will breach NZS 6803:1999. The Commissioners consider that noise emitted during these occasions will be of short duration and the CNMP will ensure that the best practicable option is employed to ensure that emission of noise from the construction site does not exceed a reasonable level.
- In addition, the Commissioners consider that it is necessary to notify surrounding residences prior to the undertaking of night time concreting work and have amended the condition relating to the formulation of the Night-time CMP to require the Applicant to notify surrounding neighbouring buildings two working days prior to the concreting work being undertaken.

As with the CMP arrangements for traffic, the requirement to have this plan approved before construction commences and the ability to review the performance of both plans is a particular feature that the Commissioners endorsed.

7.5.4 Effects on the marina

Evidence

Keith Hogan (New Zealand Marina Operators Association) and Ian Pike provided evidence on behalf of the applicant on this matter. The Commissioners heard evidence from submitters regarding the effects on the marina during construction in particular Mr Anastasiou, Dennis Foot, Clive Lewis and Jillian Campbell-Board.

The proposal has the ability to affect the functioning and operation of the Chaffers Marina. There are three aspects to the effects on the marina:

- The displacement of marina support facilities and associated businesses from the wharf and the existing OPT building;
- The impact on the ability to service the marina; and
- Impacts on traffic associated with the marina.

The Commissioners heard conflicting views on the matter. Duncan Laing, legal counsel for the applicant considered that the effect on the marina per se was not a resource management issue and was controlled by commercial arrangements between WWL and the marina. Mr Pike advised that the businesses currently

located in the existing OPT building had no certainty of tenancy. Mr Hogan also advised that marina associated businesses are not necessarily located near a marina in other parts of the country.

The Commissioners also found the view of Mr Anastasiou particularly useful. Mr Anastasiou's view was that it was not for the marina to justify its own existence. Mr Anastasiou submitted that the marina is part of the existing environment and that it was the applicant's responsibility to demonstrate that the effects on the marina are less than minor.

Evaluation

The Commissioners consider that it is not a resource management matter in the strictest sense and is more a commercial matter between the developer, WWL and the marina company and its members. However, the Commissioners note the negotiated Agreement between the Marina and WWL which addresses aspects of the temporary relocation of marina support facilities such as the marina offices, storage lockers and amenities, the opportunity for the relocation of marina related business and provision of car parking and servicing areas.

In addition to the provisions of the Agreement, the applicant has suggested conditions that address the following aspects:

- The provision of a loading zone for berth holders;
- The provision for the use of the wharf by berth holders for moving heavy loads by arrangement;
- The provision of trolleys to aid berth holders transporting loads; and
- The establishment of a liaison groups between all parties.

The Commissioners note that neither Chaffers Marina nor the applicant suggested any supplementary amendments to the above conditions during the hearing.

Given the above, the Commissioners consider appropriate regard has been given in relation to each of these matters and provision is made under the Agreement for each of these matters to the best extent possible.

7.5.5 Effect on the marine environment and coastal water quality

Statutory context

The NZCPS, RPS and RCP contains a number of environmental objectives and policies that seek to ensure that adverse effects of activities in the CMA on the marine environment are avoided, remedied or mitigated; and that any significant adverse effects are avoided. These provisions were taken into consideration by the Commissioners when assessing the effects of the proposal on the marine environment and coastal water quality.

Evidence

The only expert to provide evidence at the hearing regarding this matter was the applicant's ecologist, Dr Jeremy Helson. Dr Helson concluded that adverse effects would primarily result from the following activities:

- The works required to upgrade and strengthen the wharf structure which will result in some localised disturbance of the sea bed and to organisms living on the wharf structure; and
- Replacement and strengthening of the piles under the wharf which will also generate suspended material and increase turbidity in the water column. These discharges will primarily result from re-suspension of existing sediments and other material within the coastal marine area, with only a small proportion of new material being discharged.

Mr Pene concluded that overall the disturbance and discharge to the CMA associated with the proposal is small-scale and temporary and the associated effects on marine ecology will be no more than minor. Dr Helson concurred with this conclusion and added that any disturbance will be no greater than disturbance from a storm event in terms of the area which would be affected and the degree of disturbance.

Evaluation

The Commissioners have accepted Dr Helson's evidence and note Mr Pene's review which agrees and accordingly have placed conditions which seek to ensure that any adverse effects are appropriately avoided, remedied or mitigated. These include a requirement to prepare a Sediment Management Plan prior to works commencing.

7.6 Long term effects

In considering the long term effects, the Commissioners detail first the statutory context, the evidence presented at the hearing relating to the matter and their final evaluation and determination on each matter individually.

7.6.1 Heritage

Statutory context

The protection of historic heritage from inappropriate subdivision, use and development is deemed to be a matter of national importance in Section 6(f) of the RMA. The statutory instruments produced under the RMA - The NZCPS, RPS and RCP also contain provisions that relate to historic heritage. The expression of heritage and history is one of the principles of the WWF.

In terms of Rules, the RCP is the most valid instrument. Under this document the wharf and wharf edge are listed as a feature of "*historic merit*". The specific policies in the RCP that relate to this listing in general look to preserve these features and to disallow proposals with adverse effects on these structures

unless these effects are appropriately avoided, remedied or mitigated. This listing does not include the OPT building.

The Commissioners note that no distinction is made in the RCP heritage listing between the older concrete (1907) wharf and the later timber wharf added in 1964, as such they consider the '*wharf and wharf edge*' as expressed in the RCP represent the entire wharf as it is now as a whole.

Neither the wharf nor OPT building are listed in the DP as Historic Buildings nor scheduled by the Historic Places Trust (HPT). Furthermore, the Commissioners note that HPT did not submit on the application. The heritage value of the OPT building is noted in the WWF and it is included in the WCC's Heritage Building Inventory 2001. In addition the WWF provides the expectation to "*retain and develop the OPT*".

In summary the Commissioners consider the only direct trigger is the RCP listing for wharf. The OPT building does not have statutory recognition; however, the Commissioners note Ms O'Callahan's statement in Mr Pene's report that states that outside of the wharf there are no statutory listed heritage features in the vicinity, and there is widespread acknowledgement that the waterfront area has heritage values generally.

Evidence

Heritage - overview

As with many of the matters discussed at the hearing, two opposing views emerged with regard to the appropriateness of the proposed development and the effect on the heritage values of the wharf and OPT building.

The views of submitters in opposition can essentially be distilled to:

- The OPT is a heritage building in the WWF;
- Previous assessments of the heritage values of the OPT are very high and would normally be protected in the RCP;
- No alterations are permitted to the wharf and wharf edge under the RCP;
- A full archaeological and conservation assessment should be carried out;
- The proposal contravenes the provisions of Section 6(f) of the Act; and contravenes the WWF and RCP; and
- The OPT building should be retained as it is and restored.

The applicant's view was presented by Adam Wild, a heritage architect. Mr Wild presented evidence at the hearing with regard to the heritage context of the site. Mr Wild's position is summarised as follows:

- The Wharf is afforded protection in the RCP, the OPT building is not afforded the same recognition. However, that does not mean that it is without heritage value; and
- The maintenance of heritage values of the wharf and OPT building are not driven by a requirement to restore, but to conserve; and
- To conserve the wharf and the OPT building in their current form is not sustainable; and
- This is not a conservation project in the strictest sense of the discipline. The proposal ensures that the ‘spirit’ of the place is saved and enhanced where appropriate.

Overall Mr Wild considered that the mitigation measures proposed by the applicant adequately achieve the aim of retaining as much original heritage fabric in the proposed structure, building and form as is possible and desirable.

Summarising the applicant’s case, Alistair Aburn provided evidence regarding this matter. He reiterated previous points made by the applicant that in relation to the wharf (as it has statutory protection) it is protection from *inappropriate* (his emphasis) use and development and not just protection *per se* that is the test. In that respect he concluded that based on his assessment of all the heritage evidence (having heard all the evidence of all parties over the duration of the entire hearing) the proposal does not constitute inappropriate development.

The Commissioners also heard evidence regarding this matter from John Hardwick-Smith who provided and discussed a Heritage Values Retention Schedule in his evidence. Adam Thornton discussed the practicalities of retention of heritage fabric of the wharf during construction. Mr Thornton also discussed the extremely poor state of the wharf and OPT building.

Dr Alexandra Teague provided an assessment of the proposal to the Mr Pene. Her initial report stated/concluded that the proposed development was not a heritage conservation project and did not satisfy the heritage requirements of the WWF, the OPT Heritage Values Report or the Design Brief. After hearing evidence provided by the applicant at the hearing Dr Teague moderated her initial position. The conclusions in her evidence presented at the hearing are summarised as follows:

- The proposal still does not constitute a heritage conservation project and as such she cannot support the project from a heritage conservation methodology.
- In her professional opinion the proposal does not satisfy the WWF OPT Heritage Values report or the Design Brief.
- The changes suggested by the applicant have potential to introduce some heritage component into the development which is a positive outcome,

- Acknowledged the value of having a conservation architect involved throughout the construction.

Mr Pene in his reply concluded that:

- As the development does not constitute conservation of these heritage features he therefore considers there is still the potential for significant effects on heritage values. Having said that, he considered that the fabric retention proposal and employment of a conservation architect throughout the design and construction phases greatly reduces the potential for adverse effects of that magnitude.

The Commissioners heard evidence from a limited number of submitters on this topic, including Sir Michael Fowler (whose firm of architects designed the original OPT) who supported the design. Darryl Cockburn (who was also involved with the original design) and Waterfront Watch considered that the building should be conserved as it is and restored.

Evaluation

After considering the evidence on heritage, the Commissioners concur with Ms O’Callahan’s statement that outside of the wharf which is listed in the RCP, there are no statutory listed heritage features on the development site, but acknowledge that there is widespread opinion that the waterfront area has heritage values in a general sense.

They also accept the assessment of Mr Aburn that Section 6(a) of the Act calls for protection from “inappropriate” development not protection from development *per se*.

The Commissioners acknowledge that there will be alteration and removal of some features. It also acknowledges that the true extent of the alteration and removal will not be known until detailed investigations are undertaken.

The Commissioners then assessed the two main elements separately – the wharf and the OPT building.

Wharf

The Commissioners accept that the effects associated with the strengthening of the wharf and the construction of a sub-wharf carpark are likely to be significant in a “pure” heritage sense. There is no doubt that heritage fabric will be lost, however, as Mr Aburn pointed out this is not the test for them; rather its is the overall effect of that loss in the wider context of the proposal. In this respect the Commissioners consider that those effects are somewhat compensated by the applicant’s commitment to retain as much of the heritage fabric as possible in the detailed design and construction phases of the project. In this regard the Commissioners place emphasis on the applicant’s intention to formulate a Heritage Values Retention Schedule to inform the detailed design phase and in addition the proposal to employ a conservation architect to provide expert input throughout both of those phases. The Commissioners have

placed conditions of consent to ensure these occur. Furthermore, they consider that this approach achieves a balance where the retention of heritage fabric is maximised throughout the redevelopment project.

Ms O'Callahan also suggested that the applicant be required to maintain a photographic record of all heritage features to be retained during these phases. The Commissioners accept that this would be beneficial and have included it as a condition of consent.

In addition, the Commissioner's note that the current visibility of the wharf, in particular the 1907 concrete wharf, is low and the Commissioners concluded that few people would actually be aware of its existence. The inclusion of a cut out in the wharf deck located at the southern end of the wharf showing the underside of the wharf, including supporting piles and bracing, will ensure that the previously hidden heritage fabric will be promoted for all to see. The placement of an interpretational panel adjacent to the cut out will ensure the connection with the heritage fabric and its importance is effectively communicated.

The Commissioners consider that this is an important matter in the consideration of the effects on the heritage values of the wharf. They agree with Mr Wild that the cut-out will enhance the heritage features of the wharf and incorporate a 'use' aspect into the heritage of the wharf. If left in its current state the wharf has the potential to become a '*white elephant*'.

In addition, the Commissioners note that given its current poor state of repair some loss of heritage fabric is inevitable because of the strengthening which is required to meet current building code standards.

Taking into account the above considerations the Commissioners consider that the effects on heritage values of the wharf are moderate.

Whether this development is inappropriate in terms of Section 6(f) of the Act is discussed in section 10 of this decision.

OPT building

In the first instance the Commissioners considered the effects on heritage fabric in terms of the **statutory framework**. They accept that the OPT is not a listed building but its heritage values are referred to in both the WCC 2001 inventory and in the WWF. They consider it does hold some heritage values for the public as it is a building which represents an aspect of Wellington City's history and it is highly visible from around the city.

The Commissioners acknowledge that the redevelopment will result in the loss of the majority of the heritage fabric of the building. However, given the OPT building does not have the statutory support, the Commissioners are satisfied that the heritage values of the building are taken into account throughout the development of this proposal. If not retained, (as proposed with the spire, mosaic murals and roof shape) heritage values will be re-interpreted to establish a relationship with the existing OPT building.

In terms of this position, the Commissioners found the evidence of Mr Aburn particularly useful. He identified the process by which the development was influenced by heritage values. He submitted that the WWF provides the only guidance on the future use of the OPT building which states the OPT is to be '*retained and developed*'.

The statutory framework aside, the Commissioners turned to consider how the proposal "stacks up" against the **Design Brief** established by the former WDSC and TAG. For the record whilst the Commissioners acknowledge that the Design Brief (like the WWF) is not a RMA instrument and has little statutory weight other than being an "other matter" in terms of Section 104(1)(c) of the Act, it is at least a document that has specifically addressed through a council lead public process the aspects of appropriate design for this important part of the waterfront. In many respects the Design Brief has become, by default, the design document that the WWF is not.

In terms of this, the Commissioners noted that the Design Brief included a number of prerequisites for the consideration of heritage values which included:

- That heritage objectives shall be balanced;
- That the redevelopment shall take into account the heritage values of the site;
- The architectural character of the building should be respected;
- The building should remain recognisable; and
- Departures from the Design Brief are acceptable if the design is exemplary.

Noting those, the Commissioners were mindful that Chris Cochrane, an independent conservation architect, reviewed the proposal and concluded that the proposal draws inspiration from the existing building, re-using or replicating some elements, building on the nautical imagery in an even more explicit manner, and that the proposed building will have landmark qualities as strong as the existing OPT building.

Moreover, the Commissioners acknowledge that TAG also reviewed the proposal and concluded that:

- *The proposal is highly resolved architecturally and makes a well considered response to the design brief. It is a lively yet coherent collection of forms and the central portion of its three-part composition is reminiscent of the existing building.*

In addition, TAG also concluded that the landmark remains recognisable; the proposal constitutes adaptive re-use rather than heritage conservation and represents an exemplary design. The Commissioners note that TAG still held some outstanding concerns with respect to the heritage conservation and the

proposal. However, in response to questions from the Commissioners, Mr McIndoe, advised that these can be resolved through the detailed design phase of the project.

Summary

The Commissioners concur with the findings that heritage values have been taken into consideration in the development of the proposal. Where heritage elements cannot be retained the design response has satisfactorily attempted to re-use or replicate those items in some manner. The resulting design maintains links to the previous building and retains its landmark quality.

In addition, the Commissioners note that given its current poor state of repair some loss of heritage fabric is inevitable given the works required to meet current building code standards and conclude that there is no over-riding expectation that it should be conserved in its entirety.

Taking into account the above considerations the Commissioners consider that the impacts on heritage values of the OPT are minor to moderate, but accept that in the context of the statutory provisions that overall the effects are minor. In part this is because the Commissioners have amended the conditions of consent for the development to mitigate these effects.

The Commissioners on reviewing all this evidence conclude that the proposed treatment of heritage associated with the proposal as a whole is, overall, a sensitive one which will provide; a visual connection to the existing building, a greater knowledge and appreciation of the old wharf and a sense of continuity with the history of the area – both older and more recent. The condition requiring a heritage consultant throughout the design and construction process should ensure that heritage retention opportunities are maximised.

7.6.2 Height, bulk and urban form

Statutory context

The relevant statutory framework for considering height (and by default, bulk and form) is the RCP and the DP. Under the RCP that there is no height limit restrictions that apply to the application site. The DP sets a Zero Height Limit for new buildings within the LHDA with no maximum height stipulated. Map 32 of the DP shows the existing building with no height limit for the area of wharf surrounding the existing OPT building. The DP framework therefore acts a trigger for considering each building proposal on its merits using the policy and objective framework as a guideline.

A proposal for any new building in a sensitive area will typically raise questions regarding the appropriateness of its height, bulk and scale for its proposed location. In this case the location considered is Chaffers Area and the issue is how the proposal fits into that locale given the wider context of the overall urban form of the city. There are several objectives and policies in the DP, and principles in the Waterfront Framework, that are relevant to the assessment of urban form.

Objective 12.2.3 of the DP is to maintain and enhance the physical character, townscape and streetscape of the Central Area. There are several policies supporting this objective. One of these, 12.2.3.1, seeks the preservation of the present urban form of the Central Area. The explanation to this policy describes the Central Area as being located in an amphitheatre formed by hills to the west and the harbour. It also comments on the High City and Low City components of the Central Area.

This Central Area comprises the main commercial and business heart of Wellington City (the central business district or CBD) and includes the Lambton Harbour Area (LHA). The High City is a well-defined and constrained core of high-rise buildings centred on Lambton Quay and Willis Street, whilst the Low City refers to the low-rise development to the eastern outer boundaries of the Central Area of the city, commonly referred to as Te Aro Flats.

The explanation to Policy 12.2.3.1 refers to developments in the Lambton Harbour Area as needing to be *'complementary to and in scale appropriate to the existing buildings around them'*. This intent is echoed in the explanation to Policy 12.2.11.6, which seeks to provide for new development which adds to the waterfront character and quality of design within the area, and promote the principles of the WWF.

Policy 4.2.45 of the RCP states that development in the Lambton Harbour Development Area should be compatible with the urban form of the city. The explanation to this policy states that the urban form of the city provides for *'an enhancement of the amphitheatre where the built form reflects the stepping down of the topography from the Kelburn area to the sea. ...development in the Lambton Harbour Development Area will generally be lower than the adjacent city centre.'*

The Commissioners noted the close parallels that exist between Policy 4.2.45 of the RCP and the aforementioned objectives and policies of the DP for the Central Area which in their view further strengthen the statutory linkages between the RCP and the DP.

Evidence

Evidence on the height, bulk and urban form effects associated with the proposal was heard from a number of expert and lay witnesses. Two conflicting views emerged throughout the course of the hearing as follows:

- That the proposed building is too big for the site and doesn't fit within the context of Chaffers Area and the wider Central Area in the City.
- That the development is generally consistent with the statutory framework and is physically compatible with its receiving environment.

The main concern represented by the submitters in opposition to the proposal was that the proposed building is too big for its location, in particular the extension of the southern end. In addition a number of submitters considered

that the applicant had mis-communicated the size of building in their application drawings and imagery.

The opposing view, which was supported by the applicant, TAG, Ms O’Callahan and Sir Michael Fowler, is that the proposed building is:

- Appropriate to the setting;
- At an appropriate scale relative to other waterfront developments; and
- Consistent with the wider city patterns.

Evaluation

Three important themes were drawn from the statutory framework. These were form, scale and context.

The Commissioners consider the following aspects of the building design of particular focus here are:

- The increase in height of the building and in particular at the southern end;
- The increase in length and width of the building.

The Commissioners considered, whether there is a potentially uncomfortable fit between the southern end and the adjoining buildings in terms of context relating to form, bulk and height. Commissioners questioned all architects and urban design witnesses on this matter all of whom supported the extension of the southern end. The Commissioners agree with the conclusion of the applicant’s architects that it provided a positive punctuation mark to the building and was “inviting”. Commissioners accept that view given the balance of evidence.

The Commissioners note that the increase in height and length was considered by these witnesses in terms of the context and surrounds of the area. The Commissioners agree that the redeveloped OPT will provide good relationships with the surrounding buildings, the Herd St apartments and The Boathouse annex (collectively known as Chaffers Dock Apartments). It also notes that although they are not part of the existing environment, the buildings expected on the area of land known as Sites 1-3 adjacent to the Port Nicholson Marina will contribute further to that relative sense of scale. In addition, that the one floor increase in height of the bulk of the building will still be complementary to and in scale with those buildings.

In addition, they acknowledge that whilst the application site has a zero height limit, it is noteworthy that under the DP the adjacent ‘Low City area’ has a height limit of 27m amsl. The maximum height of the proposed building is approximately 18m above wharf level and they consider that the proposed building will be of an appropriate scale relative to other waterfront developments. In effect, it will not stand out from its surrounding context in

terms of form, bulk and height, rather it will be consistent with the wider city patterns.

They also accept that a “zero height limit” does not mean that there should be no increase in footprint nor that it means there will be no new buildings or structures. They accept the evidence provided by Mr Aburn that it is meant as a trigger for resource consent notification for **all** building proposals in the Lambton Harbour Area

The Commissioners placed greater weight on the opinion of TAG with regard to their assessment of urban form and accepted their assessment of the proposal, which concluded that:

The increase in bulk is carefully considered. The expansiveness of the harbour setting and the dimensions of adjacent building such as Chaffers Dock and Te Papa means that the development is commensurate with its near neighbours. Additional volume is concentrated at either end of the wharf with only a single additional residential floor between. This configuration limits the impact on city-harbour views, and also produces a positive scale relationship between the base of the OPT, Chaffers Dock and the John Wardle design for Sites 1-3.

On the above basis the Commissioners conclude that the effects of the new building on the urban form of the area will be acceptable in the context of the existing and proposed environment.

7.6.3 Traffic

Statutory context

The key document in terms of this issue is the DP which deals with parking and traffic. The WWF promotes pedestrian priority along the waterfront.

The Commissioners consider that the provisions of the DP for the Central Area provide useful guidance on this matter. They acknowledge the general thrust of the DP with regards to parking which is generally to discourage vehicle use through the non-provision of minimum car parking requirements. Notwithstanding this, and as explained to the Commissioners, development in the Central Area triggers the need for a resource consent where the provision of parking exceeds 70 car parks.

Evidence

Mr Galloway, Mr Pike, Ms Wraight and Mr Hardwick-Smith provided evidence on behalf of the applicant on this matter. This evidence was reviewed and commented on by Mr Spence and Ms O’Callahan on behalf of GWRC.

Parking, traffic and the potential conflict between vehicles and pedestrians was a common theme in many of the submissions lodged in opposition to the consent application. Construction traffic and related effects are discussed separately in section 7.5 of this decision.

In responding to these issues, and based on the reports of Mr Spence and Ms O'Callahan, Mr Pene suggested a condition requiring a Traffic Management Plan (TMP) to be developed after the completion of the construction works and prior to the occupation of the site. This condition was accepted by the Applicant subject to some minor amendments which were in turn accepted by Mr Pene. The TMP covers the following matters:

- Appropriate measures to manage servicing activities;
- Controlling taxi access;
- Traffic signage;
- The enforcement of public parking limits on the wharf; and
- Pedestrian safety.

An additional condition was also recommended by Mr Pene requiring the TMP to be regularly reviewed. He said this would test the effectiveness of the TMP and allow the Council to implement further mitigation measures if required.

Mr Pene advised the Commissioners that the TMP would need to be approved by the Manager at GWRC in consultation with WCC Traffic Engineer. The results of the reviews shall also be submitted to the Manger at WCC.

Issues

In terms of the evidence and statutory context, the Commissioners considered that the following matters relating to traffic and parking effects were relevant:

Traffic

- Potential conflict with promenade users;
- Effects on the greater roading network – Oriental Parade and Herd Street;
- Traffic flow around the wharf; and
- Effects on the access for emergency services.

Parking

- Provision of parking for the marina;
- Provision of parking for taxi's and coaches; and
- Provision of public and residential parking.

Evaluation

In contemplating the traffic issues the starting point for the Commissioners is acceptance that the TMP is an important mitigation tool and will adequately

address many of the issues raised by the submitters. The Commissioners concur that it is essential that the TMP becomes a living and working document so as to ensure that the effects on traffic as a result of the development are addressed and reviewed in a timely manner.

Potential conflict with traffic and promenade users

This was a concern raised by submitters. The Commissioners accept that there is potential for conflict with traffic and promenade users' safety particularly at the southern end of the wharf.

Mr Galloway advised that this matter had been given particular attention during the traffic design for the development. He noted in particular the approach to the wharf and sub wharf car park had been realigned to require vehicle drivers to perform a right angle manoeuvre in the approach. This would have the effect of slowing down traffic entering the area and minimise risk to promenade users traversing that area.

In addition, Ms Wraight and Mr Hardwick-Smith added to Mr Galloway's comments regarding the architectural measures, including the use of different surface treatments, and landscape treatment that will be employed that will indicate to users of the area that it is a shared space. One submitter was concerned whether these '*subtle architectural clues*' will prevent conflict.

The Commissioners accept the evidence of the applicant's experts and note that the reporting officer's advisors were also in agreement with their conclusions. They consider that the realignment of the approach to the site and the architectural measures are more than subtle and will slow down drivers of vehicles, without the measures being difficult to manoeuvre around, and therefore minimise the risk of conflict between vehicle drivers and users of the promenade.

If the proposed design of that particular area fails to completely minimise conflict the Commissioners consider that the condition requiring a review of the TMP will ensure that this matter can monitored and altered if appropriate.

Effects on the greater roading network – Oriental Parade and Herd Street

Mr Galloway advised that there is likely to be a lower more constant level of traffic using the Oriental Parade and Herd Street as a result of the development, in comparison to the irregular large peaks in traffic currently associated with events held at the OPT building. He advised that the extent of the increased traffic on the ability of the roading network to accommodate the increases will be negligible. He also stated that there would be a slight (in the order of seconds) increase in the delay at the intersection of Herd Street and Oriental Parade, in particular turning on to Oriental Parade from Herd Street. Mr Spence concurred with the evidence of Mr Galloway on this matter.

The Commissioners accept the evidence of traffic experts that the effects on the wider roading network as a result of the development will be no more than

minor. In particular, they consider that the increased delay at the intersection of Herd Street and Oriental Parade will be minimal.

Traffic flow around wharf

Mr Galloway identified the following features of the management of traffic on the wharf:

- The provision of adequate space for vehicles to travel around the wharf edge;
- A one way system (along the western side, across the northern end and along the eastern side) and also the two alternate cross links to connect the western and eastern sides of the wharf
- The provision of adequate space to allow parking or servicing to be undertaken and other vehicles to pass (this was a concern of one submitter); and
- The enforcement of a 10 km/h speed limit and placement of speed humps along the wharf.

Mr Galloway stated that these features will achieve an efficient traffic management solution. Except for the placement of speed humps along the wharf, this conclusion was supported by the reporting officer's advisers.

With regards to the placement of speed humps along the wharf, Mr Galloway advised these are an existing feature of the wharf but that they don't necessarily have to be there given other speed restriction measures such as signage. Mr Spence advised he thought speed humps were effective in getting vehicles to slow down; however, if another measure could be formulated he would support that. The applicant confirmed that this aspect could be considered during the detailed design phase of the project.

The Commissioners agree that the design of the project does allow for the efficient travel of traffic around the wharf edge. They consider that adequate allowances have been incorporated into the design to ensure that vehicles (including larger service vehicles) can travel around the wharf relatively easily, even in the event vehicles need to pass each other.

In respect of the last matter the Commissioners wish to note that the applicant provided some calculations to address concerns raised by a submitter. They note they had no reason to not accept the calculation provided by the applicant as they were based on the actual dimensions of the buildings provided by the applicant's architects.

With regards to the placement of speed humps the Commissioners consider that it is a matter which can be addressed during the detailed design phase of the project. They note that any other measure will be included in the TMP which will be scrutinised by GWRC in consultation with WCC prior to its approval.

Emergency services

Mr Galloway advised emergency services will be able to access the entire length of the wharf. He advised that emergency vehicles would disregard the one way system in order to access the incident site as quickly as possible. If that vehicle could not manoeuvre around the wharf to the north because of its size, Mr Galloway advised that the vehicle would reverse down the side of the wharf the incident was on, the priority is getting the vehicle to the site of the emergency.

The Commissioners agree with the applicant's expert on the matter. They also note that the TMP identifies the emergency services as affected parties and enables ongoing ready access for them.

Parking for Chaffers Marina and berth holders

The Commissioners acknowledge there has been an erosion of the number of parking spaces allocated for the use of Chaffers Marina and berth holders as a result of other developments occurring in the area.

They note that the Agreement between WWL and the Marina companies specifies the number and location of parking spaces for the use of Chaffers Marina and berth holders.

The provision of taxi and coach parking

TAG and Mr Spence advised that provision should be made for a taxi drop off area on the wharf. Mr Galloway agreed and advised that there will be two spaces available for use by a nominated taxi company between the hours of 6pm and 6am. Mr Spence supported that arrangement and advised this arrangement occurs elsewhere in the city.

The Commissioners agree with the experts on this matter.

Mr Spence in his report to Mr Pene advised that coaches may still be required to travel along the wharf in circumstances such as when a ship is berthed at the wharf. Mr Spence concluded that coaches on the wharf are not desirable and stated that coaches should be prohibited on the wharf.

Mr Galloway advised that a prohibition would not be useful and could not think of another event which would require coaches on the wharf, other than that suggested by Mr Spence. Mr Galloway advised it is a matter which could be addressed in the TMP and would allow coaches on to the wharf in exceptional circumstances only. Mr Spence agreed with this after hearing this evidence. The Commissioners have included a provision in the TMP condition to this effect.

The Commissioners wish to note their conclusion stated in section 7.6.7 of this decision regarding the future berthing at the wharf. Because of that fact they anticipate the need for coach use on the wharf will be limited they agree with the experts on this matter. They also anticipate that the TMP will confirm this arrangement.

Provision of public and residential parking

The Commissioners agree that the residential parking is satisfactory. They note the concern raised by some submitters regarding the potential effects of this development on the resident parking around Oriental Bay. They accept Mr Spence's evidence that Resident Parking Permits are not issued for the Central Area and therefore owners of the apartments in the proposed development will not be able to gain a permit and park in resident parking along Oriental Bay.

The Commissioners note that the provision of public parking is restricted and it will result in the majority of public seeking parking off site. However, they consider that this is acceptable given the guidance from the DP and the lack of a requirement to provide public parking.

The Commissioners would have preferred to see some provision for public parking during the evenings for café/restaurant use and encourage the applicants to investigate opportunities to make such provision outside of the resource consent process.

7.6.4 Visual amenity (private and public views)

Statutory context

The proposed development will result in a change to the waterfront that could potentially affect visual amenity. Accordingly, the Commissioners considered the proposed development in the context of view-shafts identified in the DP, private views and public views. The relevant statutory context are these provisions which encompass those matters. The advice to the Commissioners was that the following provisions are relevant:

- Policy 1.1.1 of the NZCPS encourages appropriate development in areas where the natural character has already been compromised.
- Policy 6.2.9 of the RCP directs the consent authority to have regard to provisions of the DP relating to the protection of important views (for example, view-shafts).
- Ms O'Callahan identified the relevant view-shafts in the DP as view-shafts 10 (Hunter Street), 11 (Willeston Street), and 12 (Chews Lane/Harris Street).

Evidence

Some submitters were concerned with the increase in form, bulk and height of the proposed development and its effects on public and private views. Two submitters presented evidence (including mock-up photomontages from various viewpoints) regarding the effect on views from neighbouring residential properties; and one was concerned with the effect on the landmark view of St Gerard's Monastery.

In responding to those issues Mr Laing presented the Commissioners with copies of photomontages of the development from the view-shafts identified as being relevant in the DP.

Using this as a basis, Ms Popova discussed the effects of the proposed development on private and public views further. She considered that the application site occupies a prominent landmark location and the increase in form, bulk and height of the proposed building will impact on some views. In addition, she added that the degree of impact is dependent on the viewing distance and position. She concluded that the visual impact of the additional bulk on the key characteristic views is acceptable and will not significantly affect the character of the key public views.

Placing Ms Popova's comments in the statutory context Mr Aburn considered the effects of the proposed development on the DP view-shafts would be no more than minor, maybe negligible. Ms O'Callahan supported this assessment.

Mr Pene concurred with Ms O'Callahan's assessment that the effects of the proposed development on public view-shafts will not be more than minor. In addition, she stated that while to some extent private views were lost from some east-facing windows within the Chaffers Dock Building the main orientation in terms of views from the building was north over the Marina and that these effects would be minor.

The Commissioners note they had no reason to not accept the architectural evidence presented by the applicant. They acknowledge that the perspectives used on some drawings in the form of trees, boats and people were indicative only. The Commissioners did, however, find the photomontages provided by the applicant difficult to use given the small scale. The Commissioners therefore undertook site visits of the significant photomontage locations to confirm their accuracy.

Evaluation

Before evaluating the views, the Commissioners questioned the reliability of some of the drawings and overlays provided to them by some of the submitters.

The issue of imagery aside, the Commissioners agree with the conclusions reached by Mr Aburn and Ms O'Callahan with regards to the effects of the proposed development on those view-shafts identified in the DP. The Commissioners note that the OPT building is in the distance in these view-shafts and is interrupted by features in the foreground.

The Commissioners agree with Ms Popova's statement regarding the effect on public views which is that the degree of impact is dependant on the viewing distance and position. They consider that the most significant impacts of the proposed building on public views will be when approaching the building. Essentially, as viewers get closer to the building the building blocks out more of the skyline. When viewed from a distance the effects on public views will be minor.

Despite the comments of some submitters, the Commissioners note that the effects of the proposed development on the important public views of St Gerard's Monastery will be no more than negligible.

The Commissioners agree with submitters such as Mr Clarry and Mr Bennett that the proposed development will affect private views to varying degrees. They undertook visits to the Chaffers Dock apartment building to the residences of two submitters who presented at the hearing. From those visits they consider that the most significant impacts of the proposed development on private views will be on those premises located on the eastern end. For residences on the north side of the building the Commissioners consider that the proposed development will have only a minor effect on views because the larger views of the harbour to the north will remain.

The Commissioners note that private views of those residences at the eastern end of the building will principally be disrupted by the southern extension of the proposed building. Specifically this will result in the partial loss of views of the harbour and beyond to the north east, however, they note that this will not result in a complete loss of views.

Overall, the Commissioners conclude that the effect on public views and DP viewshafts will be minor. In terms of private views, there will be moderate effects on some views from apartments in the Chaffers Dock complex; however, these views are not protected by the statutory instruments and no view will be completely lost.

7.6.5 Public access, open space and landscape design

Statutory context

Section 6(d) of the Act requires that public access to the CMA be recognised and provided for. Drawing on this statute, the RCP includes provisions that emphasise the importance of public access to and along the CMA. Further to this, policies 4.2.45 and 6.2.4 of the RCP require that public open spaces, public access and through-routes are to be provided for in the Lambton Harbour Development Area; that the effects of development in this area do not detract from people's enjoyment of the area; and that appropriate disabled access is provided to all new structures in the CMA.

In the DP, the relevant assessment criteria is 13.4.7.2 (in relation to the construction of new buildings in the Lambton Harbour Area) which states that the ground floors of buildings should have an '*active edge*' that supports the public use of the space and are predominately accessible to the public.

The WWF states the aspirations that the waterfront is predominately a public area; ground floors of buildings will be accessible to the public; there will be a promenade along the length of the waterfront; and that there should be good access to the water.

Evidence

The proposal involves the development of a new building in the Lambton Harbour Area and the development of public space within the building and on the wharf.

Some submitters in opposition to the proposal were concerned at the reduction in public open space as a result of the development. In addition others thought that the proposal would result in the alienation of public space and this matter is addressed in section 7.7.4 of this decision. Submitters in support of the proposal considered that it would lead to an increase in the attractiveness of the area.

The Commissioners heard evidence regarding the design aspects of the public space development from Ms Wraight, Mr Athfield and Mr Hardwick-Smith, on behalf of the applicant.

Mr Hardwick-Smith concluded that public access will be maintained in the open space and landscape design of the project and improved to a degree. In making this point, he referred to the lower level jetty at the northern end of the wharf and the public viewing area at the northern end of the building. Mr Hardwick-Smith also provided the Commissioners with a set of calculations detailing the amount of public open space prior to and after the development is constructed. These indicated that while the net area of wharf surface outside of the building is reduced from 6060m² to 5099m² (the Commissioners noted a minor discrepancy in the calculations) the overall gain in public open space area including the jetty and viewing platform is from 3700m² to 4959m².

Ms Wraight concluded that the approach taken towards landscape design was a simplistic one, which reinforces and celebrates the simple nature of the wharf scape. In addition, the design and the chosen materials indicate that this is part of the wider urban waterfront.

TAG reviewed the initial application and concluded that the redevelopment provides a convincing treatment of public space. In addition, several measures will enhance the public's experience of the wharf. In addition Ms O'Callahan and Mr Blunt provided advice to Mr Pene regarding this matter. They advised that the public access, open space and landscape design were appropriate and consistent with the relevant provisions listed above.

Evaluation

The Commissioners agree that public access to the CMA will be maintained and improved as a result of this proposal.

They also acknowledge the submitters concerns about encroachments on currently available open public space on the wharf resulting from the enlarging of the footprint of the building. However, as demonstrated by Mr Hardwick-Smith's evidence they consider that the significance of the reduction in open public space is mitigated in the main by an increase in the quality of open public space. The Commissioners also accept the TAG assessment of the

landscape treatment for the site and consider that it will enhance the area and result in a more attractive area for the public.

In addition, they consider that the proposed uses at wharf level, which are to be predominantly accessible to the public, are provided in a location where the public can undertake social activities which may be considered to increase public amenity as stated by Ms O'Callahan in her assessment of the proposal.

The provision of the lower-level fishing jetty may facilitate better access to the CMA for public recreational activities, in particular angling, so may increase the quality for members of the public. Likewise the provision of public viewing deck at 1st floor level may also increase public amenity.

7.6.6 Natural hazards

Statutory context

Section 7(i) of the Act requires particular regard to be given to the effects of climate change. In giving effect to the Act, Principle 7 of the NZCPS recognises that the coastal environment is particularly susceptible to the effects of natural hazards. Chapter 11 of the RPS is dedicated to natural hazards; of particular pertinence to this proposal is Policy 2 which lists matters that should be considered when making decisions on development in areas known to be susceptible to natural hazards. These are echoed in objectives 4.1.11 and 4.1.12 of the RCP which address reduction of natural hazards to an acceptable level, and location of structures being such that they do not increase risk. .

Evidence

This was a topic discussed primarily between the GWRC and the applicant with no real involvement by those submitters who presented at the hearing.

For the applicant, Mr Sharpe assessed the proposal against the following natural hazards:

- Earthquake, including liquefaction and seismic risk;
- Tsunami;
- Climate Change, including sea level rise; and
- Storm surge

He concluded that storm surge and climate change hazards do not provide a significant threat to the proposal. In addition he added that both the wharf and OPT building are exposed to damaging earthquakes and tsunami. However, he added this threat is not considered to be at any more risk than other waterfront locations.

Also appearing for the applicant, Mr Palmer provided an assessment of the liquefaction hazard of the site. The assessment concluded that the soils beneath the wharf have a low potential for liquefaction; however, the soils of land adjacent to the wharf have a potential to liquefy as a result of severe earthquake. He suggested that these soils are tested during the detailed design

phase to ensure that the nature of the soils is understood and the risk from liquefaction is appropriately assessed.

Drawing on the evidence of Mr Palmer and Mr Sharpe, Mr Thornton advised of the current state of the existing OPT building which falls short of the earthquake standard for buildings. He also stressed the point that the wharf would be seismically separated from the land which mitigates the risk from earthquake and liquefaction.

Dr Dawe, GWRC Hazards Analyst, reviewed the evidence provided by the applicant's witnesses and provided his own comments. He accepted Mr Palmer's assessment of the liquefaction hazard. However, he had some outstanding concerns with aspects of Mr Sharpe's evidence relating to the consideration of sea level rise. This is with respect to the datum and the planning horizon used in the assessment of the effects of sea level rise.

In response to questions from the Commissioners, Dr Dawe noted the differences between the two datum sets used by Mr Sharpe and himself. He explained Mr Sharpe used the New City Datum which produced a sea level of a lower value than that if the Wellington Datum-53 had been used. He advised that the resulting assessments would produce differences in values of approximately 13mm. He advised this had implication when assessing the effects of sea level rise in the long term. On that basis he concluded that a 100 year planning horizon should be used in the detailed design phase of the project.

On these matters Mr Pene agreed with Dr Dawe that it would be prudent to allow for a 100 year planning horizon but expressed concern that this might place an unduly onerous constraint when compared to the 50 year planning horizon which buildings are usually subjected to under the relevant building regulations. As a result he did not recommend incorporating a stipulation for the planning horizon in the suggested conditions.

In relation to the suggested condition of Mr Palmer regarding the testing of soils of land adjacent to the wharf, Mr Pene advised that such an assessment would be outside of the application site on the landward side of the CMA boundary and outside of the authority's jurisdiction.

Evaluation

Where there was a general agreement on matters, the Commissioners accepted the views of the experts. They wish to note that the inconsistencies between values provided by the experts with regard to the appropriate consideration of sea level rise impacts are minimal. In the end the Commissioners consider that the potential effects of natural hazards have been appropriately taken into account in the development of the proposal. With regard to the planning horizon used by the applicant in the design of the building and the requirement to undertake soil testing on land adjacent to the wharf, the Commissioners accept the conclusions of Mr Pene.

7.6.7 Effects on port activities

Statutory context

Recognition of the continued use of Clyde Quay Wharf for berthing and the CMA for port and harbour activities in general is given varying degrees of statutory importance through provisions of the RCP and DP, which both seek to ensure that the LHDA remains an integral part of the working port of Wellington. Similarly, the WWF also supports the continued use of the area for port activities. At a more generic level the RPS provides some guidance with regard to the allocation of finite resources within the CMA.

Evidence

Mr Pike presented evidence on this matter and tabled a letter from CentrePort. He concluded that arrangements with CentrePort mean that vessels which are incompatible with residential uses will not be permitted to berth at Clyde Quay Wharf. He advised that CentrePort has retained the right to berth larger vessels in emergency situations or events of national significance. This was confirmed in the letter from CentrePort to the applicant. In addition, he stated that large vessel berthage (greater than 300 tonnes) at the wharf has become problematic which makes berthing at Clyde Quay Wharf a last resort. In response to suggestions by submitters that the wharf should be re-opened as a berth for Cruise ships, it was confirmed that the wharf is too short and has insufficient water depth for modern cruise ships.

Evaluation

The Commissioners acknowledge the statutory provisions, the WWF and the design brief in attempting to not preclude future berthing from Clyde Quay Wharf. They also acknowledge the CentrePort position that the imposition of the development on berthage at the wharf will be largely irrelevant given the physical problems in berthing large vessels at the wharf even now.

To this end, the Commissioners accept that the opportunity for berthage at Clyde Quay Wharf will be limited due to the physical problems associated with berthing at the wharf. CentrePort has also stated that they do not intend to use the wharf for future berthage of vessels over 300 tonnes. However, the Commissioners noted that the wharf will be maintained so as to provide an opportunity for berthing of vessels, even if only in emergency situations.

TAG identified the importance of retaining the fendering around the wharf edge for berthage in the future so that should it prove desirable to berth ships there again then it could be done. Retention of the fendering was also desirable for heritage reasons, as it is linked to its history as a working wharf. The Commissioners note that the applicant accepts this.

7.6.8 Wind

Statutory context

Although it is not a mandatory requirement in the CMA, the proposed building complies with the permitted standards set out in 13.1.2.11.1 and 13.3.2.15 of the DP, which require new buildings (greater than 18.6m in height) to provide for an improvement to existing wind conditions. Given the proposed building is less than 18.6m in height it is a permitted activity under the DP. Notwithstanding this, evidence was provided to the hearing in response to submitters' concerns and to address the issue of the impact on amenity in public spaces on the wharf.

Evidence

One submitter raised concerns regarding the adverse effects on wind speeds from the proposed development.

The initial wind report undertaken by Opus Consultants supplied with the application concluded that except for four places there will be overall improvement in wind conditions with the development of the proposed building. Of the four places, three showed only a slight increase.

Mr Donn, WCC's wind advisor, reviewed that report and concluded that for him only one of those four sites where wind conditions did not improve was of particular significance. He raised concerns about increased wind speeds on the eastern promenade adjacent to the pedestrian/vehicle cross link at the northern end of the proposed development. In response to this Mr Pene advised that further information would need to be provided by the applicant at the hearing to mitigate the effects on wind speeds in this area.

Mr Jamieson provided evidence on this particular subject at the hearing. He considered that any mitigation measures at that location were desirable but that a solution is not imperative. He advised that if mitigation measures could be employed in a manner that will not conflict with other design aspirations of the project (such as traffic and pedestrian movement or landscape design) that they could be used to mitigate winds effects. Mr Hardwick-Smith reiterated the difficulties in finding a solution to the increased wind speeds in this area.

Mr Jamieson suggested a condition that a solution should be investigated to the most extent practicable at the detailed design phase.

Mr Donn, Ms O'Callahan and Mr Pene agreed with Mr Jamieson's conclusions and recommended conditions.

Evaluation

The Commissioners accept the evidence of the applicant's experts and note the DP provisions. They acknowledge testing shows that overall improvements in wind conditions result from the proposed development. They have placed a condition of consent which requires the remaining issue of increased wind speeds on the eastern promenade adjacent to the pedestrian/vehicle cross link at

the northern end of the proposed development to be given appropriate consideration at the detailed design phase. They consider this is an appropriate response to the issue given the complications in formulating a solution which does not conflict with other desirable elements.

Overall, the Commissioners conclude that the effects of the proposal on the wind environment will be no more than minor, and that overall they will improve the current situation.

7.6.9 Operational and post construction noise

Statutory context

Plan Change 1 to Policy 4.2.45 of the RCP and the corresponding Plan Change 47 to the DP seek to ensure buildings containing noise sensitive activities, such as residential apartments, are adequately acoustically insulated.

The RCP does not contain any specific rule relating to noise, but has General Standards and Terms (contained in chapter 14 of the RCP) including 14.1.3 which relate to noise from activities outside the Commercial Port Area. This section sets standards to be met at the Residential Area boundary; an L_{max} sound level of 75dB (A) for single noise events; and construction noise standards.

Evidence

Expert evidence on operational noise was provided by two parties, Mr Lloyd (on behalf of the applicant) and Mr Borich (on behalf of GWRC).

Mr Lloyd and Mr Borich reached agreement on conditions of consent that should be applied to adequately address the potential reverse sensitivity noise effects resulting from the different uses within the development. Neither party had any outstanding issues with regard to noise and the ongoing operation of the cafes and restaurants, or from residences within the development, nor the potential conflict between these uses. Mr Borich advised that he anticipated the proposed insulation of apartments would exceed the standard in the DP.

Evaluation

The Commissioners accept the evidence of the two experts, and agree with the conditions proposed by the experts which include:

- A requirement that any habitable room in the building shall be insulated to the following minimum performance standard:

$$D_{nT,w} + C_{tr} > 30 \text{ dB}$$

- A requirement that noise emission levels emanating from all activities shall not exceed the following:

$$\textit{At all times} \quad 60\text{dBA (L10)}$$

At all times *85dBA (Lmax)*

- A requirement that noise emission levels emanating from all activities when measured on any residential site in the Inner Residential Area must not exceed:

Monday to Saturday 7am to 7pm *55dBA(L10)*

Monday to Saturday 7pm to 10pm *50dBA(L10)*

At all other times *40dBA(L10)*

All days 10pm to 7am *70dBA(Lmax)*

- A requirement that noise emission levels in any public space generated by electronic sound systems shall not exceed 75 dBA L10; and
- Certification protocols.

The Commissioners consider that the conditions will adequately avoid or mitigate any adverse noise effects associated with the proposal to the level where they will be negligible.

7.6.10 Sunlight and shading

Statutory context

Access to direct sunlight is an important amenity, especially in open spaces. New buildings can cause shading effects, and reduce the amount of sunlight that is available to open spaces.

In this respect, Objective 12.2.2 of the DP seeks to maintain and enhance the amenity values of the Central Area. One of the policies under this objective encourages improved sunlight access to public places when new building development occurs. In addition, the WWF states that the impact of shading from any new buildings into the public spaces should be taken into account.

Evidence

Some submitters expressed concern at the loss of sunlight and increase in shading along the promenade and around the wharf resulting from the increase in height and the increased footprint of the proposed building.

John Hardwick-Smith presented evidence on behalf of the applicant on the shading effects that would result from the proposed building. This evidence described the spatial and temporal extent of shading effects. He noted that there are some minor increases in shading on public spaces along the western side of the building in the morning and on the area of land between Herd Street apartments and the OPT building in the early morning and late afternoon period.

TAG reviewed the evidence provided by Hardwick-Smith with the application (which was the same as that presented at the hearing) and agreed that the increased shading effects were acceptable and the reduction in amenity is minor. TAG made the note that both sides of the wharf will receive sun at midday through the year and the opportunity remains for promenade users to find sun somewhere along the length of the building.

Evaluation

The Commissioners accept the evidence of Mr Hardwick-Smith and TAG and consider that shading and sunlight effects will be no more than minor.

7.6.11 Lighting

Statutory context

The DP sets out criteria for assessing lighting within pedestrian areas under rule 13.3.1.10. This criterion places an emphasis on maintaining public safety. Similarly, one of the objectives of the WWF is that the waterfront is, and is perceived to be, safe.

Evidence

The application included an assessment of the level of lighting proposed around the building. In addition, Allister Adams, Building Services Design Engineer presented evidence on behalf of the applicant on the lighting of the proposed buildings architectural features.

Ms O'Callahan assessed the lighting proposal for the pedestrian routes and outdoor car parking. She considered the proposal will be consistent with the DP requirements and that there will be no adverse lighting effects.

Evaluation

The Commissioners agree with the assessment made by Ms O'Callahan and consider that the adverse effects from lighting will be no more than minor.

Summary of effects:

In reaching the above conclusions on each of the issues identified, the Commissioners conclude that apart from matters arising around heritage with regard to the wharf, all matters fall into the category of having no more than minor effects. Where heritage matters relating to the wharf and wharf edge are concerned the Commissioners consider that with the conditions of consent (as set at the end of this decision) that these impacts will be treated and managed to a level that the impacts will be acceptable. The outcome will be that the history of the wharf will be brought into public view to a degree well above that which it has in its current form.

7.7 Other matters raised during the hearing

During the course of the hearing a number of matters were raised, principally by submitters which do not “slot” readily into the previous effects assessment but do demand some comment. In addition there were some procedural matters that needed to be addressed.

The Commissioners have noted these matters below.

7.7.1 Alternatives/Appropriateness of design and uses

Under Section 88 and the 4th schedule of the Act an assessment of effects on the environment lodged with the resource consent application should include a description of any possible alternative locations or methods for undertaking the activity where the effects are considered to be significant. In relation to this, some submitters were concerned that alternatives for the site had not been considered. One submitter (Mrs Ritchie) proposed an alternative use for the site. Mr Pene addressed this issue in his right of reply and considered that a satisfactory description of alternatives had been provided and the application had been completed in accordance with Section 88 and the 4th Schedule of the Act.

The Commissioners agree with the conclusion of Mr Pene and note that it is not mandatory for the applicant to consider alternatives unless the effects are deemed to be more than significant. Whilst they agree that this is a matter of judgment to be considered on a case by case basis, in this instance they determined that the consideration of alternatives is a moot point. Certainly an alternative location was never a serious consideration from either applicant or submitters. This leaves the consideration of alternative methods. In this respect, this involves matters such as the mix of activities and alternative designs to accommodate those activities.

In term of activities, the Commissioners did not hear from anyone who opposed the mix of residential and commercial activities. There was considerable support for this mix and as both Mr Wild and Dr Teague commented, the preservation of heritage features often depends on achieving a viable use and activity for them. In this case, and as Mr Copeland and Mr Mark McGuinness advised, residential activity is critical to the success of the proposal and will, as the TAG advisor commented, improve security in the area.

On the matter of alternative designs, the Commissioners acknowledge that there could be various designs employed for the redevelopment of this site. Certainly some possibilities were discussed by some of the submitters including Dennis Foot and Daryl Cockburn. However, the Commissioners resolved that in the absence of a case that proved significant adverse effects emanating from design, it is not for them to make a decision on whether the proposal or the design is the ‘best’ use or concept for the site.

The Commissioners agree with the conclusion of Mr Pene and note that they can only assess the effects of the proposal before them and it is not for them to

make a decision on whether the proposal is the ‘best’ use for the site. They also note the selection process undertaken by the relevant parties which saw nine proposals for the site, some involving alternative uses. They note that the design embodied in the application was the result of independent selection against a robust design brief which drew on inter alia, the WWF and the heritage listing of the wharf in the RCP.

In terms of the above, the Commissioners note their discussion and conclusions in section 7.6.5 of this decision. They also considered that the design of the development meets the requirements of the RCP, namely policy 4.2.45 and the Design Brief regarding diversity of uses.

7.7.2 Public Involvement and consultation

Some submitters raised concerns regarding the degree of public consultation and public involvement in selecting the proposed design. The development timetable of the proposal is covered in section 2.2 of this decision, and in the evidence of Mr Pike.

The Commissioners note that there was public consultation undertaken during that process, even though there is no requirement for consultation under the Act. In addition, they acknowledge that the former WDSC acted as a quasi public voice for the development of the Design Brief and selection of the ultimate proposal.

7.7.3 Alienation of public space

During the hearing the Commissioners heard evidence from submitters regarding concerns that the proposal would result in the alienation of public space.

In procedural terms, the Commissioners consider that the debate surrounding the alienation of public space in the context of the Act is limited and this proposal does not fall within the ambit of that debate.

In addition the Commissioner’s note, that a prime facie case does not exist on this matter solely because a private company is undertaking the development that involves private residences; that does not in itself constitute the alienation of public space. In substantive terms the Commissioners consider their conclusions regarding the effects on public access, open space and landscape design in section 7.6.5 of this decision are relevant to this matter.

7.7.4 Sites 1 to 3 – The Wardle Scheme

Throughout the hearing Sites 1 to 3 – known as The Wardle Scheme development - were referred to on numerous occasions by various parties including TAG and some of the submitters. The Commissioners were advised that the Wardle Scheme consists of three buildings located to the south east of the site, in the area of the existing Herd Street car parking area and “Enormous Crocodile” bike hire building. Some of the imagery for the OPT redevelopment presented by the applicant included a ghosted outline of the Wardle Scheme.

The applicant's right of reply also made reference to the place of the Wardle Scheme in the statutory framework.

The Commissioners note that the Wardle Scheme is merely that – a concept for sites 1-3 on the waterfront. If it is to proceed it will need authorisation under the RMA and its statutory instruments. Under the current statutory framework, this will require resource consent from the WCC. The Commissioners wish to record that they have not taken the relationship between this proposal and that scheme into account in this decision as it does not constitute part of the permitted baseline nor the “existing environment”.

Notwithstanding this, but for the record, the Commissioners note that TAG in their assessment noted that the proposed building will fit in with the Sites 1 to 3 – The Wardle Scheme - in terms of its height, bulk and urban form in its surrounding context.

7.7.5 Court cases

Mr Anastasiou presented the Commissioners with a copy of the Canterbury Museum Trust Board v Christchurch City Council ENVCC059/06 court case. He considered that the case was relevant to the determination of this proposal as it involved a heritage resource and design brief/competition similar to this. One difference he made was that the building involved in the case was listed under the relevant District Plan.

The Commissioners consider that the case was not of particular significance to these proceedings as it is based on different circumstances.

7.7.6 Breach of LGA

Mrs Ritchie considered that the consultation undertaken in developing this proposal constituted a breach of Section 5 of the Local Government Act 2002 (LGA). The Commissioners note that Section 5 of the LGA refers to the interpretation section. However, the Commissioners consider Mrs Ritchie may have been referring to 'Part 5' which relates to a governance and accountability framework for local authorities' involvement in arms-length organisations, council-controlled organisations and council organisations.

The Commissioners consider that the provisions contained in Part 5 relating to consultation have no direct relevance to the applicant because WWL is a 'council controlled organisation' as defined in Section 6(1) of the LGA and is not subject to the decision making requirement of local authorities.

8. Policies and objectives

As recorded in earlier sections throughout this decision, some submitters were concerned that the proposal was inconsistent with some provisions of the relevant statutory instruments, including the NZCPS, RPS and RCP.

The response by the applicant was largely lead by Mr Aburn. Rather than traverse every objective and policy to determine the relevance and

compatibility to the proposal, Mr Aburn instead formulated a series of questions which drew on the relevant provisions. These questions were:

1. *Will there be significant adverse effects on natural character of the coastal environment as a result of the development? [NZCP/RPS/RCP]*
2. *Does the proposal 'represent' an "appropriate" use and development in this part of the coastal environment? [NZCPS/RPS/RCP]*
3. *Will there be any loss of public access or diminution in the quality of that access to this part of the coastal environment? [NZCPS/RPS/RCP/DP]*
4. *Will there be any significant adverse effects on coastal processes and/or marine ecosystems of the CMA, including during construction? [NZCPS/RPS/RCP]*
5. *Is the proposed building consistent with its immediate setting and context in terms of overall urban form? [DP/WWF]*
6. *Will any important heritage features be significantly affected (modified or destroyed) by the proposed development? [RPS/RCP]*
7. *Will the proposed building and/or proposed activities have significant adverse effects on the character, sense of place or amenities of the Wellington waterfront? [DP/WWF]*
8. *Is the proposal consistent with the values, objectives and guidelines of the WWF? [WWF]*
9. *Can the proposed works and activities satisfactorily 'co-exist' with the adjacent Chaffers Marina? [WWF]*

The Commissioners found this approach, with the relevant statutory provisions identified, to be useful in getting a feel for the issue 'in the round'. They consider that these questions accurately reflect the planning regime from the relevant statutory instruments. However, to supplement this, the Commissioners have included a comprehensive breakdown of the relevant provisions of the planning instruments as Appendix 2 to this decision. The Commissioners responses to the questions are similar to that of Mr Aburn; however, they have answered each question below:

1. The Commissioners consider that there will not be significant adverse effects on the natural character of the coastal environment as a result of the development as it has been a highly developed site for over a century and its natural character was lost long ago.
2. With regards to whether this development is 'appropriate' the Commissioners considered three important provisions from the RCP – Objective 4.1.24 and Policies 6.2.1 and 4.2.45 provide useful guidance on the matter.

Objective 4.1.24 states:

The comprehensive development of the Lambton Harbour Development Area is provided for.

Policy 6.2.1 states:

To consider the following as appropriate in the coastal marine area:

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

Policy 4.2.45 states:

In the Lambton Harbour Development Area to:

- *provide for a wide range of activities appropriate to the harbour/city interface;*
- *provide for development compatible with the urban form of the city;*
- *recognise the heritage character, development and associations of the area;*
- *develop and have particular regard to any design guides for the area which are contained in any proposed or operative Wellington City District Plan;*
- *provide for a range of public open spaces, access and through-routes, and to ensure that their nature, purpose and function is maintained;*
- *ensure that the effects of development and activities do not detract from people's enjoyment of the area; and*

- *ensure that the area is an integral part of the working port of Wellington.*

The Commissioners are of the view that when read collectively Objective 4.1.24 and Policy 6.2.1 generally confirm that the LHDA is an appropriate location for the development of structures which are used “*for a wide range of activities appropriate to the harbour/city interface*”.

In relation to this development, Policy 4.2.45 identifies 7 matters which any development must either accommodate or be measured against. The Commissioners consider that the proposal accommodates each of the bullet points of this policy, except the 4th, as detailed in their assessment of the status of the WWF in section 6 of this decision. From that discussion the Commissioners conclude that bullet point 4 is not relevant as there are no Design Guides for this area. Overall, the Commissioners consider that the proposal is consistent with this policy and taking into account the provisions of the other statutory instruments they conclude that this is an appropriate use of the site.

3. The Commissioners consider that there will be no loss of public access in the long term or diminution in the quality of that access to this part of the coastal environment, as detailed in section 7.6.5 of this decision.
4. The Commissioners consider that the adverse effects on coastal processes and/or marine ecosystems associated with this development are limited to the construction phase of the development and will be no more than minor, as detailed in section 7.5.5 of this decision.
5. The Commissioners consider that the proposed building will be sympathetic to and consistent with its immediate setting and context in terms of overall urban form, as detailed in section 7.6.2 of this decision.
6. In terms of whether any important heritage features will be significantly affected (modified or destroyed) by the proposed development, the Commissioner’s conclusions on this matter are detailed in section 7.6.1 of this decision. However in summary, they consider that:
 - the most important heritage features are the wharf and wharf edges. The wharf will be modified and destroyed in some places as a result of the development. However, this will be somewhat compensated for by the applicant committing to retain as much of the heritage fabric as possible in the detailed design and construction phases of the project.
 - The formulation of a Heritage Values Retention Schedule and employing a conservation architect during the project will ensure

that heritage values will be taken into consideration throughout development of the proposal.

They consider the impact of these heritage effects to be minor to moderate.

7. The Commissioners consider that the proposed development will not have significant adverse effects on the character, sense of place or amenities of the Wellington waterfront. The adverse effects on visual amenity are detailed in section 7.6.4 of this decision. Also, in some respects they consider that the amenity value of the area will increase with particular respect to the quality of the open space.
8. The Commissioners consider that the proposal is consistent with the values, objectives and guidelines of the WWF. However, as they detailed in section 7.1.1 of this decision the WWF has limited weight in this decision.
9. The Commissioners consider that the proposed works and activities can satisfactorily 'co-exist' with the adjacent Chaffers Marina, as detailed in sections 7.5.4 and 7.6.3 of this decision, during and after construction of the development.

On the basis of the preceding responses the Commissioners consider that the question and answer approach adequately covers the policy and objectives portions of the planning regime from the relevant statutory instruments. Their conclusion is that overall the proposal is not inconsistent with the provisions in the relevant statutory instruments.

9. Sections 105, 107 and 108 of the Act

The Commissioners note that Sections 105 and 107 of the Act apply to the coastal permits associated with the discharge of contaminants to the CMA associated with the construction of the development.

9.1 Section 105 of the Act

The Commissioners had regard to the matters detailed in Section 105(1) (a) and (c) of the Act.

Dr Helson provided evidence, on behalf of the applicant, on the sensitivity of the receiving environment and concluded that the CMA in the area of the works was typical of other similar environments in the Wellington Region, specifically around the harbour. He also noted that the water quality in the area of the works was compromised because of stormwater drains which discharge near the site. The Commissioners accept the evidence of Dr Helson.

The applicant did not advise of any other alternative methods of discharging the contaminants to the CMA. However, the Commissioners note that the mitigation measures to be employed during the construction works will minimise the discharge of contaminants to the CMA.

The Commissioners have had regard to the above matters, and taking into account the conclusion reached in section 7 of this decision, conclude that the proposed discharge of contaminants to the CMA will not have significant adverse effects on the coastal water quality and ecology of the CMA.

9.2 Section 107 of the Act

This section sets requirements in relation to discharge permits and sets parameters for consideration by the Commissioners including the production of conspicuous grease or oil films on water, odour or diminution of visual clarity and adverse effects on aquatic life. The Commissioners consider that provided the conditions of consent are complied with the discharge of contaminants to the CMA will not result in any of the effects listed in this Section of the Act.

9.3 Section 108 of the Act

The Commissioners consider that they have at their disposal a series of practical and robust set of conditions (suggested by both the applicant and the officers over several iterations) that will avoid, remedy or mitigate the majority of the adverse effects on the environment as a result of the proposal. In circumstances where there maybe more than minor adverse effects on the environment (such as the impacts on heritage fabric of the wharf) the conditions remedy or mitigate those effects to an acceptable level. The consent conditions are attached as Appendix 3 to this decision.

In particular, the Commissioners highlight the fact that the conditions regarding the formulation of a Heritage Values Retention Schedule and the employment of a conservation architect to provide expert input throughout the detailed design phase and construction of the development will ensure the retention of heritage fabric is maximised throughout the project.

They also highlight the requirements to formulate various management plans. Prior to construction starting the applicant shall formulate a Heritage Fabric Retention Plan, Construction Management Plan, a Construction Noise Management Plan, a Night-time Construction Management Plan and a Sediment Management Plan. After construction is complete but prior to the development becoming operational the applicant shall formulate a Traffic Management Plan.

The Commissioners consider these plans will form a comprehensive suite of management tools that will ensure any adverse effects on the environment resulting from aspects of the construction works or the ongoing operation of the development will be adequately addressed. The Commissioners require that the majority of these management plans will be reviewed regularly to ensure they maintain their effectiveness.

Other conditions to note include:

- Establishing noise limits for activities and insulation standards for apartments;

- Supply of working drawings;
- Provision of parking for the public and marina users on the wharf;
- Provision of taxi access;
- Provision of storage facilities for the marina after construction is completed;
- The general minimisation of the discharge of contaminants to the CMA from the site; and
- The maintenance of the wharf.

10. Part 2 consideration

In considering this application, the Commissioners have had regard to those matters identified in Part 2 of the Act. In particular the Commissioners have to consider whether the proposal achieves the purpose of the Act, which is to promote the sustainable management of natural and physical resources.

In making their assessment of the Purposes and Principles of Part Two **Section 5(2)**, the Commissioners had regard to the meaning of ‘*sustainable management*’, which is defined as follows:

“...managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—

- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

In terms of this statutory framework, the Commissioners have made the following determinations:

- It is evident that the development will provide for the economic well-being of the people of Wellington. It will also provide social benefits as a result of the design of the development, for instance it will be an attractive place for people to visit and reside adding to the vibrancy and vitality of the area. In addition the 24 hour use of the site will provide an additional sense of safety and security for members of the public in that area.
- The development will ensure that the wharf, an important heritage feature, is upgraded in a timely manner, and maintained for the foreseeable future.

In addition to this point, they note that given its current poor state of repair some loss of heritage fabric is inevitable given the strengthening which is required to meet current building code standards.

- The Commissioners consider the potential adverse effects on the marine environment associated with the proposal will be no more than minor; therefore the life-supporting capacity of this ecosystem is provided for.
- The Commissioners have imposed conditions of consent in order to avoid, remedy or mitigate the adverse effects of the proposal on the environment.

Under **Section 6**, Matters of National Importance, the Commissioners consider that (e) and (f) are particularly relevant to this decision. These sections refer to *'the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga'* and *'the protection of historic heritage from in appropriate subdivision, use and development'* respectively as matters of national importance.

In terms of Section 6(e) the Commissioners note the cultural impact report produced by Raukura Consultants and in association with Wellington Tenth Trust. The report concludes that the proposed development will not create any significant cultural impacts. The Commissioners did not receive any evidence to the contrary and thus accept that conclusion.

In terms of Section 6(f) Historic Heritage is defined in Section 2 of the Act. It is a broad definition and amongst other items includes historic sites, structures, places and areas. The Commissioners conclude that the most important heritage feature is the wharf and wharf edge as identified in the RCP. However, they also agree with those who argued that the existing OPT building does hold heritage values, albeit to a lesser extent. They accept that although the OPT does not have statutory recognition, the submitters argument that it is part of the recent maritime history of the area is valid. The proposal will result in the modification and loss of some heritage values of the site as a result of the development. However, conditions imposed will result in the maximisation of heritage fabric retention throughout the project. To this end the Commissioners consider that the extent of the adverse effects on the heritage values associated with the site are minor to moderate and protection of historic heritage is recognised and provided for.

With regard to **Section 7** Other Matters, the Commissioners are of the opinion that the following sections are of some relevance to this application:

- (a) kaitiakitanga;
- (b) the efficient use and development of natural and physical resources;
- (c) the maintenance and enhancement of amenity values;
- (d) intrinsic values of ecosystems;
- (f) maintenance and enhancement of the quality of the environment;

- (g) any finite characteristics of natural and physical resources; and
- (i) the effects of climate change.

The Commissioners had regard to these matters whilst making their assessment of the actual and potential environmental effects resulting from the proposal and concluded that all these matters are addressed in some way earlier in this decision.

Section 8 of the Act requires a consent authority to take into account the principles of the Treaty of Waitangi when considering a resource consent application. The Commissioners received no evidence or information to suggest that the proposal will be contrary to these principles.

Overall, and in terms of Part 2 considerations, the Commissioners acknowledge that the Act has a principal purpose of promoting the “*sustainable management of natural and physical resources*” and that approving this application achieves that principal purpose without creating emissions to the CMA that will damage the environment to the detriment of future generations. From a land use perspective, the Commissioners also conclude that the commercial development of the site proposed in this application represents a way of both fulfilling the economic needs of the community whilst fitting into the local environment in an environmentally responsible manner.

11. Section 104B Determination

11.1 Statutory Test

As a discretionary activity the principal statutory context is set out in s.104 of the Act. The matters the Commissioners were required to have regard to when considering the applications were as follows:

- (1) *When considering an application for resource consent and any submissions received, the consent authority must, subject to Part II, have regard to –*
 - (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (b) *any relevant provisions of –*
 - (i) *a national policy statement*
 - (ii) *a New Zealand coastal policy statement*
 - (iii) *a regional policy statement or proposed regional policy statement*
 - (iv) *a plan or proposed plan*

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

In terms of the above, and for the reasons canvassed in the preceding sections of this decision, the Commissioners concluded as follows:

Any actual and potential effects on the environment

In relation to the first matter to be considered, - *any actual and potential effects on the environment of allowing the activity* - and drawing on the balance of the evidence, the Commissioners concluded that in the main any effects on the environment will not be more than minor and in many respects they will be positive (e.g. wharf strengthening, wind improvements and traffic calming). The potential exception to this relates to heritage effects where the impact was generally agreed to be more than minor but no more than moderate.

Without unduly repeating the details in their preceding assessment of effects, the Commissioners made the following summary determinations in respect to the categories of actual and potential effects arising from this proposal.

Urban design and townscape

In relation to *urban design and townscape*, and drawing particularly on the evaluation provided by TAG, the Commissioners concluded that a ‘good measure of fit’ is achieved by the proposed OPT building and associated open space enhancements and urban design outcomes for the Chaffers Area promoted through the WWF. Moreover, Commissioners determined that the proposal is consistent with the WWF and the Design Brief. The Commissioners endorsed the view by TAG who considered that the proposal is “highly resolved architecturally and makes a well-considered response to the Design Brief”.

Landscape and public open space

In terms of these two inter-related matters, the Commissioners considered that the simplicity of the *landscape design* acknowledges and reinforces the fact that the ‘site’ is a wharf, which by definition is an unobstructed open space that is accommodating a range of activities including the berthing and servicing of marine vessels. They concluded that the ‘minimalist’ approach to the landscape treatment not only is entirely in keeping with the nature of the wharf structure and its setting as part of the urban waterfront but that it also enhances the quality of the *public space*. They also noted that the retention of the various historical artefacts is an important element in the landscaping.

Overall, the effects on landscape and public space were categorised by the Commissioners as being positive and not adverse.

Views and visual amenities

The issues for the Commissioner in this category included effects on public views, private views and visual amenity generally.

In term of *private views*, the Commissioners agreed that the views of some of the adjacent Chaffers Dock apartment complex will be reduced. This was apparent from their site visits. However, it was also noted that in none of the instances cited by the submitters would the present views be completely lost. Whilst the panorama of some views would be reduced it is also arguable that the quality of the remaining views would not be diminished when regard is had to the mix of design and activity that is proposed. The Commissioners also noted that private views per se are not protected in the statutory instruments.

In terms of *public views*, the Commissioners were aligned to the evaluation of the reporting officer (Ms O'Callahan) who concluded that is that the proposal is likely to have only minor impacts on the three identified DP view shafts. The Commissioners observed that this assessment was supported by photomontages to be supplied by the Applicant at the hearing.

In terms of *overall amenity*, the Commissioners endorsed the TAG assessment which concluded that: the increase in bulk is carefully considered. Additional volume is concentrated at either end of the wharf with only a single additional residential floor between. This configuration limits the impact on city-harbour views.

Accordingly, and on the totality of the evidence, the Commissioners concluded that the new OPT will retain its significant landmark status (a positive effect and outcome) but at the same time will not result in any significant impact on city-harbour views.

Micro-climatic effects (wind/shading)

In terms of *wind effects* the Commissioners found the report by the Council's wind assessor (Mike Donn) to be conclusive. It confirmed the applicant's contention that wind speeds are generally improved by the proposed building. Whilst Mr Donn did, however, suggest a further mitigation measure involving the positioning of wind screens adjacent to the northern pedestrian/vehicle cross link, the Commissioners noted (with the endorsement of TAG) that such a measure could be further considered at the detailed design stage should it be considered to be desirable.

As far as *shading* is concerned, the Commissioners again endorsed the TAG assessment which concluded that while increased shading is likely in certain locations and at limited times of the year, it does not compromise the public use of the promenade. On that basis, the Commissioners concluded that shading effects as a result of the development will be no more than minor.

The overall conclusion of the Commissioners regarding these microclimatic effects is that that the proposal will generally improve shelter from wind and have a beneficial effect on the local pedestrian environment which is a positive outcome.

Amenity effects (noise/lighting)

In relation to *noise*, the high level of agreement between the Applicants' noise consultant (Mr Nigel Lloyd) and the Councils noise expert (Mr Matt Borich) was of significance for the Commissioners. Accordingly, they endorsed the principal conclusions by Mr Lloyd and Mr Borich; namely that:

The main source of adverse noise effects is from *construction activities* during the two-year construction period. A noise management plan will be prepared in accordance with the appropriate construction noise standard *NZS6803:1999 Acoustics - Construction Noise*. The noise management plan will place strict controls on the hours for the activities likely to generate the most significant noise, in particular hours for the re-piling activities; and

In terms of *post construction/ operational noise*, potential reverse sensitivity effects for the residential apartments from wharf related activities, marina operations and entertainment events held in nearby Waitangi Park will be satisfactorily addressed through appropriate sound insulation of the residential apartments.

Although there was little discussion of note on the issue of *lighting*, the Commissioners noted that a lighting assessment was lodged with the application. That assessment described the approach to building and promenade lighting and a preliminary evaluation was conducted against the standards in the DP which was in turn endorsed by Ms O'Callahan. The Commissioners acknowledged that the building and promenade lighting will be fully analysed during the design stage to ensure that the building does not only comply with statutory regulations, but also minimises light spill and glare. Accordingly, the Commissioners concluded that there will not be many, if any, adverse effects associated with lighting.

Coastal marine / ecological effects

Even though this application is for a series of coastal permit applications, the potential for effects on the marine environment and ecology resulting from the redevelopment project were largely not at issue. Accordingly, the assessment by the applicants' expert marine biologist Dr Jeremy Helson was largely uncontested. It was endorsed by Mr Pene.

The Commissioners noted that Dr Helson, as part of his assessment, had regard to the draft construction management plan (CMP) prepared by the proposed project contractor (LT McGuinness). Importantly for the Commissioners, Dr Helson noted that the CMP identified a number of potential effects and outlined appropriate measures to avoid or mitigate any associated effects and concluded that the actions outlined in the CMP "... *should contribute to limiting, as far as practicable, any significant effect on the marine environment*". The Commissioners acknowledged this and also the existence of a robust condition requiring the certification the CMP prior to works commencing is proposed.

Overall, the Commissioners adopted the conclusion of Dr Helson that the proposed development is not likely to affect the marine environment in the long term. They determined that any effects are likely to be limited to the construction phase, and given the nature of the existing environment and the proposed mitigation measures, will not be significant.

Heritage

Of all the issues raised during the hearing, the topic of heritage was one of the most prominent and contested issues. In this respect, the evidence of the two key heritage witnesses, Mr Wild for the applicant and Dr Teague for the Council was of a contrasting nature. On one hand, there was the *preservation approach* argued by Dr Teague who expressed considerable concern that adverse effects on the wharf and OPT's historic heritage will be more than minor due to the extent of demolition, and the lack of mitigation measures being proposed and that this would result in a dis-benefit to the wharf's and OPT's heritage values. On the other hand, there was the *adaptive reuse approach* discussed by Mr Wild, who acknowledged that this is not a conservation project in the strictest sense of the discipline and that the weighting of values and the balancing of effects upon heritage values in this case ensures that the "spirit" of the place (OPT and wharf fabric) is saved and enhanced where it appropriate to do so.

For the Commissioners, the central deciding aspect was whether, having regard to the heritage resource at stake, the proposal constituted "inappropriate use and development" of the heritage values. In considering this issue, the Commissioners had regard to a number of factors including:

- The wharf is a listed feature of "historic merit" in the RCP; whereas the heritage listing does not extend to the OPT building;
- The degree of retention of heritage fabric for both the wharf and the OPT; and in particular noting in particular that a significant proportion of the 'high value' heritage items as defined in Chris Cochran's 'OPT Heritage Values Assessment' have will either be literally retained, re-built or at least reinterpreted with sensitivity to their historical value in the redevelopment;
- The evidence of Adam Thornton who outlined the necessity for the structural upgrade of the sub-wharf structure; and also provided confirmation that significant elements, including sections of the lattice bracing, will be retained and 'exposed' to public view. Mr Thornton also confirmed that the removal of the fendering system at the north end in order to make way for the lower-level jetty extension is not essential and that it is now intended to retain this fendering;
- The evidence of Adam Wild who provided confirmation that a conservation architect will continue to provide expert input into the detailed design process, with a focus on identifying further heritage fabric/items that can be retained and re-used in the project; and

- Confirmation from the applicant regarding the use of interpretative panels at the site.

In addition to the above, the Commissioners also acknowledge Dr Teague's revised assessment having heard the additional evidence of the applicant regarding the above mentioned matters. Whilst, still of the opinion that the project does not constitute heritage conservation per se, Dr Teague did acknowledge the positive aspects of the applicants further evidence.

The Commissioners, also accept that the project is not a heritage conservation project and were of the view that Mr Wild encompassed the issue appropriately when he stated that:

“Conservation should be sustainable and the condition and use of the Clyde Quay Wharf and OPT “conserved” in their current form does not appear sustainable. In my opinion the proposal balances heritage values with enhanced future use and amenity values.”

Based on their assessment of all the factors, the Commissioners determined that an appropriate balance has been reached between enabling an adaptive re-use of the wharf and building, while at the same time maximising the retention of heritage fabric. In short, the proposal is an appropriate use and development of historic heritage.

Vehicle access, servicing and parking (traffic effects)

The topic of traffic effects was largely of the “nuts and bolts” mould which was primarily dealt with by the Applicant's traffic engineer (Mr Galloway) through minimum standards such as ramp gradients and aisle widths. Notwithstanding, this, one of the key considerations for the Commissioners was the quality of the shared pedestrian/vehicle spaces on the wharf. The Commissioners noted that the Waterfront Framework emphasises that the promenade, of which the wharf is part, is primarily a pedestrian space. In this respect, the Commissioners derived a considerable amount of comfort from the summary comment made by the Council's Chief Transportation Engineer Mr Steve Spence that:

“I am of the view that the parking arrangements proposed are appropriate and will lead to a number of improvements over the current situation; in particular the reduction in availability of longer stay public parking and the reduction in the availability of casual parking around the perimeter of the OPT will be beneficial in improving the pedestrian environment in this area.”

The Commissioners also noted Mr Pene's conclusion which is that subject to the preparation of a Traffic Management Plan, and some further detail relating to management of taxis on the wharf, the proposal ...would have no more than minor effect on the public road network and pedestrian safety and amenity on the wharf.

Based on the traffic evidence of Mr Galloway and Mr Spence, subject to appropriate consent conditions along the lines of those proposed by the

Officers, the Commissioners concluded that appropriate provision has been made for vehicles access, parking and servicing such that the aspirations of the Waterfront Framework are realised.

Marina Operations

Although potentially an area for significant debate at the hearing, this issue was largely resolved as a result of a detailed Agreement between the Marina Company and the applicant. That agreement was tabled for the information of the Commissioners.

Notwithstanding the presence of the Agreement, and particularly given that it is not binding on the deliberations process, the Commissioners clearly understood that they needed to be satisfied that the long term functionality and viability of the Marina – a key physical resource in the “existing environment” – will not be adversely affected by the proposal. Based on the concerns raised by the submitters, the issues distilled to the following five specific matters being satisfactorily addressed:

- Maintenance of appropriate access to the marina (during and after construction);
- Confirmation of the number and location of dedicated car parks;
- Retention of marina support facilities in the new OPT;
- Opportunity for maritime-related businesses to locate in the new OPT; and
- Provision of an effective construction management plan.

Based on the evaluation the evidence of the applicant (Keith Hogan, Ian Pike, Richard Galloway and Peter McGuinness), and the conclusion of the reporting officer (Mr Pene), the Commissioners concluded that appropriate regard/provision has been taken/will be made in relation to f these matters such that the effects can be classified as temporary and minor.

Construction effects

The Commissioners noted and accept that there will be disruption for a period of around two years caused by construction activity. They acknowledged that the potential for disruption exists with any major development in the Central Area and on the waterfront. However, with the implementation of the required construction management plan, including construction traffic management, the Commissioners determined that such effects can be appropriately mitigated through robust construction management practices and procedures being adopted.

The Commissioners also noted that full compliance with *NZS 683:1999, Acoustics - Construction Noise* is proposed; and also how the “best practicable option” will be adopted at all times to ensure the emission of noise from the

site during construction will not exceed a reasonable level in accordance with s.16 of the Act.

Summary - Environmental Effects

In summary, the Commissioners were satisfied that the information originally presented in the AEE and supplemented during the hearing the Applicant's technical witnesses in response to Mr Pene's request for further information provides a comprehensive and robust assessment of the potential effects of the proposed redevelopment and adaptive re-use of the OPT building and Clyde Quay wharf on the environment.

In terms of s.104(1)(a) the Commissioners concluded that any actual and potential effects on the environment of allowing the activity are either positive, or, where they have the potential to be adverse, given the proposed mitigation directed by the consent conditions, they will be acceptable in the context of the sustainable management purpose of the Act.

Plan and Policy Provisions/Other Matters

Having considered the initial part of the 104C "test" - the nature of the effects - the Commissioners moved on to consider the proposal against the provisions of the relevant statutory and non statutory instruments. A full evaluation of those provisions has been undertaken earlier in this decision and without repeating that but indeed drawing on the conclusions from that exercise, the Commissioners moved to consider the degree of consistency (or otherwise) between the proposal and the relevant policy framework in the following statutory instruments:

- New Zealand Coastal Policy Statement
- Regional Policy Statement for the Wellington Region
- Regional Coastal Plan, including Policy 4.2.45
- Wellington City District Plan; and
- Wellington Waterfront Framework

By way of explanation for the above list, the Commissioners note that in addition to considering the relevant statutory plans and policy statements, they have also considered the Wellington Waterfront Framework – a non statutory document or "*other mater*".

Having undertaken a detailed assessment of the proposal against each of the aforementioned documents, the Commissioners assessment, in short, is that overall, when viewed 'in the round', the proposal is not only generally consistent with the various statutory instruments, but in several ways will actively implement the many applicable objectives and policies that arise from those instruments. In their view the proposal is by no means "contrary" in the

sense of being ‘opposed in nature’ or ‘repugnant’ to the overall purpose and scheme of the applicable plans and policy statements.

Also, and as indicated in their assessment under Part 2 of the Act, the Commissioners were of the view that the proposal is consistent with the ‘sustainable management’ purpose of the Act.

In arriving at this conclusion the Commissioners have drawn upon the RCP’s provisions relating to the Lambton Harbour Development Area (particularly policy 4.2.45 and policy 6.2.1 of RCP); the District Plan’s provisions for the waterfront, and the Wellington Waterfront Framework. In doing so, the following key outcomes have been determined which the Commissioners consider to be relevant to an assessment of the proposed redevelopment and adaptive re-use of the existing OPT building and Clyde Quay Wharf:

- The application site is within the Wellington inner harbour in that part of the CMA where development is considered appropriate – i.e. the LHDA;
- The application incorporates uses which are acknowledged in both the RCP and the DP to be appropriate to the harbour/city interface, particularly the mix of residential and commercial activities;
- Existing activities in the locality which are appropriately located in the CMA - notably the marina and marine services in the OPT - will largely be maintained and, apart from temporary disruption during the construction period, will not adversely affected;
- The new OPT building development will, based on independent advice from TAG, generally be consistent with the overall urban form of the Central Area;
- The ‘new build’ component of the proposal will enable activities to establish that will add to the vitality and vibrancy of the waterfront;
- The new buildings will (again on the independent advice of TAG) be complementary to, and in scale appropriate to, existing buildings (and potential future buildings) around them;
- Although heritage fabric from listed and unlisted buildings (i.e. the wharf and the OPT respectively) will be lost, significant heritage fabric and features (based on the independent advice of Chris Cochran) are to be preserved and protected,
- In this respect, the Commissioners considered that the heritage values of both the wharf and the OPT per se are being protected from inappropriate use and development and waterfront heritage values are recognised and provided for;
- Public access to the marina and around the wharf will be both maintained and enhanced. The additional low level northern jetty will contribute to this; and

- There was a high level agreement amongst the experts that adverse effects on coastal processes and marine ecosystems will be largely avoided and where necessary mitigated, through the production of, adherence to and monitoring of construction management plans.

Reading the policies and plans provisions ‘in the round’ in relation to waterfront buildings, the Commissioners considered that the ‘environmental result’ that is anticipated is a LHDA / waterfront area which:

- Provides for buildings which accommodate activities appropriate to the harbour/city interface and which support a high quality public environment, and
- Encourages buildings which, in scale, are complementary to other buildings in the locality.

It is this ‘result’ that they consider represents the “overall purpose and scheme” of the Plans.

In applying this “anticipated result” to the proposal before them, the Commissioners accepted that there is a high level of consistency between the overall planning strategy (policy direction for CMA, Central Area development and waterfront development) and the outcome represented by the proposed Wharf/OPT development. In their view, this is particularly so in relation to the development not being inconsistent with, or indeed not contrary to, the overall planning strategy for the waterfront/central city interface (as represented by the objectives, policies and rules of both the RCP, DP and (to a lesser extent) the Waterfront Framework.

In terms of s.104(1)(b) and (c), the Commissioners concluded on this basis that overall the proposed development will actively implement many of the key objectives and policies in both the statutory and non- statutory documents. Thus, the Commissioners agreed with Mr Pene that the proposed development can readily be categorised as “not being contrary to” the relevant objectives and policies of the NZCPS, the RPS, the RCP, the DP and the WWF.

Section 104B Determination

Based on these conclusions, the Commissioners have determined that there are no jurisdictional hurdles in the Act under s.104B to the granting of the consent.

12. Concluding remarks

There are a number of important themes running through this decision which underpin the nature and outcome the Commissioners’ determination. In an endeavour to make the basis of their decision-making transparent the Commissioners resolved to summarise these themes in the following brief outline. It is hoped that in doing so the mechanisms of the decision are clear to all parties.

- Essentially these concluding remarks fall into three categories as follows:
- Observation about the Contextual Setting;
- Comment on the Statutory Instruments; and
- Appropriateness of the Selected Design

Observation about the contextual setting

Firstly, a fundamental basis of the decision relates to the contextual setting for considering the effects of the proposed OPT activity, particularly the effects relating to land use issues associated with the CMA/Central Area interface. In terms of this contextual setting, and as implied earlier in this decision, the Commissioners observed that although this is an application for a suite of coastal permit applications, the traditional issues associated with such applications, namely effects on marine ecosystems and ecology, were largely uncontested during the application.

Whilst this may have been partially due to the high degree of acceptance of the management plan processes proposed for dealing with potential discharges during the construction and operation periods, the Commissioners were of the view that this largely reflected that it is the land use issues raised by the application which are of most interest and concern to the parties.

In this respect, and aside from the heritage/noise insulation rules and CMA occupation policy issues in the RCP, the provisions of the NZCPS, RPS and RCP were not to the forefront as might normally be expected with coastal permit applications. Conversely, and because of cross boundary issues highlighted in the regional documents, the provisions of the DP (traffic, noise, wind, parking, shading, views etc) and (to a lesser extent) the Waterfront Framework (heritage, pedestrian safety and convenience) were extensively considered.

Having said that, and lest it be thought otherwise, the provisions of the regional documents were still important in the overall deliberations, particularly the RCP as it was the driver for both the heritage and noise insulation issues and for determining the appropriateness of locating the proposed activity in the CMA.

Commentary on the statutory instruments

Secondly, and in terms of the above contextual observations, the Commissioners wish to record the following subsidiary observations regarding the statutory instruments that they considered:

Regional Coastal Plan (RCP)

Whilst the wharf and wharf edges are listed in the RCP and thus consent as a discretionary activity is required, the Commissioners found very little specific guidance in the RCP in terms of how to assess the acceptability (or otherwise) of the alterations to and removal of heritage fabric. Whilst the RCP provides

broad policy guidance associated with heritage issues, the paucity of assessment criteria and precise guidance was noted by the Commissioners. Although not a fatal omission in the RCP, this did mean however that the Commissioners were highly reliant on the evidence of the experts presenting and in this respect the *adaptive re-use approach* by Dr Wild found favour with the Commissioners over the *Conservation Heritage approach* of Dr Teague and Ms Paynter. The Commissioners noted the support for that choice in both the Design Brief and in the assessments of TAG.

As an aside, the Commissioners record that the Regional Council may wish to investigate ways in which to incorporate more guidance on heritage assessment into the RCP should they concur with the concerns of the Commissioners.

In terms of the appropriateness of locating commercial and residential activities of the type proposed in the CMA, the Commissioners observed a very clear and strong policy direction in the framework of the RCP for encouraging such activities in the Lambton Harbour Development Area (LHDA). Moreover, the Commissioners noted that whilst Policy 6.2.1 implies that any structure associated with a use that does not have to be located in the coastal marine area is considered inappropriate, the explanation to that policy clearly states that this exclusion does not apply to the LHDA.

Having established that, the Commissioners noted the focus of the RCP is then on Policy 4.2.45 which sets out what type of activities and structures are appropriate in the LHDA area of the CMA. In this respect, the Commissioners found clear guidance in that policy that “*provides for a wide range of activities appropriate to the harbour/city interface*” and “*provides for development compatible with the urban form of the city.*” Accordingly, the Commissioners determined that the Clyde Quay Wharf is recognised in the RCP (and the Waterfront Framework for that matter) as an appropriate place for development and that the ‘new’ OPT, given the intended range of activities, will add vibrancy and vitality to this part of the waterfront.

The Commissioners concluded that the application before them is an “appropriate” use and development of this important site, in a manner consistent with the statutory Plan (the RCP).

District Plan

Once the “big picture” issues of heritage and appropriate activity had been canvassed by the Commissioners then the District Plan became the vehicle for assessing the effects associated with the activity during both the construction and post construction periods. In this respect, the Commissioners acknowledged that although the rules in the Plan did not have direct application to the CMA because of jurisdictional issues they were a useful measure against which to assess the degree to which effects would be acceptable and the degree to which they may be mitigated avoided and /or remedied.

In undertaking this exercise, the Commissioners observed an expectation from some submitters that the District Plan rules would be mandatorily applied to the development. The Commissioners wish to record that this was clearly not

the case nor should it have been. At the most the District Plan rules are guidelines for considering the land use effects associated with activities and buildings in the CMA. The statutory mandate for this is the policy cross-references in the RCP as opposed to the triggering of District Plan rules per se. For example rules covering, wind, height, construction noise, view shafts, car parking/traffic and shading and lighting are not directly applicable to this development. They are useful guidelines for assessing the acceptability of the activity and its effects. Notwithstanding this, the Commissioners did acknowledge the high degree of compliance with the majority of these rules and concluded that the effects are of an acceptable level when measured against the District Plan.

Waterfront Framework

There has already been discussion on this document earlier in this decision. The key outcome of that was to convey to the parties the degree of weighting that the Commissioners placed on that document. Without repeating that in detail, the Commissioners record that the weight attributed to the Framework is low. This is in line with its status as a non statutory document that has not been tested via the RMA process. At most, it forms an “*other matter*” to be considered under section 104(1)(c) of the Act.

Notwithstanding this assessment, the Commissioners wish to record that even if the Waterfront Framework document had been afforded more weight it is doubtful that its contribution to the decision-making process would have been any different given its lack of precise direction for development on Clyde Quay Wharf. In this respect, and by way of example, whilst the OPT is one of several listed building in the Framework the only reference to it in that document is that “*the OPT will be retained and developed*”. The Commissioners did not find this minimal reference to be of any assistance.

For the record however, and whilst the Framework per se was of little direct relevance, the Design Brief for the OPT development which has been developed by the WDSC with the input of TAG and Chris Cochran was of considerable relevance and assistance to the Commissioners in the areas of heritage assessment, traffic and pedestrian conflict, urban design, landscape treatment and public/open space provision. The Commissioners found it ironic that this type of Design Brief was largely what the now abandoned second phase of the review of the Waterfront Framework was supposed to achieve by way of design guides for the five identified areas that comprise the waterfront area.

Appropriateness of the selected design

The third and final point that the Commissioners make relates to an inference in some of the submitters’ cases that this development proposed by the applicant is not the most optimum use or design for the site. Whilst this may or not be the case, the Commissioners determined that this is not a relevant consideration for them. Some submitters were particularly critical of the design and argued that alternative development options for this important site should have been canvassed by way of a design competition.

The Commissioners response to this is to emphasise that it is not the consent authority's role to determine the most effective approach for addressing the possibilities presented by the site but to assess the effects of a specific proposal in relation to, inter alia, building height and design. This is what the Commissioners have done. Furthermore they have resisted any temptation sought from the submitters to tinker with the design or height. For them it was a case of either approving or declining the application. In the end the Commissioners have approved the application because it passes the tests of the Act.

Summary/Conclusion

In summary, the principal conclusions of the Commissioners are:

- (a) the proposed redevelopment and adaptive re-use of the OPT and Clyde Quay Wharf will make an overall positive contribution to the waterfront's amenities;
- (b) effects, where they have the potential to be adverse, have been appropriately avoided, remedied or mitigated, including effects on the heritage values of the Clyde Quay Wharf (a listed heritage feature) and the OPT building and effects on the operation of the Chaffers Marina;
- (c) an appropriate level of consistency is achieved with the overall purpose and scheme of the Regional Coastal Plan, the principal statutory instrument governing the development and use of resources in the coastal marine area (CMA);
- (d) the proposal is consistent with the vision, themes and principles of the Wellington Waterfront Framework; and
- (e) the relevant statutory tests of the Resource Management Act 1991 are met.

Overall, therefore, the Commissioners conclude that the proposed redevelopment and adaptive re-use of the OPT and Clyde Quay Wharf is an appropriate use and development of an important physical resource located within the CMA.

13. Decision

The Hearing Commissioners, acting pursuant to the powers delegated to them by the Wellington Regional Council under Section 34 of the Act, and subject to Sections 104, 104B, 105, 107 and 108 of the Act, hereby grant the following coastal permits subject to the conditions listed in Appendix 3 to this decision and for the durations stated in section 14 of this decision:

- WGN080117 [26385] Coastal permit for the redevelopment of the existing Overseas Passenger Terminal building (including partial demolition, additions and alterations) and its use for cafes/restaurants, retail, gallery

and other public uses, residential apartments, and car parking; for the construction of an under-wharf deck to be used for private parking; for the refurbishment, strengthening, repair and refurbishment of the Clyde Quay Wharf (including partial demolition, additions and alterations) and for the maintenance of each of these structures;

- WGN080117 [26386] Coastal permit to disturb the foreshore and seabed, in connection with the strengthening, repair and refurbishment of the Clyde Quay Wharf; the redevelopment of the Overseas Passenger Terminal building and the construction of an under-wharf deck;
- WGN080117 [26387] Coastal permit to discharge contaminants to the coastal marine area, in connection with demolition and construction activities associated with the redevelopment of the Overseas Passenger Terminal building, the strengthening, repair and refurbishment of the Clyde Quay Wharf and the construction of an under-wharf deck;
- WGN080120 [26390] Coastal permit for the strengthening, repair and refurbishment of the Clyde Quay Wharf (including partial demolition, additions and alterations) and its use for car parking and as public open space; for the construction of a lower-level jetty extension and storage lockers; and the maintenance of each of these structures;
- WGN080120 [26391] Coastal permit to occupy the land of the crown in the coastal marine area with a lower-level jetty extension of the Clyde Quay Wharf;
- WGN080120 [26392] Coastal permit to disturb the foreshore and seabed, in connection with the strengthening, repair and refurbishment of the Clyde Quay Wharf (including piling works) and the construction of a lower level jetty extension and storage lockers; and
- WGN080120 [26393] Coastal permit to discharge contaminants to the coastal marine area, in connection with demolition and construction activities associated with the strengthening, repair and refurbishment of the Clyde Quay Wharf (including piling works) and the construction of a lower level jetty extension and storage lockers

14. Duration of consent

Pursuant to Section 123 of the Act, coastal permits WGN080117 [26385] and WGN080120 [26390] that relate to the redevelopment/refurbishment of the Overseas Passenger Terminal building and Clyde Quay Wharf and the use and maintenance of those new structures and coastal permit WGN080120 [26391] to occupy the land of the crown in the coastal marine area with a lower-level jetty extension of the Clyde Quay Wharf, are granted for a duration of 35 years. This is the maximum period that may be granted for a coastal permit under Section 123(d) of the Act.

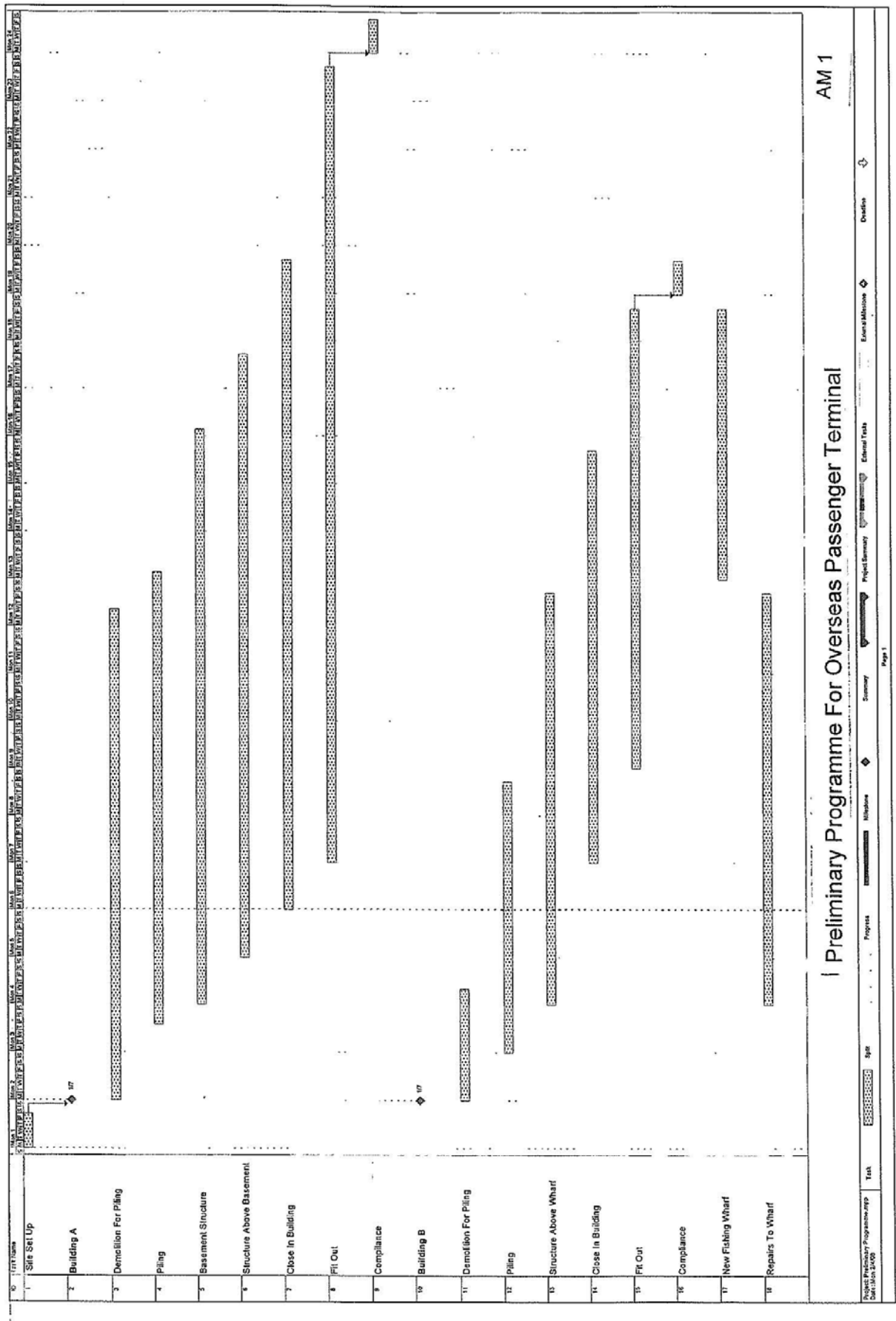
Coastal permits WGN080117 [26386] and [26387] and WGN080120 [26392] and [26393] which relate to discharges and disturbance of the coastal marine

area during the construction period, are granted for a period of seven years. These permits are required for the construction of the development; therefore it is appropriate to limit their duration to a shorter time period. Seven years allows sufficient time for the works to be completed and makes allowance for some delay to the commencement of construction whilst ensuring that the development will progress in a timely manner, thus providing surety for all users of the waterfront.

A handwritten signature in black ink, appearing to read 'S. Baber.', with a stylized flourish at the end.

Cr Sally Baber (Chair)

Appendix 1 – Construction programme and timeline



Appendix 2 – Relevant provisions of the statutory instruments

Resource Management Act

Section 2: Interpretation

Historic heritage

- (a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand’s history and cultures, deriving from any of the following qualities:
 - (i) archaeological;
 - (ii) architectural;
 - (iii) cultural;
 - (iv) historic;
 - (v) scientific;
 - (vi) technological; and
- (b) includes –
 - (i) historic sites, structures, places, and areas; and
 - (ii) archaeological sites; and
 - (iii) sites of significance to Maori, including wahi tapu; and
 - (iv) surroundings associated with the natural and physical resources.

Section 5 – Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—
 - (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Section 6 – Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.
- (f) The protection of historic heritage from inappropriate subdivision, use, and development
- (g) The protection of recognised customary activities.

Section 7 – Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (a) Kaitiakitanga:
- (aa) The ethic of stewardship:
- (b) The efficient use and development of natural and physical resources:
- (ba) The efficiency of the end use of energy:
- (c) The maintenance and enhancement of amenity values:
- (d) Intrinsic values of ecosystems:
- (e) *Repealed:*
- (f) Maintenance and enhancement of the quality of the environment:
- (g) Any finite characteristics of natural and physical resources:
- (h) The protection of the habitat of trout and salmon:

- (i) The effects of climate change:
- (j) The benefits to be derived from the use and development of renewable energy.

Section 8 – Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Section 12 – Restrictions on use of coastal marine area

- (1) No person may, in the coastal marine area,—
 - (a) Reclaim or drain any foreshore or seabed; or
 - (b) Erect, reconstruct, place, alter, extend, remove, or demolish any structure or any part of a structure that is fixed in, on, under, or over any foreshore or seabed; or
 - (c) Disturb any foreshore or seabed (including by excavating, drilling, or tunnelling) in a manner that has or is likely to have an adverse effect on the foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal); or
 - (d) Deposit in, on, or under any foreshore or seabed any substance in a manner that has or is likely to have an adverse effect on the foreshore or seabed; or
 - (e) Destroy, damage, or disturb any foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal) in a manner that has or is likely to have an adverse effect on plants or animals or their habitat; or
 - (f) Introduce or plant any exotic or introduced plant in, on, or under the foreshore or seabed; or
 - (g) destroy, damage, or disturb any foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal) in a manner that has or is likely to have an adverse effect on historic heritage—

unless expressly allowed by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or a resource consent.

- (2) No person may, in relation to land of the Crown in the coastal marine area, or land in the coastal marine area vested in the regional council,—
 - (a) Occupy any part of the coastal marine area; or
 - (b) Remove any sand, shingle, shell, or other natural material from the land—

unless expressly allowed by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or by a resource consent.

- (3) Without limiting subsection (1), no person may carry out any activity—
- (a) In, on, under, or over any coastal marine area; or
 - (b) In relation to any natural and physical resources contained within any coastal marine area,—

in a manner that contravenes a rule in a regional coastal plan or a proposed regional coastal plan unless the activity is expressly allowed by a resource consent or allowed by section 20A (certain existing lawful activities allowed).

- (4) In this Act... -
- (a) Repealed
 - (b) “Remove any sand, shingle, shell, or other natural material” means to take any of that material in such quantities or in such circumstances that, but for the rule in the regional coastal plan or the holding of a resource consent, a licence or profit à prendre to do so would be necessary.
- (5) The application of this section to overflying by aircraft shall be limited to any noise emission controls that may be prescribed by a regional council in relation to the use of airports within the coastal marine area.
- (6) This section shall not apply to anything to which section 15A or 15B applies.

Section 15 – Discharge of contaminants into the environment

- (1) No person may discharge any—
- (a) Contaminant or water into water; or
 - (b) Contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or
 - (c) Contaminant from any industrial or trade premises into air; or
 - (d) Contaminant from any industrial or trade premises onto or into land—
- unless the discharge is expressly allowed by a rule in a regional plan and in any relevant proposed regional plan, a resource consent, or regulations.
- (2) No person may discharge any contaminant into the air, or into or onto land, from—
- (a) Any place; or
 - (b) Any other source, whether moveable or not,—

in a manner that contravenes a rule in a regional plan or proposed regional plan unless the discharge is expressly allowed by a resource consent, or regulations, or allowed by section 20A (certain existing lawful activities allowed).

- (3) This section shall not apply to anything to which section 15A or section 15B applies.

Section 104 – Consideration of applications

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—
- (a) any actual and potential effects on the environment of allowing the activity; and
 - (b) any relevant provisions of—
 - (i) a national policy statement:
 - (ii) a New Zealand coastal policy statement:
 - (iii) a regional policy statement or proposed regional policy statement:
 - (iv) a plan or proposed plan; and
 - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
- (2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect
- (2A) When considering an application affected by section 124, the consent authority must have regard to the value of the investment of the existing consent holder.
- (3) A consent authority must not—
- (a) have regard to trade competition when considering an application:
 - (b) when considering an application, have regard to any effect on a person who has given written approval to the application:
 - (c) grant a resource consent contrary to—
 - (i) section 107 or section 107A or section 217:
 - (ii) an Order in Council in force under section 152:
 - (iii) any regulations:
 - (iv) a *Gazette* notice referred to in section 26(1), (2), and (5) of the Foreshore and Seabed Act 2004:

- (d) grant a resource consent if the application should have been publicly notified and was not.
- (4) Subsection (3)(b) does not apply if a person has given written approval in accordance with that paragraph but, before the date of the hearing (if a hearing is held) or otherwise before the determination of the application, that person gives notice in writing to the consent authority that the approval is withdrawn.
- (5) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.

Section 104A – Determination of applications for controlled activities

After considering an application for a resource consent for a controlled activity, a consent authority—

- (a) must grant the application, unless it has insufficient information to determine whether or not the activity is a controlled activity; and
- (b) may impose conditions on the consent under section 108 for matters over which it has reserved control in its plan or proposed plan.

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

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

- (a) may grant or refuse the application; and
- (b) if it grants the application, may impose conditions under section 108.

Section 104C – Particular restrictions for restricted discretionary activities

When considering an application for a resource consent for a restricted discretionary activity, a consent authority—

- (a) must consider only those matters specified in the plan or proposed plan to which it has restricted the exercise of its discretion; and
- (b) may grant or refuse the application; and
- (c) if it grants the application, may impose conditions under section 108 only for those matters specified in the plan or proposed plan over which it has restricted the exercise of its discretion.

Section 104D – Particular restrictions for non-complying activities

- (1) Despite any decision made for the purpose of section 93 in relation to minor effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—
 - (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(b) applies) will be minor; or
 - (b) the application is for an activity that will not be contrary to the objectives and policies of—
 - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or
 - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.
- (2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.

Section 105 – Matters relevant to certain applications

- (1) If an application is for a discharge permit or coastal permit to do something that would contravene section 15 or section 15B, the consent authority must, in addition to the matters in section 104(1), have regard to—
 - (a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
 - (b) the applicant's reasons for the proposed choice; and
 - (c) any possible alternative methods of discharge, including discharge into any other receiving environment.
- (2) If an application is for a resource consent for a reclamation, the consent authority must, in addition to the matters in section 104(1), consider whether an esplanade reserve or esplanade strip is appropriate and, if so, impose a condition under section 108(2)(g) on the resource consent.

Section 107 – Restriction on grant of certain discharge permits

- (1) Except as provided in subsection (2), a consent authority shall not grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A allowing—
 - (a) The discharge of a contaminant or water into water; or

- (b) A discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or
- (ba) The dumping in the coastal marine area from any ship, aircraft, or offshore installation of any waste or other matter that is a contaminant,—

if, after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters:

- (c) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:
 - (d) Any conspicuous change in the colour or visual clarity:
 - (e) Any emission of objectionable odour:
 - (f) The rendering of fresh water unsuitable for consumption by farm animals:
 - (g) Any significant adverse effects on aquatic life.
- (2) A consent authority may grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A that may allow any of the effects described in subsection (1) if it is satisfied—
- (a) That exceptional circumstances justify the granting of the permit; or
 - (b) That the discharge is of a temporary nature; or
 - (c) That the discharge is associated with necessary maintenance work—
- and that it is consistent with the purpose of this Act to do so.
- (3) In addition to any other conditions imposed under this Act, a discharge permit or coastal permit may include conditions requiring the holder of the permit to undertake such works in such stages throughout the term of the permit as will ensure that upon the expiry of the permit the holder can meet the requirements of subsection (1) and of any relevant regional rules.

Section 108 – Conditions of resource consents

- (1) Except as expressly provided in this section and subject to any regulations, a resource consent may be granted on any condition that the consent authority considers appropriate, including any condition of a kind referred to in subsection (2).
- (2) A resource consent may include any one or more of the following conditions:

- (a) Subject to subsection (10), a condition requiring that a financial contribution be made:
 - (b) a condition requiring provision of a bond (and describing the terms of that bond) in accordance with section 108A:
 - (c) A condition requiring that services or works, including (but without limitation) the protection, planting, or replanting of any tree or other vegetation or the protection, restoration, or enhancement of any natural or physical resource, be provided:
 - (d) In respect of any resource consent (other than a subdivision consent), a condition requiring that a covenant be entered into, in favour of the consent authority, in respect of the performance of any condition of the resource consent (being a condition which relates to the use of land to which the consent relates):
 - (e) Subject to subsection (8), in respect of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 (relating to the discharge of contaminants) or section 15B, a condition requiring the holder to adopt the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of the discharge and other discharges (if any) made by the person from the same site or source:
 - (f) In respect of a subdivision consent, any condition described in section 220 (notwithstanding any limitation on the imposition of conditions provided for by section 77B(2)(c) or (3)(c)):
 - (g) In respect of any resource consent for reclamation granted by the relevant consent authority, a condition requiring an esplanade reserve or esplanade strip of any specified width to be set aside or created under Part 10:
 - (h) In respect of any coastal permit to occupy any part of the coastal marine area (relating to land of the Crown in the coastal marine area or land in the coastal marine area vested in the regional council), a condition—
 - (i) Detailing the extent of the exclusion of other persons:
 - (ii) Specifying any coastal occupation charge.
- (3) A consent authority may include as a condition of a resource consent a requirement that the holder of a resource consent supply to the consent authority information relating to the exercise of the resource consent.
- (4) Without limiting subsection (3), a condition made under that subsection may require the holder of the resource consent to do one or more of the following:
- (a) To make and record measurements:

- (b) To take and supply samples:
 - (c) To carry out analyses, surveys, investigations, inspections, or other specified tests:
 - (d) To carry out measurements, samples, analyses, surveys, investigations, inspections, or other specified tests in a specified manner:
 - (e) To provide information to the consent authority at a specified time or times:
 - (f) To provide information to the consent authority in a specified manner:
 - (g) To comply with the condition at the holder of the resource consent's expense.
- (5) Any conditions of a kind referred to in subsection (3) that were made before the commencement of this subsection, and any action taken or decision made as a result of such a condition, are hereby declared to be, and to have always been, as valid as they would have been if subsections (3) and (4) had been included in this Act when the conditions were made, or the action was taken, or the decision was made.
- (6) *Repealed.*
- (7) Any condition under subsection (2)(d) may, among other things, provide that the covenant may be varied or cancelled or renewed at any time by agreement between the consent holder and the consent authority.
- (8) Before deciding to grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 (relating to the discharge of contaminants) or 15B subject to a condition described in subsection (2)(e), the consent authority shall be satisfied that, in the particular circumstances and having regard to—
- (a) The nature of the discharge and the receiving environment; and
 - (b) Other alternatives, including any condition requiring the observance of minimum standards of quality of the receiving environment —
- the inclusion of that condition is the most efficient and effective means of preventing or minimising any actual or likely adverse effect on the environment.
- (9) In this section, “financial contribution” means a contribution of—
- (a) Money; or
 - (b) Land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent), but excluding Maori land within the

meaning of the Maori Land Act 1993 unless that Act provides otherwise; or

- (c) A combination of money and land.
- (10) A consent authority must not include a condition in a resource consent requiring a financial contribution unless—
- (a) The condition is imposed in accordance with the purposes specified in the plan or proposed plan (including the purpose of ensuring positive effects on the environment to offset any adverse effect); and
 - (b) The level of contribution is determined in the manner described in the plan or proposed plan.

New Zealand Coastal Policy Statement

Policy 1.1.1

It is a national priority to preserve the natural character of the coastal environment by:

- (a) encouraging appropriate subdivision, use or development in areas where the natural character has already been compromised and avoiding sprawling or sporadic subdivision, use or development in the coastal environment;
- (b) taking into account the potential effects of subdivision, use or development on the values relating to the natural character of the coastal environment, both within and outside the immediate location;
- (c) avoiding cumulative adverse effects of subdivision, use and development in the coastal environment.

Policy 1.1.3

It is a national priority to protect the following features, which in themselves or in combination, are essential or important elements of the natural character or the coastal environment:

- (a) landscapes, seascapes and landforms, including:
 - (i) significant representative examples of each landform which provide the variety in each region;
 - (ii) visually or scientifically significant geological features; and
 - (iii) the collective characteristics which give the coastal environment its natural character including wild and scenic areas;
- (b) characteristics of special spiritual, historical or cultural significance to Maori identified in accordance with tikanga Maori; and

(c) significant places or areas of historic or cultural significance.

Policy 2.1.2

Protection of the characteristics of the coastal environment of special value to the tangata whenua should be carried out in accordance with tikanga Maori. Provision should be made to determine, in accordance with tikanga Maori, the means whereby the characteristics are to be protected.

Policy 3.1.2

Policy statements and plans should identify (in the coastal environment) those scenic, recreational and historic areas, areas of spiritual or cultural significance, and those scientific and landscape features, which are important to the region or district and which should therefore be given special protection; and that policy statements and plans should give them appropriate protection.

Policy 3.1.3

Policy statements and plans should recognise the contribution that open space make to the amenity values found in the coastal environment, and should seek to maintain and enhance those values by giving appropriate protection to areas of open space.

Policy 3.2.1

Policy statements and plans should define what form of subdivision, use and development would be appropriate in the coastal environment, and where it would be appropriate.

Policy 3.2.2

Adverse effects of subdivision, use or development in the coastal environment should as far as practicable be avoided. Where complete avoidance is not practicable, the adverse effects should be mitigated and provision made for remedying those effects, to the extent practicable.

Policy 3.2.5

Subdivision, use and development in the coastal environment should be conditional on the provision of adequate services (particularly the disposal of wastes), and the adverse effects of providing those services should be taken into account when preparing policy statements and plans and when considering applications for resource consents.

Policy 3.4.2

Policy statements and plans should recognise the possibility of a rise in sea level, and should identify area which would as a consequence be subject to erosion or inundation, Natural systems which are a natural defence to erosion and/or inundation should be identified and their integrity protected.

Policy 3.4.5

New subdivision, use and development should be so located and designed that the need for hazard protection works is avoided.

Policy 3.5.1

In order to recognise the national importance of maintaining public access to and along the coastal marine area, a restriction depriving the public of such access should only be imposed where such a restriction is necessary:

- (a) to protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna;
- (b) to protect Maori cultural values;
- (c) to protect public health or safety;
- (d) to ensure a level of security consistent with the purpose of a resource consent; or
- (e) to justify the restriction notwithstanding the national importance of maintaining that access.

Policy 3.5.2

In order to recognise the national importance of enhancing public access to and along the coastal marine area, provision should be made to identify, as far as practicable:

- (i) the location and extent of places where the public have the right of access to and along the coastal marine area;
- (ii) those places where it is desirable that physical access to and along the coastal marine area by the public should be enhanced; and

those places where it is desirable that access to the coastal marine area useable by people with disabilities be provided.

Policy 4.2.1

All persons exercising functions and powers under the Act in relation to land of the Crown in the coastal marine area shall recognise and facilitate the special relationship between the Crown and the tangata whenua as established by the Treaty of Waitangi (Te Tiriti o Waitangi).

Policy 4.2.2

All persons exercising functions and powers under the Act in relation to land of the Crown in the coastal marine area should follow these general guidelines:

- (a) take into account the principles of the Treaty of Waitangi;

- (b) make provision for consultation with tangata whenua which is early, meaningful and on-going, and which is as far as practicable in accordance with tikanga Maori;
- (c) have regard to any relevant planning document recognised by the appropriate iwi authority;
- (d) where appropriate, involve iwi authorities and tangata whenua in the preparation of plans and policy statements, in recognition of the relationship of māori and their culture and traditions with their ancestral lands; and
- (e) where practicable, and with the consent of the tangata whenua, incorporate in policy statements and plans and in the consideration of applications for resource consents, Maori customary knowledge about the coastal environment, in accordance with tikanga Maori.

Regional Policy Statement for the Wellington Region

Chapter 4 – The Iwi Environmental Management System

Objective 4.3.1

A mutually satisfactory relationship is developed and maintained between the Wellington Regional Council and the iwi of the Region.

Objective 4.3.2

The principles of the Treaty of Waitangi are taken into account in resource management,

Objective 4.3.4

There are increased opportunities for the cultural aspirations and tikanga of tangata whenua with regard to natural and physical resources to be met.

Policy 4.4.2

To support the active participation of tangata whenua in the development and implementation of resource management policy and plans, and in the resource consent granting process.

Policy 4.4.4

To recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.

Method 4.5.2

The Wellington Regional Council will provide information to tangata whenua on resource management matters, including the respective responsibilities of different resource management agencies.

Method 4.5.3

The Wellington Regional Council liaise with other environmental and resource management agencies on resource management matters of significance to iwi.

Method 4.5.4

The Wellington Regional Council where it is the consent authority, will:

- (1) Consult tangata whenua on all consent applications it considers will have a significant effect on tangata whenua;
- (2) Encourage applicants to consult with tangata whenua as part of the assessment of effects;
- (3) Appoint Maori as hearings Commissioners, when appropriate;
- (4) Recognise, when appropriate, tikanga Maori in pre-hearing meetings and hearings; and

Consider effects on iwi when assessing whether consent application should be non-notified.

Chapter 7 – The Coastal Environment

Objective 7.3.1

The natural character of the coastal environment is preserved through:

- (1) The protection of nationally and regionally significant areas and values;
- (2) The protection of the integrity, functioning and resilience of physical and ecological processes in the coastal environment;
- (3) The restoration and rehabilitation of degraded areas; and

The management of subdivision, use and development, and the allocation of resources in the coastal environment so that adverse effects are avoided, remedied or mitigated.

Objective 7.3.2

Existing provisions for public access to and along the coastal marine area remain and appropriate opportunities are taken to enhance public access.

Objective 7.3.3

Coastal water quality is of a high standard.

Objective 7.3.4

There are increased opportunities for the aspirations of the tangata whenua for the coastal environment to be met.

Policy 7.4.1

To give effect to the following matters when planning for and making decisions on subdivision, use and development in the coastal environment:

- (1) Protection, from all actual or potential adverse effects, of areas of nationally or regionally significant indigenous vegetation and significant habitats for indigenous fauna, including those listed in table 8;
- (2) Protection of the values associated with nationally or regionally outstanding landscapes, seascapes, geological features, landforms, sand dunes and beach systems and sites of historical or cultural significance, including those listed in tables 9 and 10;
- (3) Protection of sensitive, rare or unusual natural and physical resources, habitats, amenity values and ecosystems which are unique to the coastal environment (including estuaries, coastal wetlands, mangroves and dunes, and their margins) by avoiding, remedying or mitigating adverse effects so as to preserve the natural character of the coastal environment.
- (4) Protection of the integrity, functioning and resilience of the coastal environment in terms of the:
 - (a) Dynamic processes and features arising from the natural movement of sediments, water and air;
 - (b) Natural movement of biota;
 - (c) Natural substrate composition;
 - (d) Natural water quality and quantity, and air quality;
 - (e) Natural biodiversity, productivity and biotic patterns; and
 - (f) Intrinsic values of ecosystems.

Policy 7.4.2

To consider, where relevant and to the appropriate extent, the following matters when planning for and making decisions about subdivision, use or development in the coastal environment:

- (1) The degree to which the proposed activity will impose effects additional to those resulting from existing subdivision, use and development, and the extent to which such cumulative adverse effects on natural character may be avoided, remedied or mitigated;
- (2) The extent to which natural character has already been compromised in an area and the need to avoid sprawling or sporadic subdivision, use or development;

- (3) The efficient use of finite resources in the coastal environment and the viability of alternative sites outside the coastal marine area and outside of the coastal environment for the proposed activity;
- (4) The potential impact of projected sea level rise;
- (5) The actual or potential adverse effects of subdivision, use or development on areas of cultural or spiritual significance, heritage resources and on scenic, scientific, recreation, open space or amenity values; and
- (6) The adequacy of provision of infrastructure services (particularly for the disposal of waste).

Policy 7.4.4

To ensure, in planning for or making decisions about new subdivision, use or development, that there is no reduction in the quality of existing legal access to and along the coastal marine area; and that opportunities are taken, other than in exceptional circumstances, to enhance the amount and variety of public access to and along the coastal marine area.

Policy 7.4.5

To maintain or improve the quality of coastal water by:

- (1) Improving, where necessary, the quality of fresh water entering the coastal marine area;
- (2) Avoiding, remedying or mitigating the effects of activities in the coastal environment that can degrade coastal water; and
- (3) Avoiding, remedying or mitigating the effects of point discharges that directly enter the coastal marine area so the effects do not render any water in the coastal marine area unsuitable for any purpose specified in a Regional Coastal Plan for the Wellington Region.

Policy 7.4.6

To adopt a precautionary approach to the evaluation of risk in making decisions that affect the coastal environment, recognising that there will be situations where there is a low probability of an event occurring, but that such an event has the potential to create major adverse effects. Such events include:

- (1) Earthquakes and tsunami;
- (2) Maritime shipping disasters; and
- (3) Accidents involving release of contaminants into the coastal marine area.

Method 7.5.3

To achieve integrated management, other means which could be used to implement Coastal Environment Policies 1-7 include:

- (1) Development and implementation of management plans and other non-statutory plans by territorial authorities for areas and issues that impact on the coastal environment;
- (2) Liaison between the Wellington Regional Council, territorial authorities, iwi and the Department of Conservation to identify projects in the coastal environment of the Wellington Region where voluntary organisations, companies and individuals may assist in caring for the coastal environment; and
- (3) Liaison between the Regional Council, Department of Conservation and Ministry of Agriculture and Fisheries.

Chapter 10 – Landscape and Heritage

Objective 10.3.3

The cultural heritage of the Region which is of regional significance is:

- (1) Recognised as being of importance to the Region;
- (2) Managed in an integrated manner with other resources; and
- (3) Conserved and sustained for present and future generations.

Objective 10.3.4

The attributes of natural and physical resources which provide for regional recreational opportunity, and for the appreciation and enjoyment of those resources by the regional community, are maintained or enhanced.

Policy 10.4.5

To recognise, when planning for and making decisions on new subdivision, use, and development, the heritage values of regionally significant cultural heritage resources and to manage those heritage resources in an integrated manner with other natural and physical resources.

Policy 10.4.6

To avoid, remedy or mitigate the adverse effects of subdivision, use and development on regionally significant cultural heritage resources.

Policy 10.4.7

To manage and protect existing recreational opportunities of regional significance.

Policy 10.4.8

To promote, on behalf of future generations, the protection of the potential for recreation of open space, indigenous and exotic vegetation, water bodies, the coast, and regionally outstanding landscapes, and other regionally or nationally outstanding natural features.

Method 10.5.8

The Wellington Regional Council will provide for the management and conservation of any cultural heritage values relating to any land it owns and for the recognition and protection of these values in any plan it prepares (including a Regional Coastal Plan) and through the consent granting process.

Method 10.5.13

The Wellington Regional Council will require, where relevant, that an assessment of effects, undertaken as part of an application for resource consent affecting a cultural heritage resource of regional significance, has regard to its heritage values.

Method 10.5.17

The Wellington Regional Council will advocate for the preservation of recreational opportunities of a regional nature for future generations, particularly where they are vulnerable to irreversible effects.

Chapter 11 – Natural Hazards

Objective 11.3.1

Any adverse effects of natural hazards on the environment of the Wellington Region are reduced to an acceptable level.

Policy 11.4.1

To ensure that there is sufficient information available on natural hazards to guide decision making.

Policy 11.4.2

To consider all of the following matters when planning for, and making decision on, new subdivision, use, and development in areas which are known to be susceptible to natural hazards:

- (1) The probability of occurrence and magnitude of the natural hazards, and the location of the effects, including any possible changes which might arise from climate change;
- (2) The potential consequences of a natural hazard event occurring, both on-site and off-site. Potential loss of life, injury, social and economic disruption, civil defence implications, costs to the community, and any other adverse effects on the environment should be considered;

- (3) The measures proposed to mitigate the effects of natural hazard events, the degree of mitigation they will provide, and any effects on the environment from adopting such measures;
- (4) Alternative measures that might be incorporated into the subdivision, use and development to mitigate the effects of natural hazard events, the degree of mitigation they will provide, and any effects on the environment from adopting such measures. Both structural and non-structural measures should be considered;
- (5) The benefits and costs of alternative mitigation measures;
- (6) The availability of alternative sites for the activity or use; and
- (7) Any statutory obligations to protect people and communities from natural hazards.

Method 11.5.9

The Wellington Regional Council will, in situations where it is the consent granting authority, require applicants for resource consents to include, in their assessments of effects, the risks posed by natural hazards. The level of assessment should be appropriate to the potential consequences of the hazard and the location of the activity in relation to known natural hazards.

Regional Coastal Plan for the Wellington Region

Chapter 4 - General objectives and policies

Objective 4.1.2

People and communities are able to undertake appropriate uses and developments in the coastal marine area which satisfy the environmental protection policies in the plan, including activities which:

- rely on natural and physical resource of the coastal marine area; or
- require a coastal marine area location; or
- provide essential public services; or
- avoid adverse effects on the environment; or
- have minor adverse effects on the environment, either singly or in combination with other users; or
- remedy or mitigate adverse effects on the environment and provide a net benefit to the environment.

Objective 4.1.3

The adverse effects that new activities may have on legitimate activities in the coastal marine area are avoided, remedied or mitigated as far as is practicable.

Objective 4.1.4

Land, water and air in the coastal marine area retains its life supporting capacity.

Objective 4.1.5

The natural character of the coastal marine area is preserved and protected from inappropriate use and development.

Objective 4.1.8

Public access along and within the coastal marine area is maintained and enhanced.

Objective 4.1.9

Amenity values in the coastal marine area are maintained and enhanced.

Objective 4.1.10

Important views to and from the coastal marine area are retained.

Objective 4.1.11

Any adverse effects from natural hazards are reduced to an acceptable level.

Objective 4.1.12

That the location of structures and/or activities in the coastal marine area does not increase the risk from natural hazards beyond an acceptable level.

Objective 4.1.14

The values of the tangata whenua, as well as their traditional uses, are, where practicable, recognised and provided for.

Objective 4.1.16

Tangata whenua are consulted on resource consent applications which may affect their interests and values.

Objective 4.1.19

In addition to the requirements of objective 4.1.16, opportunities are provided for people and communities to be involved in any decision-making about significant activities in the coastal marine area, and in the management of natural and physical resources in that area.

Objective 4.1.23

Conditions placed on resource consents are used as a means of avoiding, mitigating or remedying adverse effects.

Objective 4.1.24

The comprehensive development of the Lambton Harbour Development Area is provided for.

Objective 4.1.25

Activities which span the line of mean high water springs are managed in accordance with the provisions of both this Plan and any requirements in the relevant district plan.

Objective 4.1.26

In promoting the sustainable management of the coastal marine area, the importance of the Port of Wellington to the social and economic well being of the Region is recognised.

Policy 4.2.2

To recognise and distinguish between those parts of the coastal marine area which retain natural character, and those areas where natural character has already been compromised, and to encourage appropriate new developments only in latter areas.

Policy 4.2.3

When considering the significance of adverse effects of activities on the coastal marine area, to recognise and distinguish between:

- those activities which require occupancy on a ‘permanent’ basis, and those which can effectively relinquish coastal space at a future date;
- those activities which have irreversible adverse effects and those for which adverse effects are reversible; and
- those activities which have short term adverse effects and those which have on-going or long term adverse effects.

Policy 4.2.6

To recognise the importance of the coastal marine area as a place for the safe and convenient navigation of ships and aircraft, and to protect these activities from inappropriate use and development.

Policy 4.2.7

To recognise that port and harbour activities are an appropriate use of the coastal marine area provided that the environmental protection policies of this Plan can be satisfied.

Policy 4.2.8

To recognise existing lawful commercial and recreational users of the coastal marine area, and to protect them from the adverse effects of new activities as far as is practicable.

Policy 4.2.12

To protect significant cultural and historic features in the coastal marine area from the adverse effects of use and development. In particular, the values of the features and buildings identified in Appendix 4 will be protected.

Policy 4.2.15

Subject to Policy 4.2.17, to ensure that the adverse effects of new use and development on existing lawful access along and within the coastal marine area are avoided where practicable; where avoidance is not practicable, to ensure that the adverse effects are mitigated or remedied so that there is no net reduction in the quality of public access in the area.

Policy 4.2.17

To recognise that there are circumstances when public access along the coastal marine area is not appropriate; and other circumstances where it is not practicable because of the nature of the coastline.

Policy 4.2.18

To recognise that the coastal marine area is an extensive area of public open space, and to ensure that the interests of the public, both now and in the future, are given a high priority when making decisions on the allocation of any land of the Crown or any related part of the coastal marine area.

Policy 4.2.19

To recognise the importance of amenity values in the coastal marine area, and to avoid, where practicable, any adverse effects on these values; where avoidance is not practicable, to remedy, or mitigate the adverse effects.

Policy 4.2.20

To recognise the importance of the coastal environment to recreation activities, and to avoid, where practicable, any adverse effects on these values; where avoidance is not practicable, to remedy, or mitigate the adverse effects.

Policy 4.2.21

Use and development of the coastal marine area must take appropriate account of natural hazards, and any adverse effects arising from the storage, use, disposal, or transportation of hazardous substances.

Policy 4.2.33

To identify explicitly the occupancy component on any resource consent which is granted for an activity in the coastal marine area which requires occupation of land of the Crown and any related part of the coastal marine area.

Policy 4.2.34

To ensure that, as far as practicable, all stakeholders are involved in the coastal management process and that the decision making process is transparent.

Policy 4.2.35

To consider placing conditions on resource consents for the purpose of avoiding, remedying or mitigating any adverse effects which are associated with, or are a consequence of, an activity, particularly where adverse effects impact on the following matters:

- fauna, flora or habitat;
- lawful public access;
- natural character;
- amenity values;
- views to and from the coastal marine area;
- characteristics of spiritual, historical or cultural significance to tangata whenua; or
- recreational opportunities.

Policy 4.2.36

To have regard to the following matters when determining the nature and extent of any conditions to be placed on a resource consent:

- the significance of the adverse effects arising as a consequence of, or in association with, the proposed activity;
- the extent to which the proposed activity contributes to the adverse effects;
- the extent to which the adverse effects of the proposed activity can and have been dealt with by other means;
- any proposals by the applicant to avoid, remedy or mitigate, adverse effects, and any agreements reached at pre-hearing meetings;
- the extent to which the community as a whole benefits from the proposed activity and from any proposed conditions on a consent;
- the financial cost of complying with any conditions on a consent; and
- the extent to which a condition placed on a consent will, avoid, remedy or mitigate any adverse effects.

Policy 4.2.37

To avoid, remedy or mitigate adverse effects, conditions on a resource consent may relate to all or any of the following:

- design and project implementation, choice of materials, site improvements;
- habitat restoration, rehabilitation, creation and improvement;
- restocking and replanting of fauna or flora (with respect to replanting, preference will be given to the use of indigenous species, with a further preference for the use of local genetic stock);
- works and services relating to the improvement, provision, reinstatement, protection, restoration or enhancement of the matters listed in 4.2.35.

Policy 4.2.38

To encourage applicants to:

- consult and discuss with parties who may be affected by the proposal prior to applying for a consent; and
- identify in the consent application how adverse effects may be avoided, remedied or mitigated.

Policy 4.2.39

To recognise that there are circumstances where placing conditions on resource consents may not be sufficient to adequately avoid, remedy or mitigate the adverse effects of a proposal, and that in such circumstances consent applications will be declined.

Policy 4.2.42

To have particular regard to the objectives and policies in relevant district plan(s) when assessing an application for an activity which spans the coastal marine area boundary; and where appropriate, to deal with such applications through joint hearings.

Policy 4.2.43

To recognise that port and harbour activities are an appropriate use of the coastal marine area provided that the environmental protection policies of this Plan can be satisfied.

Policy 4.2.45

In the Lambton Harbour Development Area to:

- provide for a wide range of activities appropriate to the harbour/city interface;
- provide for development compatible with the urban form of the city;
- recognise the heritage character, development and associations of the area;
- develop and have particular regard to any design guides for the area which are contained in any proposed or operative Wellington City District Plan;
- provide for a range of public open spaces, access and through-routes, and to ensure that their nature, purpose and function is maintained;
- ensure that the effects of development and activities do not detract from people's enjoyment of the area; and
- ensure that the area is an integral part of the working port of Wellington.

Policy 4.2.46

To vary or change the Plan, if necessary, as soon as practicable after the Wellington City District Plan becomes operative, to align rules in the Lambton Harbour Development Area (for activities and structures on wharves on the seaward side of the coastal marine area boundary) with the rules in Wellington City Council's District Plan for the Lambton Harbour Development Area (for activities and structures on the landward side of the coastal marine area boundary).

Policy 4.2.47

To vary or change the Plan, if necessary, as soon as practicable after the Wellington City and Hutt City District Plans become operative, and to align noise standards in the Commercial Port Areas with noise standards in the adjacent Wellington City and Hutt City District Plan with respect to port and port related activities.

Chapter 6 – Structures

Objective 6.1.1

Appropriate structures which enable people and communities to provide for their economic and social well-being are allowed.

Objective 6.1.2

There is no inappropriate use or development of structures in the coastal marine area.

Objective 6.1.3

The environment is protected from the adverse effects and risks associated with spills from facilities using and/or storing of hazardous substances.

Objective 6.1.4

The community and its assets are protected from unacceptable risks from facilities using and/or storing hazardous substances.

Policy 6.2.1

To consider the following as appropriate in the coastal marine area:

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

Policy 6.2.2

To not allow the use or development of structures in the coastal marine area where there will be:

adverse effects on:

- any Area of Significant Conservation Value, or Area of Important Conservation Value;
- characteristics of special spiritual, historical or cultural significance to Maori identified in accordance with tikanga Maori;
- significant places or areas of historic or cultural significance; or
- significant ecosystems; or

significant adverse effects on:

- the risk from natural hazards;
- navigation channels;
- coastal processes, including waves, tidal currents and sediment transport;
- amenity values;
- existing lawful public access;
- natural character;
- views to an from the coastal marine area;
- recreational uses; or
- structure of architectural or historic merit;

unless such adverse effects can be satisfactorily mitigated or remedied.

Policy 6.2.4

To ensure that all new structures in the coastal marine area to which the public are admitted provide reasonable and adequate access and facilities for disabled persons in accordance with section 25 of the Disabled Persons Community Welfare Act 1975.

Policy 6.2.5

To ensure that adequate allowance is made for the following factors when designing any structure:

- rising sea levels as a result of climate change, using the best current estimate scenario of the International Panel of Climate Change (IPCC);
- waves and currents;
- storm surge; and
- major earthquake events.

Policy 6.2.6

To ensure that all exterior lighting associated with activities on structures in the coastal marine area is directed away from adjacent activities, streets and navigational channels, so as to avoid the spill of light or glare which might be:

- detrimental to the amenity of residential or other activities;
- a hazard to traffic safety on streets outside the coastal marine area;
- a hazard to navigation in the coastal marine area; and
- detrimental to wildlife, including bird nesting, roosting, and navigation.

Policy 6.2.7

To ensure that all structures in the coastal marine area which are visible and/or accessible are adequately maintained so that:

- the structure remains safe; and
- any adverse effects on the visual amenity of the area are minimised.

Policy 6.2.9

To have particular regard to any relevant provisions in appropriate district plans relating to the protection of important views when assessing an application for an activity involving the development of a structure in the coastal marine area.

Policy 6.2.12

To manage hazardous facilities and activities involving the use and/or storage of hazardous substances so that adverse effects and unacceptable risks to the environment, human health and property are avoided, remedied or mitigated, including:

- contamination of soil, water or air;
- short or long term damage to ecosystems; and
- damage through fire and explosion events.

Chapter 7 – Destruction, damage or disturbance of foreshore or seabed

Objective 7.1.2

The adverse effects from activities which destroy, damage, or disturb foreshore or seabed are avoided, remedied or mitigated.

Policy 7.2.1

To allow activities involving damage or disturbance to any foreshore or seabed, where the adverse effects are short term, reversible, or minor; and to allow other activities where adverse effects can be satisfactorily avoided, remedied or mitigated. As a guide, the following criteria will need to be met for the activity to be deemed to have minor adverse effects:

- the activity will not require exclusive use of the foreshore or seabed, and will not preclude public access to and along the foreshore past the site of the disturbance or damage;
- any adverse effects on plant and animals or their habitat will be short term, and the area will be naturally decolonised by a similar community type;
- the activity will not result in any significant increase in water turbidity or elevated levels of contaminants;
- the activity will not have any off-site adverse effects;
- the activity will not adversely affect shoreline stability;
- the activity will not have any permanent adverse effects on the amenity values of the foreshore or seabed;
- the activity will not have any adverse effect on natural character;

- the activity will not destroy or damage historic sites;
- the activity will not have any adverse effects on the Hutt Valley aquifer; and
- the activity will not have any adverse effects on mahinga mātaitai, waahi tapu or any other sites of significance to iwi.

Objective 7.1.4

The positive effects from activities which disturb foreshore or seabed are recognised where such activities are undertaken for the well-being of the community. Activities with minor adverse effects are allowed.

Chapter 10 – Discharges to land and water

Objective 10.1.2

Where practicable, the quality of water in the coastal marine area which is currently degraded as a result of human activities is enhanced.

Objective 10.1.3

The quality of water in the coastal marine area is, as far as practicable, consistent with the values of the tangata whenua.

Objective 10.1.5

The risk to human health from contaminated water in the coastal marine area is minimised.

Policy 10.2.2

To manage all water in the following areas for contact recreation purposes:

- Those parts of the coastal marine area within Wellington Harbour and the Wellington South Coast landward of a straight line extending between a point 1000 metres off shore of Baring Head (NZMS 260:R28;657.749) and 1000 metres offshore of Tongue Point (NZMS 260:Q27;484.828), except that described in policy 10.2.1 (which relates to managing certain area for shellfish gathering purposes).

[The details of the other nine other areas identified in this Policy have not been reproduced here, as they are not relevant to this application. All areas are mapped in Appendix 8. Planning Map 8D, attached, shows the relevant area within the Wellington Harbour].

Policy 10.2.4

To allow discharges of contaminants or water to land or water in the coastal marine area which do not meet the requirements of Policies 10.2.1, 10.2.2 and 10.2.3 only if, after reasonable mixing:

- the discharge is not likely to cause a decrease in the existing quality of water at that site; or

- the discharge would result in an overall improvement in water quality in the coastal marine area; or
- the discharge was present at the time this plan was notified and the person responsible for the discharge has defined a programme of work for the upgrading of the discharge so that it can meet the requirements of policies 10.2.1, 10.2.2 and 10.2.3; or
- the discharge is of a temporary nature or associated with necessary maintenance works or there are exceptional circumstances and that it is consistent with the purposes of the Act to do so.

Policy 10.2.8

To ensure that where appropriate coastal permits to discharge contaminant to land or water in the coastal marine area contains conditions for monitoring:

- the effects of the discharge; and
- compliance with any conditions or standards imposed on the consent.

Policy 10.2.9

To have regard to the adverse effects of the discharge of water or contaminants to land or water in the coastal marine area on areas:

- containing important ecosystems or species;
- used for fisheries purposes;
- used for fish spawning;
- used for the gathering or cultivating of shellfish for human consumption;
- used for contact recreation purposes;
- used for industrial abstraction;
- which are significant because of their natural values;
- which are significant because of their aesthetic values; and
- with significant cultural value.

Policy 10.2.11

To have particular regard to the views, values, aspirations and customary knowledge of tangata whenua when assessing applications to discharge contaminants to land or water in the coastal marine area.

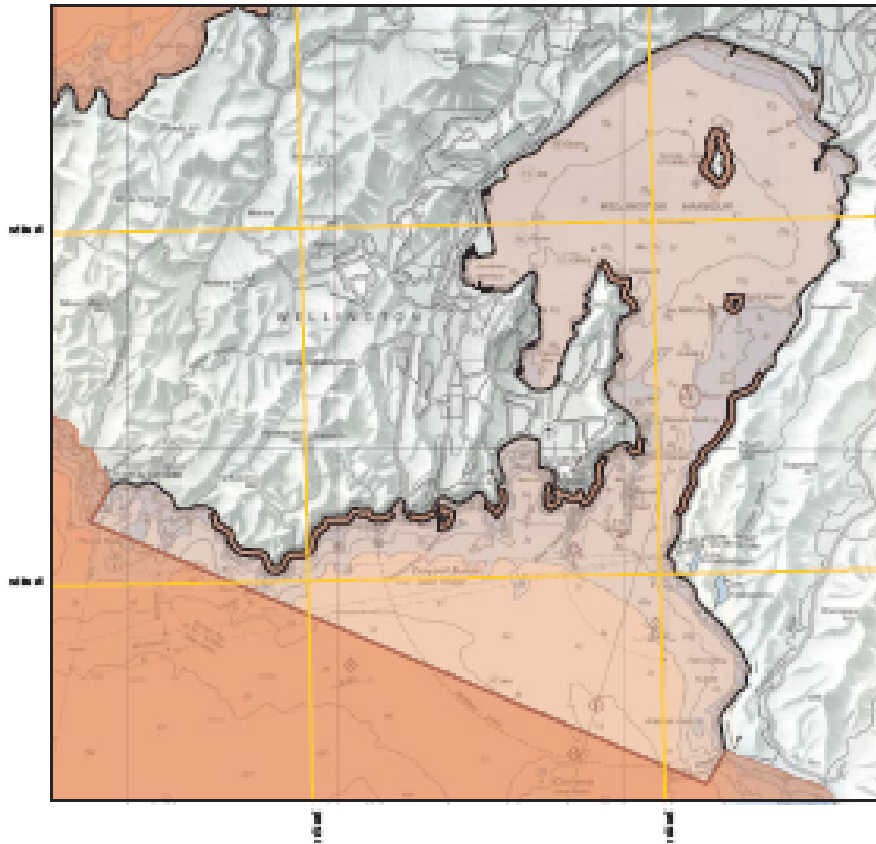
Planning Map 8D

Coastal Water Quality Classes Water Managed for Contact Recreation and Shellfish Gathering Purposes Wellington

This map identifies water areas managed for contact recreation purposes.

The extent of the areas managed for contact recreation purposes is defined by the appropriate shading.

The maps are NOTCA100 only. Boundary details are provided in the tables at the beginning of this section.



Planning Map 8D



Legend

-  Water managed for contact recreation
-  Water managed for shellfish gathering
-  Map grid (MDEP)



Data references derived from:
REMAP 200 RCT & M COF Wellington
REMAP 200 RCT Tairāne

CAUTION
RCT TO BE USED FOR NAVIGATION
Not a Chart/COF. SRS
Approved by Wellington
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Locality Map



Appendix 3 – Conditions

General Conditions for all permits

1. The location, design, implementation and operation of all works shall be in general accordance with the permit application and the documents lodged with the Wellington Regional Council as follows:
 - "Proposed Refurbishment, Overseas Passenger Terminal and Clyde Quay Wharf, Wellington Waterfront, Applications for Resource Consent, Volume 1, Capital Wharf Ltd & Wellington Waterfront Limited", dated September 2007 and received by the Wellington Regional Council on 19 September 2007;
 - "Proposed Refurbishment, Overseas Passenger Terminal and Clyde Quay Wharf, Wellington Waterfront, Appendices, Volume 2, Capital Wharf Ltd & Wellington Waterfront Limited", dated September 2007 and received by the Wellington Regional Council on 19 September 2007;
 - Additional information from Urban Perspectives, dated 12 December 2007 and received by the Wellington Regional Council on 13 December 2007;
 - Additional information from the Traffic Design Group; dated 11 December 2007; and received by the Wellington Regional Council on 13 December 2007; and
 - Additional information provided by representatives of the applicant during the hearing on 18-21 and 25-28 February 2008 and 3-4 March 2008.

Note: Where there may be a conflict in the information provided by the permit holder at different times, the most recent information applies (including information provided at the hearing). Where there may be conflict between information provided by the permit holder and the conditions of this permit the conditions shall prevail.

2. A copy of this permit and any associated plans and documents shall be given to all contractor(s) carrying out works authorised by this permit, prior to the works commencing.
3. A copy of this permit shall be held on the site for the duration of the works.
4. The permit holder shall remain responsible for the works, and the works shall be maintained to the satisfaction of the Manager, Environmental Regulation, Wellington Regional Council.

Notice of commencement of works

5. The Manager, Environmental Regulation, Wellington Regional Council shall be provided with written notice of the commencement of site works at least five working days prior to the works commencing.

Complaints and Incidents Records

6. During the entire construction period, the permit holder shall keep and maintain a record of any complaints received alleging adverse effects from, or related to, the exercise of this permit.

The record shall include:

- the name and address (as far as practicable) of the complainant;
- identification of the nature of the matter complained about;
- date and time of the complaint and of the alleged event;
- weather conditions at the time of the complaint (as far as practicable); and,
- any measures taken by the permit holder to ensure that such a complaint does not occur again.

This record shall be kept at the work site and shall be made available to the Manager, Environmental Regulation, Wellington Regional Council upon request.

- 7.a. The permit holder shall keep and maintain a permanent record of any incidents that occur on the site during demolition or construction, or as a result of the ongoing operation of the works, which result in any adverse effects related to the exercise of this permit.

The record shall include:

- the type and nature of the incident;
- date and time of the incident;
- weather conditions at the time of the incident (as far as practicable);
- measures taken by the permit holder to remedy the effects of the incident; and,
- measures put in place to avoid the incident from re-occurring.

This record shall be kept at the work site and shall be made available to the Manager, Environmental Regulation, Wellington Regional Council upon request.

- 7.b. The permit holder shall notify the Manager, Environmental Regulation, Wellington Regional Council of any such incident, within twenty-four hours of the incident being brought to the attention of the permit holder, or the next working day.

- 7.c. The permit holder shall forward an incident report to the Manager, Environmental Regulation, Wellington Regional Council within seven working days of the incident occurring.

Construction Management Plan

8. The permit holder shall prepare and submit a Construction Management Plan for all activities related to the development to the Manager, Environmental Regulation, Wellington Regional Council, for approval, at least 20 working days prior to the works commencing. Works shall not commence until the Construction Management Plan has been approved by the Manager, Environmental Regulation, Wellington Regional Council. The Construction Management Plan shall include, but not be limited to:
- a. a detailed design, demolition and construction methodology (including for piling);
 - b. a demolition and construction timetable;
 - c. identification of who the principal contractor for the works is;
 - d. identification of experienced person(s) who will manage the environmental issues on site;
 - e. details of the temporary accommodation of marina offices and amenities (toilets, showers and related facilities) for the duration of demolition and construction activities;
 - f. details of any public access restrictions, and what measures will be in place to ensure that impacts on the public are minimised;
 - g. an environmental management plan for the site during demolition and construction, detailing specific measures to be taken to minimise adverse effects of the activity (including dust and discharges to the coastal marine area). This shall include details of the processes/measures that will be put in place to prevent oil and other hazardous substances from entering the water column, and to avoid debris and construction materials entering the water column;
 - h. procedures (immediate and subsequent) to be undertaken in the event of a spill of oil or other hazardous substances into the coastal marine area occurring; and
 - i. details of construction traffic management, including peak pedestrian times that articulated trucks will generally avoid; procedures and practices for manning the gatehouse and supervising the arrival and departure of vehicles; details of on-site parking arrangements; a schedule of anticipated deliveries during each work stage; procedures for inspecting and maintaining Herd Street; details of records to be maintained; and contact details for any enquiries;

- j. a process for managing any complaints relating to vibration caused by construction activities; and
- k. a Construction Noise Management Plan prepared in accordance with NZS 6803: 1999 Acoustics Construction Noise Section 8 and Appendix E and which shall be consistent with conditions 31 to 35 below.

This permit shall be exercised in accordance with this Construction Management Plan.

Note: Whilst reviewing the Construction Management Plan for approval, it is recommended that the Manager, Environmental Regulation, Wellington Regional Council consults with the Chief Transportation Engineer, Wellington City Council, and the Noise Officer, Wellington City Council.

- 8A The permit holder shall undertake a review of the effectiveness of the Construction Management Plan. This review shall be undertaken during the every six months from the commencement of the construction works. This review shall identify any alterations required to any of the bullet points detailed in condition 8 of this permit to further avoid, remedy or mitigate the adverse effects associated with construction works.

The permit holder shall submit the results of review to the Manager, Environmental Regulation, Wellington Regional Council for approval within one month of the review occurring. The permit holder shall implement all practicable and reasonable recommendations contained within the review report, and as required by the Manager, Environmental Regulation, Wellington Regional Council.

9. During construction:
- (a) an exclusive loading zone as detailed in plan CTP2 Rev C at page 29 of Richard Galloway's evidence will be available for berth holders. This will remain accessible at all times;
 - (b) the permit holder shall at least once per week provide wharf access for deliveries to berth holders for heavy loads where there is no reasonable and practical alternative. The time and duration of such access shall be by prior arrangement with the permit holder.
 - (c) during the period of wharf closure, a gate person will be employed at all times (24/7);
 - (d) the permit holder will provide 20 marina trolleys for the use of the berth holders within the Chaffers Marina throughout the period of wharf closure. The permit holder shall consult with Chaffers Marina Limited on the location of the storage of the trolleys. to be stored in a location to be agreed with Chaffers Marina Limited (within the marina licenced area).

- (e) the permit holder shall make arrangements for the establishment and functioning of a berth holder liaison group consisting of representatives of:
 - (i) Chaffers Marina Limited;
 - (ii) The permit holder; and
 - (iii) The Contractor.

Details of these arrangements shall be submitted to the Manager, Environmental Regulation, Wellington Regional Council prior to closure of the wharf.

Note: The Historic Places Act 1993 provides for the identification, protection, preservation and conservation of the historic and cultural heritage of New Zealand. Under Section 2 of the Act, an archaeological site is defined as a place associated with pre-1900 human activity, where there may be evidence relating to the history of New Zealand. This definition of archaeological sites may include buildings and associated features such as artefacts, rubbish heaps, foundations, pipes, wells, and other archaeological remains. Section 10 of the Act directs that an authority is required from the New Zealand Historic Places Trust) if there is “reasonable cause” to suspect an archaeological site (recorded or unrecorded), may be modified, damaged or destroyed in the course of any activity. An authority is required for such work whether or not the land on which an archaeological site may be present is designated, or a resource or building consent has been granted.

- 10. The permit holder shall at all times take all practicable steps to minimise sedimentation and increased turbidity of the coastal marine area during the construction, implementation and maintenance of the works, including:
 - (a) completing all works in the minimum time practicable; and
 - (b) avoiding construction and demolition related materials from entering the coastal marine area.
- 11. No contaminants (including but not limited to oil, petrol, diesel, hydraulic fluid) shall be released into the coastal marine area from equipment being used for the works, and no storage or refuelling of equipment and machinery shall take place within five metres of the wharf edge.

Post-construction condition

- 12. All works affecting the coastal marine area, including tidy up on completion of the works, shall be completed to the satisfaction of the Manager, Environmental Regulation, Wellington Regional Council. As a part of this requirement, the permit holder shall provide suitable evidence that the seabed has been surveyed and cleared of any debris which may have accidentally entered the harbour. All material surplus to the works shall be removed from the area and disposed of appropriately.

Specific conditions for WGN080117 [26385] and WGN080120 [26390] Coastal permits for the refurbishment, repair and strengthening of the Clyde Quay Wharf, the re-development of the Overseas Passenger Terminal building and the use and maintenance of these structures.

Review conditions

13. The Manager, Environmental Regulation, Wellington Regional Council may review any or all conditions of this permit by giving notice of its intention to do so pursuant to Section 128 of the Resource Management Act 1991, at any time within six months of the 1st, 3rd, 5th, 10th, 15th, 20th, 25th and 30th anniversaries of the date of commencement of this permit for any of the following purposes:
 - (a) To deal with any adverse effects on the environment, which may arise from the exercise of this permit, and which it is appropriate to deal with at a later stage;
 - (b) To review the adequacy of any plans and / or monitoring requirements so as to incorporate into the permit any monitoring or other requirements which may become necessary to deal with any adverse effects on the environment arising from the exercise of this permit; or
 - (c) To require the permit holder to adopt the best practicable option to remove or reduce any adverse effects on the environment arising from the exercise of this permit.
14. The Wellington Regional Council shall be entitled to recover from the permit holder the actual and reasonable costs of the conduct of any review undertaken in accordance with condition 13 of this permit, calculated in accordance with, and limited to, that Council's scale of charges in-force and applicable at that time pursuant to Section 36 of the Resource Management Act 1991.
15. Subject to Section 123(c) of the Resource Management Act 1991, the period for which this permit is granted is thirty-five years from the date of its commencement.
16. Subject to any specific conditions of consent, the proposed building and public space design must be in general accordance with the information provided with the application and the following plans:
 - Athfield Architects' plans labelled Overseas Passenger Terminal & Clyde Quay Redevelopment and numbered RCO.OO, RC1.OO, RC2.00 rev, RC2.01 rev, RC2.02 rev, RC2.03 rev, RC2.04 rev, RC2.05 rev, RC2.06 rev, RC2.07 rev, RC3.00 rev, RC3.01 rev, RC3.02 rev, RC3.02a rev2, RC3.02b rev2, RC5.00, RC5.01, RC5.02, RC5.03, RC6.00, RC6.01, RC7.00, RC7.01, RC7.02, RC7.03, RC7.04, RC7.05, RC8.00, RC8.01, RC8.02 rev, RC8.03, RC8.04 rev, RC8.05 rev, RC8.06 rev, RC8.07 rev, RC8.08, RC8.09, RC8.10, RC8.11, RC8.12, RC8.13, RC8.14, RC8.15, RC8.16, RC8.17, RC9.00, RC9.01, RC9.02, RC10.00 and RC10.01.

- Proposed locker area plan; and
- Beca plans SK2 and SK3 (both dated 10 August 2007).

17. In order to ensure compliance with condition 16 of this permit, full working drawings shall be submitted to and approved by the Manager, Environmental Regulation, Wellington Regional Council, prior to the commencement of any construction works. The plans shall provide to the extent practicable for mitigation of wind speeds on the eastern promenade adjacent to the northern cross-link.

Note (aa): The permit holder may submit the working drawings in stages relating to the sequential construction of the works; however, any drawings for particular stages are to be submitted and approved pursuant to this condition prior to commencement of that construction works for that stage

Note (a): It is recommended that the permit holder's designers meet with TAG at least once in each of the developed and detail design stages (that is, the 2 critical stages of developing the working drawings for the development).

Note (b): The Manager, Environmental Regulation, Wellington Regional Council will seek the specialist advice of the Wellington City Council Waterfront Development Technical Advisory Group (TAG) in the assessment of the plans submitted under this condition.

Note (c): The Manager, Environmental Regulation, Wellington Regional Council will also seek the specialist advice of the Wellington City Council's Chief Transportation Engineer with regard to the final plans for the public space design.

Note (d): The Manager, Environmental Regulation, Wellington Regional Council will also seek the specialist advice of the Wellington City Council's Wind Advisor with regard to the final plans for wind mitigation for the northern cross-link.

18. The detailed design of the building and the public space shall be completed in accordance with the working drawings approved in accordance with condition 17 of this permit.

Heritage

19. Subject to condition 20, the following items from the existing building and wharf shall be retained or relocated within the development and shall be maintained or repaired as appropriate:
- (a) the building fabric as described in the Heritage Values Retention Schedule contained in Appendix 3 to the evidence of John Hardwick-Smith.

20. A **Heritage Fabric Retention Plan** for the site shall be prepared and lodged with the Manager, Environmental Regulation, Wellington Regional Council, for approval prior to the completion and submission of the full working drawings required under condition 17 of this permit.

The plan shall be prepared in consultation with an appropriately qualified and experienced conservation architect and shall include, but not be limited to:

- a. a general assessment of the current condition of features of the wharf and building outlined in the Heritage Values Retention Schedule referred to in condition 19 of this permit;
- b. details of methods to enable these features to be retained where practical;
- c. procedures for involving an appropriately qualified and experienced conservation architect during detailed design of the development and demolition and construction activities; and
- d. proposed methods of assessment of the condition of these features once construction is complete and provision of details of the assessment to the Manager, Environmental Regulation, Wellington Regional Council.

This permit shall be exercised in accordance with the Heritage Fabric Retention Plan.

21. The permit holder shall compile a thorough photographic record to show areas of the building and wharf subject to additions/alterations/partial demolition before, during and after these works and that these will be lodged with the Manager, Environmental Regulation, Wellington Regional Council within two months of which the works relate being completed.

Traffic

22. Prior to commencing any occupation of the redeveloped building, a Traffic Management Plan must be submitted to, and approved by, the Manager, Environmental Regulation, Wellington Regional Council.

This plan shall be implemented as soon as the building is occupied.

- a. Any changes to the Traffic Management Plan shall not be made without the prior approval in writing of the Manager, Environmental Management, Wellington Regional Council.
- b. The plan shall provide for appropriate measures to manage servicing activities, controlling taxi access consistent with condition 24, controlling coach access, traffic signage, enforcement of the P30 parking limit for general public parking and measures to promote pedestrian priority and safety throughout the Herd Street and Clyde Quay wharf areas.

Note: The advice of the Chief Transportation Engineer, Wellington City Council will be sought by the Manager, Environmental Regulation, Wellington Regional Council in the assessment of the traffic management plan and any subsequent proposed changes.

23. The permit holder shall engage a suitably qualified traffic engineer to undertake a review of the effectiveness of the Traffic Management Plan and the design of the Herd Street to Clyde Quay Wharf area, aimed at avoiding, remedying or mitigating the adverse effects associated with vehicles accessing and using the Clyde Quay Wharf. This review shall be undertaken during the first summer period (December to February, inclusive) after the completion of construction works and thereafter as recommended in the initial review. This review shall identify any alterations required to the Traffic Management Plan and/or the design of the public space and vehicle access areas.

The permit holder shall submit the results of review to the Manager, Environmental Regulation, Wellington Regional Council for approval. The permit holder shall implement all practicable and reasonable recommendations contained within the review report, and as required by the Manager, Environmental Regulation, Wellington Regional Council.

Note: The advice of the Chief Transportation Engineer, Wellington City Council and TAG will be sought by the Manager, Environmental Regulation, Wellington Regional Council in the assessment of the traffic management plan review.

24. Taxi access to the Clyde Quay Wharf shall be limited to that required for the picking up or setting down of passengers only. Taxis shall not remain on the Clyde Quay Wharf once passengers are set down and no part of the Clyde Quay Wharf shall be used as a taxi stand.
25. Parking on Clyde Quay Wharf perimeter shall be limited to mobility parking, parking associated with marina use, or 30-minute short stay general public parking only, within the designated car parks shown on Athfield Architects plans RC3.02a and RC.03b dated 11 December 2007.

Noise - Insulation

26. The applicant shall provide a report from a qualified acoustic engineer with the specifications for any building consent application for the apartments. The report shall in detail specify glazing requirements for each window and structural requirements to the building facade elements (including plaster board lining) to ensure the external sound insulation of the building achieves the following minimum performance standard:
 - a. Any habitable room in the building used for a residential activity shall be protected from noise arising from outside the building by ensuring the external sound insulation level achieves the following minimum performance standard:

$$DnT,w + Ctr > 30 \text{ dB}$$

Note: These details shall also be shown on the building consent plans submitted to Wellington City Council, and mechanical ventilation shall be provided to all bedrooms. A copy of the acoustic consultants report should be provided to the Noise Officer at Wellington City Council also.

27. Prior to the commencement of any residential occupation of the building the permit holder shall provide to the Manager, Environmental Regulation, Wellington Regional Council, certification from a suitably qualified person that the building has been constructed in accordance with the acoustic engineers design report which specified glazing requirements and structural requirements to the building facade elements to ensure compliance with the minimum performance standard $DnTw + Ctr > 30 \text{ dB}$.

Note a. The following persons are considered to fulfil the requirements for being suitably qualified with respect to the above:

- Members of the Association of Consulting Engineers of New Zealand (Incorporated);
- Members of the Institute of Professional Engineers of New Zealand Members of the New Zealand Institute of Architects (N.Z.I.A.); and,
- Registered Clerks of Works

Note b. In reviewing compliance with the above condition, the Manager, Environmental Regulation, Wellington Regional Council will consult with the Noise Officer at Wellington City Council.

Noise Levels - General Activities

28. Noise emission levels emanating from all activities when measured at or within the boundary of any site in the Central Area or at the outside wall of any building on any site in the Central Area, other than the site from which the noise is emitted, shall not exceed the following:

At all times	60dBA (L10)
At all times	85dBA (Lmax)

29. Noise emission levels emanating from all activities when measured on any residential site in the Inner Residential Area must not exceed:

Monday to Saturday 7 am to 7pm	55dBA(L10)
Monday to Saturday 7pm to 10pm	50dBA(L10)
At all other times	40dBA(L10)
All days 10pm to 7am	70dBA(Lmax)

Note: In regards to conditions 28 and 29 noise shall be monitored and assessed in accordance with NZS 6801 1991, Measurement of Sound and NZS 6802 1991, Assessment of Environmental Sound.

30. The noise emission levels in any public space (including streets and parks) generated by electronic sound systems shall not exceed 75 dBA L10 when measured over any 2 minute period. In any event the measurements shall be taken no closer than 0.6 metres from any part of a loudspeaker and at a height no greater than 1.8 metres (representative of the head of a passer-by).

Construction Noise

31. All construction work shall be carried out in accordance with the provisions of NZS6803: 1999 Acoustics- Construction Noise. All construction noise shall meet the noise levels specified for long term duration in Table 2 of the standard, except for:

- a. pile driving which may exceed these levels providing the requirements of conditions 32 and 33 are met; and,
- b. concrete work associated with the sub-wharf car park which may need to take place at night, in which case any construction noise shall comply with conditions 34 and 35.

32. Pile driving is restricted to the following days and hours:

Monday to Saturday between the hours of 7:30am and 6pm.

Any pile driving not meeting the provisions of NZS 6803:1999; Acoustics-Construction Noise, may be further restricted by the Manager, Environmental Regulation, Wellington Regional Council to ensure the best practicable option to reduce noise to a reasonable level is adopted.

33. Noise from pile driving shall be mitigated by the use of a sacrificial dolly where the type of pile driving provides for such a method to be used.

34. At least 10 working days prior to the first series of night time (between the hours of 8pm and 6:30am) concreting work commencing; the permit holder shall submit a Night-time Construction Management Plan to the Manager, Environmental Regulation, Wellington Regional Council for approval. The plan shall specify mitigation measures to ensure that the best practicable option has been adopted to reduce noise emanating from the concreting activity to a reasonable level. A reasonable limit is deemed to be the night time limits specified in table 2 of NZS 6803: 1999 Acoustics - Construction Noise when measured in front of the residentially zoned properties on Oriental Parade and 60 dB (LAeq), (10 minutes), measured in front of the Chaffers Dock Building.

The plan shall also include procedures for the notification of the residents of the Chaffers Dock and Boathouse annex buildings two working days prior to night time concreting work commencing.

All night time concreting works shall be undertaken in accordance with the Night-time Construction Management Plan.

The permit holder shall review the plan after the completion of each series of night time concreting work. Any amendments to the plan shall be made prior to the following series of night time concreting work. The permit holder shall supply any amendments to the plan to the Manager, Environmental Regulation, Wellington Regional Council prior to the following series of night time concreting work commencing.

Note: The advice of the Noise Officer, Wellington City Council will be sought by the Manager, Environmental Regulation, Wellington Regional Council in the assessment of the Night-time Construction Management Plan.

35. On at least one occasion noise monitoring of night time concreting activity shall be carried out by a suitably qualified expert. Noise readings shall be taken on Oriental Parade and in front of Chaffers Dock Apartments. The results shall be submitted to the Manager, Environmental Regulation, Wellington Regional Council, within one month of monitoring.

Wharf maintenance

36. The permit holder shall undertake regular surveys and maintenance of the existing and upgraded sub-wharf structure of the wharf. The permit holder shall keep records of the surveys and any maintenance work carried out in relation to this permit and any such records shall be submitted to the Manager, Environmental Regulation, Wellington Regional Council by 31 June each year (unless a survey has not been undertaken and no maintenance carried out in that year).

Note: It is anticipated that a full structural survey will be undertaken every 5-10 years.

Specific conditions for WGN080117 [26386] and WGN080120 [26392] Coastal permit to disturb the foreshore and seabed associated with construction works

13. Subject to Section 123(c) of the Resource Management Act 1991, the period for which this permit is granted is seven years from the date of its commencement.
14. During the exercise of this permit, the permit holder shall take all practicable steps to minimise any discharge into the water column, which may result in any of the following effects after reasonable mixing:
 - the production of any conspicuous oil or grease films, scums or foams or floatable or suspended material;
 - any conspicuous change in colour or visual clarity;
 - a change of more than 3° Celsius in the natural temperature of the water; and
 - any significant effects on aquatic life.
15. Prior to the exercise of this permit the permit holder shall provide a Sediment Management Plan identifying the methodology for undertaking the works on

the wharf (including re-piling) and detailing the measures that will be used to ensure that any disturbance and discharge of materials into the water column is adequately minimised and that any resulting sedimentation of the water column is adequately contained.

This plan shall be provided to the Manager, Environmental Regulation, Wellington Regional Council, for approval, at least 5 working days prior to the works commencing. Works shall not commence until the Sediment Management Plan has been approved by the Manager, Environmental Regulation, Wellington Regional Council.

All works shall be in accordance with the Sediment Management Plan.

Specific conditions for WGN080117 [26387] and WGN080120 [26393] Coastal permits to discharge contaminants to the foreshore and seabed associated with construction works

13. Subject to Section 123(c) of the Resource Management Act 1991, the period for which this permit is granted is seven years from the date of its commencement.
14. During the exercise of this permit, the permit holder shall take all practicable steps to minimise any discharge into the water column, which may result in any of the following effects after reasonable mixing:
 - the production of any conspicuous oil or grease films, scums or foams or floatable or suspended material;
 - any conspicuous change in colour or visual clarity;
 - a change of more than 3° Celsius in the natural temperature of the water; and
 - any significant effects on aquatic life.
15. Prior to the exercise of this permit the permit holder shall provide a Sediment Management Plan identifying the methodology for undertaking the works on the wharf (including re-piling) and detailing the measures that will be used to ensure that any disturbance and discharge of materials into the water column is adequately minimised and that any resulting sedimentation of the water column is adequately contained.

This plan shall be provided to the Manager, Environmental Regulation, Wellington Regional Council, for approval, at least 5 working days prior to the works commencing. Works shall not commence until the Sediment Management Plan has been approved by the Manager, Environmental Regulation, Wellington Regional Council.

All works shall be in accordance with the Sediment Management Plan.

Specific conditions for WGN080120 [26391] Coastal permit for the occupation of land of the Crown in the coastal marine area with the lower level jetty extension

[No further conditions to those general conditions outlined above]

Specific conditions for WGN080120 [26390] Coastal Permit for the strengthening, repair and refurbishment of Clyde Quay Wharf

13. The permit holder will for the duration of this permit will provide 10 car parks on Clyde Quay Wharf. These parks are for the exclusive use of Chaffers Marina Limited and berth holders.
14. Post construction, the permit holder will build permanent under-wharf storage facilities adjacent to the low level marina board walk. These will be made available to Chaffers Marina Limited and berth holders and access to lockers will be from the board walk.