

BEFORE THE ENVIRONMENT COURT

Decision No. **W 082** /2007

IN THE MATTER of appeals under s120 of the Resource
Management Act 1991

BETWEEN SAVE THE POINT INC
(ENV-2006-WLG-000575)
CHRIS WEBSTER
(ENV-2006-WLG-000574)

Appellants

AND THE WELLINGTON CITY COUNCIL
THE WELLINGTON REGIONAL
COUNCIL

Respondents

Court: Environment Judge C J Thompson, Environment Commissioner W R Howie
Environment Commissioner K A Edmonds

Heard at: Wellington on 2 – 6 and 9 - 12 July 2007: site visit 13 July 2007

Counsel/Appealances:

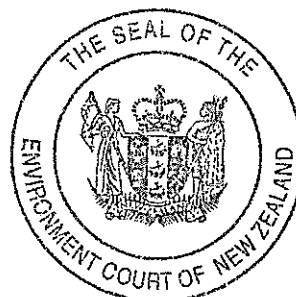
J J Hassan and C Hewitt for the Wellington Marine Conservation Trust
G D S Taylor for Save the Point Inc
C Webster for herself
T Bennion & D Cassidy for GADOT - s274 party
R C Laurenson for himself and J Trevelyan – s274 parties
C Lewis for Action for the Environment Inc – s274 party
J W Hardy & G P Hulbert for the Department of Conservation – s274 party
M Te W Love for Dr Ngatata Love – s274 party
S F Quinn & K M Anderson for the Wellington City and Wellington Regional
Councils

DECISION OF THE COURT

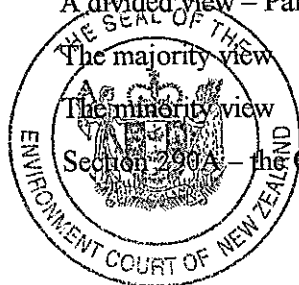
Decision issued: **20 SEP 2007**

A. The Appeals are allowed

B. Costs are reserved



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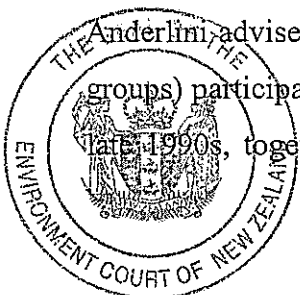
Introduction

[1] In a decision given on 26 October 2006, Commissioners jointly appointed by the Wellington City Council and the Wellington Regional Council granted the necessary resource consents and permits for the establishment and operation of what is described as a Marine Education Centre at Te Raekaihau Point on Wellington's South Coast. The Centre is being promoted by the Wellington Marine Conservation Trust. The Trust has raised sufficient funding to get the proposal this far, and has the support of the City Council, which has committed to an interest free loan of \$7M for construction costs, provided the Trust can find the balance required and, of course, obtains the necessary consents and permits.

[2] Te Raekaihau Point forms the western extremity of Lyall Bay, which is a large bay with a wide sandy beach at its head. It faces south, directly into the ocean and across to the South Island. Wellington Airport is on the eastern side of the Bay, and Moa Point forms its eastern extremity, opposite Te Raekaihau Point. Save for a parking area, the Point is presently undeveloped. The coast road traverses it, close to the escarpment of the headland behind the Point. On the seaward side of the road is a relatively flat area of rock, shingle, mud and fill interspersed with sparse vegetation and partly occupied by the present roughly formed carpark, and a sealed carpark extends from that area towards Princess Bay to the west. At the western end of that carpark there is a small building containing public toilets and changing facilities. A rocky tongue and reefs extend into the sea from the Point. In common with much of the South Coast, it is a popular area for diving and snorkelling although it is no coincidence that its name, loosely translated, means *The headland that eats the wind*. It is exposed to the extremes of the South Coast's weather and sea conditions, so those pursuits are to be followed with care and only when conditions are relatively benign.

The proposal

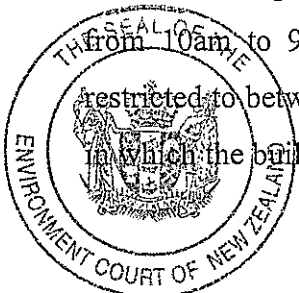
[3] Dr Victor Anderlini and Ms Judith Hutt established what is known as the Island Bay Marine Education Centre, at first operating from the Victoria University Marine Laboratory between Island Bay and Owhiro Bay, in 1996. Between then and the end of 2003, so Dr Anderlini advised us, of the order of 160,000 adults and children (the latter mostly in school groups) participated in marine education visits. They looked to expand the concept and in the late 1990s, together with others, they established the Trust which is now the applicant for



these resource consents. Presently the Marine Education Centre is operating out of temporary, and inadequate, premises at the old Island Bay Bait House.

[4] What is now proposed is a permanent, purpose built home for the Education Centre. The land on which it is to be built is owned by the City Council. As already indicated, the Council supports the proposal but the exact nature of the tenure arrangements, by way of lease or licence of some kind, with the Council has yet to be settled. The site area; ie the area of the Point to be disturbed or modified in some way, is about 1.3ha. The proposed design is for a three level building. The lowest level will be below ground level when viewed from the road, and part of the carpark will be on its roof. This will contain the large aquarium type display tanks, having a total volume of some 1.3 million litres, together with working spaces and activity rooms. The middle level, smaller than the lower and offset to the eastern end of it, will contain the reception/ticketing area, a shop and a café seating up to 155, with 120 people indoors and 35 on the terrace. The upper level will have administration, resource and research spaces. Atop that, there will be a lift room and two vertical wind turbines. The height of the actual building will be about 22m, but its apparent height above ground level will vary considerably, depending on the viewing aspect. On the seaward side of the building there will be open display spaces, enclosed by a draped mesh fence. The *footprint* of the building was said to be 2230m², and the fenced external area about another 1600m². The building's cladding will largely be of materials that will weather naturally, with glass areas, mainly on the seaward and western sides of the building, having controllable external louvres.

[5] The building, including the fenced external area, is to occupy the existing roughly formed carpark and to extend beyond it. The new car park, with a capacity of 92 marked vehicle spaces, is to be at a higher level (at road level), surrounded by gabion basket walls on three sides, and with stairs and ramps either side of the building down to the foreshore and sea. The proposal involves new vehicle access arrangements, including for Princess Bay. The land use consent the subject of this appeal has a condition on hours of operation, reflecting the description of expected on-site activities in the application. The public trading hours of the centre and shop are restricted to between the hours of 10am to 6pm (April to October) and from 10am to 9pm (November to March). The operating hours of the Centre's café is restricted to between the hours of 8am to 10pm, except up to an additional 15 events per year in which the building may be used until 1am. The condition does not restrict staff from being



in attendance at the Marine Education Centre, management training or research activities or sleep overs at the Centre.

[6] Seawater for the displays will be drawn from Princess Bay by way of a submerged and buried pipeline, and water will be discharged by way of a similar pipeline to Lyall Bay. The draw of water from Princess Bay will vary between 40m³ and 90m³ per hour.

The Applicant's position

[7] Unsurprisingly, the Wellington Marine Conservation Trust supports the granting of the consents and permits by the Councils. It believes that the benefits to be gained from its establishment outweigh such adverse effects as there might be and the proposal is an overwhelmingly appropriate development.

The Councils' positions

[8] Both Councils are content with the positions they have taken in granting the consents and permits. Wearing its non-regulatory hat, the City Council has put its weight behind the venture, seeing it as a *good thing* for the City. The Council witnesses who appeared before us were, we should say, careful to observe the boundaries between the regulatory role with which they were concerned, and the promotional role with which they were not.

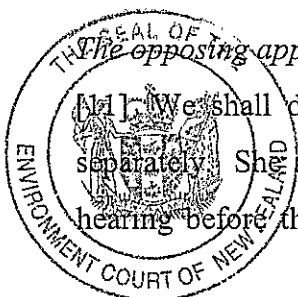
The supporting parties' positions

[9] The Department of Conservation did not call evidence, but made a submission supporting the proposal. Its view is that notwithstanding its effects on the coastal environment, the benefits to be gained from the Centre's focus on marine education and marine advocacy provide exceptional circumstances in which it can be considered an *appropriate* development within the coastal environment.

[10] As we mention in a little more detail later Dr Ngatata Love, in his role as Chair of two significant Iwi bodies, expresses support for the proposal.

The opposing appellants' and s274 parties' positions

[11] We shall deal with Ms Webster's submission about the Foreshore and Seabed Act separately. She also initially expressed concern at what she saw as some impropriety in the hearing before the Councils' Commissioners but, acknowledging the nature of the hearing



before us, elected not to pursue that issue. In general terms, she opposes the establishment of the Centre on this site.

[12] Save The Point Inc (STP) is supportive of the concept of a Centre, but is opposed to its establishment on this site. It raises a large number of issues, including landscape, natural character, ecology, recreation, open space and amenity values, traffic and parking, site selection and economic benefits.

[13] Group Against Development On Te Raekaihau Point (GADOT) shares the concerns of STP, but focussed in particular on the issues surrounding the asserted educational values of the centre on the proposed site, and amenity values connected with cycling and lighting.

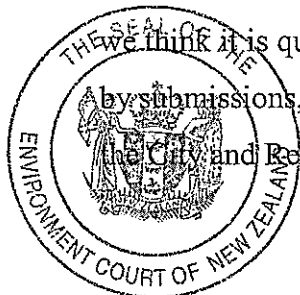
[14] Similarly, Mrs Trevelyan and Mr Laurenson oppose the proposal, arguing that the natural character of the Point is too valuable to be lost to the Centre, which they maintain could be sited elsewhere, if it is to be established at all.

[15] Action for the Environment Inc indicated in its s274 Notice that it opposed the proposal, but save for an announcement of appearance at the outset of the hearing, it took no part in it.

Zoning and planning status

[16] The site is contained in the *Open Space B* zone as described in the Wellington City District Plan, which has been operative since 2000. We shall discuss this more fully later, but for the moment it will suffice to note that *Open Space B* is somewhat more permissive open space zoning than the *Open Space C* zoning covering Wellington's Town Belt.

[17] STP's Notice of Appeal contained, as an alternative to the *discretionary* status, the assertion that the Centre should be considered, overall, as a *non-complying* land use activity under the District Plan. That interpretation of the Plan provisions was not pursued by any planner witness for it or other opposing parties, but Mr Taylor advanced it as a matter of legal submission. We mean no disrespect to his lengthy submissions on the issue when we say that we think it is quite clear-cut. The planner witnesses for the Trust and the Councils, supported by submissions, had the clear view, with which we agree, that it is to be considered under both the City and Regional planning documents as a *discretionary* activity.



[18] Rule 17.4 of the Plan provides: *Activities that contravene a Rule in the Plan, and which have not been provided for as Discretionary ... are Non-Complying Activities.* As a first step, it is accepted that the proposal includes activities which do contravene various Rules. On the plain and ordinary meaning of 17.4, they will therefore be non-complying, *unless* they are provided for as *Discretionary*. The short point is that all of those activities that do contravene a Rule *are* provided for as *Discretionary*. As Mr Ulusele sets out in his evidence, the issues of lighting (Rule 17.2.1); car parking (Rule 17.3.2); earthworks (Rule 17.3.3); vegetation removal and damage (Rule 17.2.4); non-recreational activity (Rule 17.3.2) and buildings and structures (Rule 17.3.2) are all provided for as either restricted or unrestricted *Discretionary* activities.

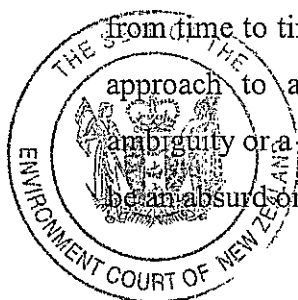
[19] Rule 17.3.2 provides:

Any recreational and other activities in Open Space B or Open Space C not specifically provided for as Permitted Activities, and any construction, alteration of and additions to buildings and structures in Open Space B and Open Space C not specifically provided for as Permitted Activities are Discretionary Activities (Unrestricted).

The District Plan defines *recreation activity* as *...any activity whose primary aim is the passive or active enjoyment of leisure, whether competitive or non-competitive, casual or organised, (but does not include the use of motor vehicles in Conservation Sites or Open Space Areas).* The proposal for the Marine Education Centre incorporating an aquarium, café shop and carparking is not a permitted activity, but it will involve the construction of buildings and structures.

[20] Mr Taylor argues that that cannot have been what the writers of the Plan intended, and that the result should be, at least for the Open Space B and C zones, that buildings and structures must have been intended to be *non-complying*. We should, he argues, set aside what Rule 17.4 actually says and hold that the proposal is *non-complying*.

[21] We cannot accept that as the correct interpretation of the Plan. The approaches to interpreting statutes and statutory instruments have had changes of emphasis and terminology from time to time. It is clear that over time there has been a movement from a strictly literal approach to a broader inquiry, particularly where the *plain meaning* approach brings ambiguity or a result that conflicts with the statutory scheme or purpose, or where there would be an absurd or unworkable result.



[22] As Professor John Burrows QC points out in his *Statute Law in New Zealand* (3rd ed) it is not helpful or accurate to speak of rules of interpretation. He is clear that while there may now be more attention paid to extraneous aids to interpretation, it is still the words actually used that are the most significant factor. As he has put it, one might not be confined *to* the words used, but one is confined *by* the words used. We think it could only be in extreme cases, probably only arising in situations of obvious drafting error resulting in the instrument not expressing the plain intention of the policy makers, that a word can be exchanged for one of different meaning. That general approach is consistent with the views expressed in cases such as *Gillies Waiheke Ltd v Auckland CC* [2004] NZRMA 385, *Transwaste Canterbury Ltd v Hurunui DC* (C52/06) and *Red Hill Properties Ltd v Papakura DC* (2000) 6 ELRNZ 157, and the Court of Appeal's approach in *Powell v Dunedin CC* [2005] NZRMA 174.

[23] It is also entirely consistent with the Interpretation Act 1999. Section 5(1) provides:

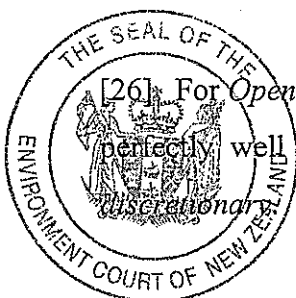
Ascertaining meaning of legislation

(1) The meaning of an enactment must be ascertained from its text and in the light of its purpose.

The first issue is therefore the *text* – ie the words used and what they mean in the light of, particularly if required to resolve doubt or ambiguity, the *purpose* of the enactment or, in this case, the provisions of the Plan.

[24] The point that the two quoted Rules also apply on their face to the more protected Town Belt areas of *Open Space C* does not, we think, assist Mr Taylor's argument. Given that the Town Belt areas are in Council ownership, it has complete control over what can happen there regardless of zoning. There is no practical need to have a more restrictive status than *Discretionary*.

[25] Read together, Rules 17.3.2 and 17.4 make perfect sense as they stand – there is nothing absurd, illogical or ambiguous about their plain meaning, nor is the result of such a reading contrary to the purpose or scheme of the Plan.



[26] For *Open Space B*, the objectives and policies relating to the zone can be given effect to perfectly well if activities that are neither *permitted* or *non-complying* are assessed as *Discretionary*. It is to be recalled that s77B(4) does not offer a bias towards grant or refusal

for *discretionary* activities, but any activity consented to must comply with any standards, terms or conditions specified in the Plan.

[27] So the proposal is to be assessed as a discretionary activity and is to be considered under s104 and s104B, and of course Part 2 of the RMA.

Section 104 – actual and potential effects

Positive effects – education

[28] There were one or two voices raised against the concept, in the abstract, of such a Centre. Mrs Trevelyan, for instance, expressed the view that aquaria generally are an outmoded concept. But even among those who oppose the proposal on Te Raekaihau Point, a strong majority supported the concept of a Centre as being a laudable idea. There was a high measure of agreement that the education of children and adults alike about coastal and marine ecology, its vulnerability to human-generated influences, and the degradation those influences have already brought about, is an important component of the quest to sustainably manage marine resources. For instance, the evidence given by Mr Morgan Williams, the recently retired Parliamentary Commissioner for the Environment, was strongly supportive of that view. In speaking of the need for marine ecology education, Dr Bill Ballantine, who gave evidence for GADOT, has had a great deal of experience with the University of Auckland Marine Laboratory near Leigh, and is an enthusiastic supporter of marine education and advocacy, put his view rather colourfully:-... *I think our existing knowledge is like a cobweb spread over a house. It's all gaps.* (p597)

[29] There was a high level of agreement among the witnesses supporting the proposal (by no means shared by those who did not) that a coastal location for such an enterprise is optimal for access to seawater but, more importantly in this context, to give readily identifiable context and added experience to what could be seen and learned at the Centre.

[30] Of the three marine education specialists, Dr Anderlini and Mrs Pam Williams, who has a great deal of education experience, particularly in the field of marine sciences, both support the proposal. Dr Ballantine does not support the MEC in its proposed location, but did agree with the others that more information about the marine environment is needed by both children and adults; that experiential learning in context (ie on the rocky shore and in the sea) is the best form of learning and that aquaria, and books, videos etc, are valuable learning aids



to learning about marine life. Dr Anderlini and Mrs Williams do not agree with Dr Ballantine that only small aquaria, capable of being viewed close up are the most valuable for learning; nor do they agree that such small aquaria are equally effective sited anywhere, and not necessarily close to the shoreline. Dr Ballantine does not agree that larger aquaria, housing large and/or fast moving species are needed to learn about the marine environment. In respect of such species, Dr Ballantine believes, and Dr Anderlini and Mrs Williams do not, that electronic and other media are the best teaching tools.

[31] A Marine Reserve (to be known as the *Kupe-Kevin Smith Reserve*) is to be established by the Department of Conservation, broadly centred on Tapu Te Ranga, or Island Bay. Present indications are that it will be operational from October 2007. Its boundaries are still to be finally Gazetted, but we understand that, indicatively, its eastern boundary is to be literally within metres of Te Raekaihau, and its western boundary is to be in the vicinity of the old Owhiro Quarry. It will extend about 2kms offshore and have an area of about 5km². It will be a *no take* reserve in which all forms of fishing and harvesting will be prohibited. If other such Reserves are a guide, it can be expected that sea life abundance will increase markedly, and relatively quickly, within the reserve. Inevitably, depending upon species, there will be a spillover of that increasing abundance into the surrounding area. The potential synergies between such a reserve and a Centre are largely self-evident, and, so the project's supporters argue, add to the desirability of a shoreline site.

[32] Mrs Williams expressed the view that a rocky shore site is essential. Dr Alison MacDiarmid, who is the Principal Scientist for Benthic Fisheries and Ecology with NIWA, and who gave evidence in support of the project, expressed the view that proximity to the boundary of the proposed reserve can of itself be a useful teaching tool, in part because of the cross-boundary contrasts in the abundance of some species. Asked outright in cross-examination if the Centre needed to be on *this* site, she replied *Yes, in my opinion it does*. Dr Ballantine's Auckland University Marine Laboratory is on the shoreline near the mid-point of the Goat Island Marine Reserve and it is his view that a Centre should be similarly placed, relative to the Kupe-Kevin Smith Reserve. Indeed it is his view that the present temporary site at the Island Bay Baithouse would be ideal.



[33] GADOT's views about education benefits can perhaps best be summarised by noting a passage from Mr Bennion's opening submissions. Having mentioned the Trust's position, he goes on to say:

...those things can be achieved without large aquarium display tanks and buildings on prominent headlands. Indeed, it is a concern that this proposal will soak up so much funding for large aquaria display tanks, and maintaining 1.3 million litres of water and fish in artificial conditions, as opposed to say, purchasing wetsuits and equipment for surveying Wellington's coastline by school groups, or even having school groups access the remoter parts of the wild Wellington coast.

Nor is GADOT much impressed by the argued benefits of having such a facility hard by the rocky coast, regarding those views as unsupported by strong evidence, and contradicted in some respects by other evidence. Mr Bennion concludes the point this way:

...it boils down to this, do we really have to have a large structure on this prominent headland for 200 years because we think that children and adults won't be able to put what they are learning "in context" if they should be in a learning centre a few hundred metres from the sea, across a road, or in the inner harbour?

[34] As always, the actual success of the concept as an education facility will depend on how well the Centre might be designed, equipped, stocked and operated. The success of the Island Bay ventures operated by Dr Anderlini and Ms Hutt provide considerable track record assurance on that point, but we are not here to judge that. We need to assume that things will happen as proposed and in accordance with the terms of any granted consent. If that is done, we think the argument that strong positive education and advocacy benefits will arise from this kind of facility is unassailable. Certainly nothing we heard in evidence or submission significantly called that conclusion into question. The question of whether the Centre is appropriate in the proposed site of course remains to be dealt with.

Positive effects – tourism

[35] Witnesses called by the Trust were enthusiastic about the proposed Centre's positive addition to the City's tourism attractions. As mentioned elsewhere, Mr Richard Miller's *more likely* scenario is that it could generate 244,000 visitors pa, growing to 257,000 over four years.

Mr Timothy Cossar is the Chief Executive of *Positively Wellington Tourism*, a charitable trust funded principally by the City Council and whose role is to help promote Wellington as an attractive visitor destination. He told us that tourism injected some \$1.4 billion, or 10% of gross regional product, into the Wellington economy in 2005, and that

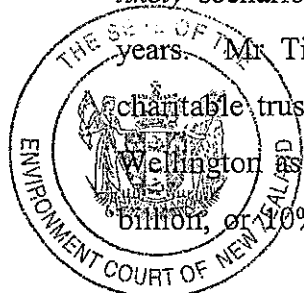


figure is projected to grow. *PWT* sees the Centre as a commissionable attraction – ie one that travel wholesalers would include in travel and visitor packages. He says: *...it should help to build a strong network of environmental and cultural visitor assets in Wellington. Others include Te Papa, Karori sanctuary, Kapiti and Matiu Somes Islands, Red Rocks seal colony and Sink F69.*

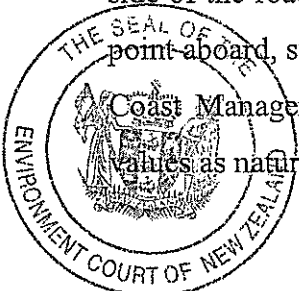
[36] Those who oppose the project see the arguable education benefits, and commercial tourism benefits, as poor justification for the adverse effects on the natural character of the coast arising from the use of this site.

[37] This issue is closely linked with that of financial viability, in the sense that we cannot predict exactly what tourist figures might be, but nor do we need to do so. What can be said is that the economic wellbeing of people and communities is an integral part of the sustainable management of resources in terms of s5. The projected, and not fanciful, tourism benefits of the proposal must obviously be taken account of in the final assessment under s5.

Adverse effects

Permitted baseline and existing environment

[38] We adopt the stricter view of what comprises the *permitted baseline*: - ie adverse effects brought about by activities which are permitted, as of right, by the relevant planning document. Mrs Sylvia Allan, the Trust's consultant planner, has the view that any such effects are so different from those likely to be brought about by this proposal that a measurement of one against the other would be of no assistance. On the other hand, Mr Warren Ulusele, who was the City Council's Principal Planner at the time the application was processed, considers that the permitted baseline might be helpful, if only in a limited way. He points out that the District Plan would permit a 30m² building (with a maximum height of 4m) for recreational purposes on the seaward side of the coast road. Such a building, as he points out, would be of the scale of a tall double garage, which hardly compares in effects to a development of the scale proposed. His real point is that the Plan does not hold the seaward side of the road as sacrosanct from any kind of structure at all. That is true, and we take the point aboard, subject to whatever weight should be given to section 6.7 of the Council's South Coast Management Plan, to be discussed later. But if we are considering *effects* on such values as natural character and visual amenity, the permitted and proposed structures are so far



apart that we agree with both planners that we should put the strictly defined concept of permitted baseline aside as being quite unhelpful in assessing relative effects.

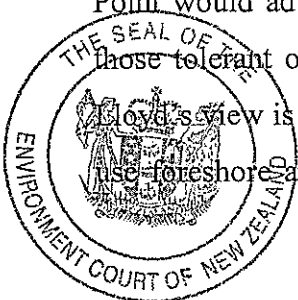
[39] A related issue is a definition of the *existing environment*. The proposal needs to be assessed in light of the existing environment which, on the wider view, includes the site and its surrounds as they exist, the lawful activities being carried out there. There are no granted but unexercised resource consents to be taken account of. Relevantly, that would seem to encompass the existing degree of vehicle access to and parking on the Point, the formed carpark, the Princess Bay facilities building, and the use of the wider area for recreational access to the rocks, shoreline and sea.

Ecology

[40] Ms Isobel Gabites, a landscape ecologist, gave evidence on the terrestrial ecology of Te Raekaihau and the design, construction and future operations of the Centre from an ecological perspective. Dr Kelvin Lloyd, an ecologist, gave evidence on the ecological features, their significance and the effects of the proposal. STP put forward an alternative in what was described as Save The Point's plan and commitment to rehabilitate the Point.

[41] There was some difference in initially held views between Dr Kelvin Lloyd about the presence of some vegetation species on the site, but that was largely resolved with Ms Gabites accepting that there were some specimens that had eluded her first inspections. They agree that the site has *Moderate* ecological significance, but disagree about its placement within the spectrum of *Moderate*. Dr Lloyd considered the proposed development would further degrade ecological values at the site. Ms Gabites was of the view any adverse effects would be relatively minor compared to the existing degree of site degradation and the proposal would result in a considerable net gain in ecological values for the part of the site not built on and an increase in the public's appreciation of these values.

[42] The two witnesses disagreed over the extent to which increased visitor numbers to the Point would adversely affect birdlife. Ms Gabites considered bird species present now are those tolerant of disturbance and no native species are resident on or rely on the site. Dr Lloyd's view is that disturbance of birdlife would be exacerbated if visitors are encouraged to use foreshore and rock platform habitats, and that variable oystercatcher and white-fronted

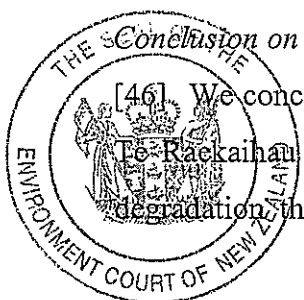


tern would be less tolerant of this disturbance. He suggested visitors should be restricted from access to parts of the Point if the development goes ahead.

[43] While the two agreed restoration of degraded habitats is required to help mitigate modification and the loss of native vegetation and habitat, they disagreed over the style of restoration. Dr Lloyd believed vegetation, habitats and species that would be found naturally on the site would be appropriate. Ms Gabites was of the view that while the ecological solutions proposed, such as the roof gardens, are designed rather than natural, they would achieve the same functionality. Both witnesses accepted there would be a continued need to manage the increased visitor traffic to minimise adverse ecological impacts.

[44] Dr McDiarmid gave evidence that the proposal would have minimal impact on the local marine environment. She also considered the Trust's plans for the restoration and enhancement of the terrestrial ecology would have a positive impact on the surrounding coastal marine area by eliminating the ongoing damage to foreshore ecology caused by vehicular access.

[45] Dr Anderlini's decision matrix in Table 1, comparing alternative sites, included two topics or criteria related to the ecological value. One was representative of the local coastal ecology and for Te Raekaihau Point scored highly as 4, along with Palmer Head and Moa Point. The Arthur's Nose and Owhiro Bay sites scored low, at 2. The other relevant topic referred to rare and endangered species which scored the highest at 5 for the Point and Arthur's Nose, and Owhiro Bay scored 3. He listed the first topic for site selection for the Centre as allowing all visitors an opportunity to see and understand coastal marine life in as natural a setting as possible. Accordingly the site needed to be adjacent to a rocky shore habitat representative of the area. It also was to have safe access to the beach and rock pools, and be sufficiently large enough to allow supervised visits while minimising impact on the habitat. His second criterion was that ideally no rare or endangered species should occur or be significantly affected by the Centre's activities.



Conclusion on Ecology

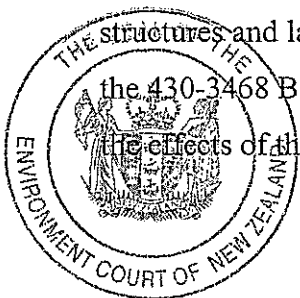
[46] We conclude that the proposal would have minimal adverse effects on marine ecology. Te Raekaihau Point has moderate terrestrial ecological value and is subject to continuing degradation through the uncontrolled access of vehicles in particular. We agree that the

control of vehicle access, re-introduction of indigenous flora and fauna to the site, a pest control programme and better defined pathways, would create a noticeable difference in and improvement to the current ecological wellbeing. However, that would not be the case for that part of the site that is occupied by the building (aside from the roof gardens), the carpark, entranceways, walls and stairs. Also we note that the measures the witnesses refer to as improving ecological wellbeing could occur without the establishment of the Centre, as many of the witnesses agreed. We set aside Save the Point's plan and commitment to rehabilitate the Point as not a relevant matter before us.

Geology

[47] We had evidence from Dr Hamish Campbell, a senior scientist at GNS Science, and Dr Tim Little, an Associate Professor of Geology at Victoria University of Wellington. Both are geologists, and gave evidence on the effect of the proposal on the geological, tectonic, geomorphological and educational value of Te Raekaihau Point. Both accepted the Point was uplifted by around 1.5m in the 1855 earthquake, with the bedrock escarpment originating as a fossil sea cliff cut by wave action in the Holocene period. Points of disagreement were on the extent of the fill and modification, if any, of the Point, and the extent to which the pre-1855 beach ridge is preserved and therefore its significance. Dr Little considered the features of Te Raekaihau Point as largely unmodified, contrary to Dr Campbell. Dr Little also gave evidence that Te Raekaihau Point exhibited geomorphic features of three wave-cut terraces (including the modern one) and two wave-cut terrace edges (fossil sea cliffs) and easily discernable effects of multiple earthquakes. Dr Campbell was of the opinion that the suggestion that Te Raekaihau consists of a flight of raised marine platforms has not previously been observed or recorded by geologists and needs to be examined carefully in the scientific community before it could be accepted, and this has not occurred to date.

[48] Dr Little considered the proposed buildings and landscape would degrade the geological character of the landforms by modifying over 50% of the currently preserved length of the uplifted 1855 beach ridge, especially along its western side and including a short segment on the east side near the café. He also said it would modify or cover, through earthworks, structures and landscaping, over 80% of the 430 BC platform and the parking area would abut the 430-3468 BC fossil seacliff at the back edge of the Point. Dr Campbell was of the opinion the effects of the 1855 earthquake are commonplace in the Wellington landscape.



[49] Policy 1.1.3 of the New Zealand Coastal Policy Statement is to protect features that are important elements of the natural character of the coastal environment, including visually or scientifically significant geological features. The Regional Policy Statement refers to protecting the values associated with nationally or regionally outstanding geological features including those listed in tables. Te Raekaihau is not listed in the tables. It is not recorded on the New Zealand Geopreservation Inventory website.

Conclusion on Geology

[50] We accept Dr Campbell's view that effects of the 1855 earthquake are evident in the Wellington landscape and indeed around the South Coast, including on the site. We note there is scientific debate about the geological, tectonic, geomorphological and educational value of Te Raekaihau Point. At this stage, there is no scientific consensus or recognition in the planning documents or on the New Zealand Geopreservation Inventory of the site having any special value or unique characteristics. We consider the proposal would have some minor adverse geological effects but consider the geological features discussed would remain evident beyond the site.

Natural Character, Landscape and Visual Amenity

[51] The Trust submitted that the Centre would be *overwhelmingly appropriate* at Te Raekaihau having regard to the site's natural character and the coastal environment it sits in. The Trust considered that there are no outstanding natural features or landscapes affected, and the presence of buildings in the natural environment is not inherently unattractive. Also the Trust says the proposal would have a limited physical effect, has a suitable purpose and that there is no conflict with policy and planning instruments of the District Plan, the Regional Policy Statement and the N Z Coastal Policy Statement.

[52] STP contended that Te Raekaihau is an outstanding natural feature in the context of Wellington and so qualifies in terms of the Regional Policy Statement. It is the last stretch of the coast between Owhiro Bay and Moa Point, and one of only three areas between Owhiro Bay and Wellington, without buildings (the Princess Bay changing shed excepted). The Centre would result in the loss of significant natural character, landscape values and important



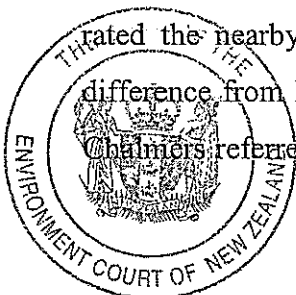
[53] GADOT's position was that the remaining unbuilt seaward side of the South Coast road is a limited resource treasured by Wellington residents, and the broader region, and is part of Wellington's identity. A building of the size proposed on this site would stand out, and indeed is intended to be noticed, and would have significant adverse natural character and visual amenity effects. GADOT considered the development on the Point not to be necessary or *overwhelmingly appropriate* on that site.

[54] We had the benefit of the views of qualified and experienced landscape architects, Mr Gavin Lister, Ms Diane Lucas, Dr Michael Steven, Ms Megan Wraight and Mr Barry Chalmers, an open space planner and member of the New Zealand Institute of Landscape Architects. Mr Chalmers originally managed the planning and put into effect the open space and recreation strategies for the Wellington Region. We also heard from the planning witnesses, Mrs Sylvia Allan and Mr Warren Ulusele, and some lay witnesses on these topics.

[55] We now separately consider natural character, landscape and visual amenity, recognising that there are overlaps.

Natural Character

[56] The landscape architects agreed that the site is within the coastal environment and has natural character, although they differed in those factors considered and the rating or degree of that natural character. The range was between high and moderate, with Mr Chalmers and Ms Lucas rating it high, Dr Steven and Mr Lister moderate-high and Ms Wraight moderate. The assessment included the bluff/headland up to the ridge, the toeslope (with the road), the foreshore, and the splash zone and adjacent sea, between Princess Bay to the west and Waitaha Bay to the east. All of the witnesses agreed that the bluff/headland and the splash zone and adjacent sea have high naturalness. Mr Chalmers and Ms Lucas considered the toeslope and foreshore still had a high degree of natural character, notwithstanding the existence of the road, parking area and the uncontrolled vehicle access. Dr Steven considered the difference in the ratings between Ms Wraight and himself was the different weight she put on her criteria, including a lesser emphasis on the natural processes of the sea. Ms Wraight rated the nearby Princess Bay as having moderate-high natural character, with the major difference from her rating of the site its modification. We note that both Ms Lucas and Mr Chalmers referred to the city context of the site as justifying its natural character rating to be



assessed more highly, a point of disagreement with the other witnesses who considered this only relevant to valuing natural character.

[57] Ms Wraight and Dr Steven gave evidence that the structures would be located on the most modified area of the Point and would not impact on the bluff/headland and splash/intertidal zones. Ms Wraight considered the design of the building and the treatment of the immediate surrounding area not only responds to but would benefit the natural character of the immediate site. Dr Steven was of the view that adding a built element to the Point would not significantly degrade such natural character as it has.

[58] Mr Lister gave evidence that despite the fact that the site is modified, and despite the sensitivity of the design, Te Raekaihau's relatively natural appearance would inevitably be greatly changed if a building is located on the point. The Centre would appear as a stand-alone structure in a landmark location, with a relationship to its surroundings akin to a lighthouse. Whether that significant effect on natural character would be acceptable depended on whether the proposal was appropriate. He said that most structures would be inappropriate in such a location. He considered that the purpose related to the site is a public one and the Centre is designed to engage with and celebrate the site, and that made the proposal appropriate in his view. We return to the reasons he gave for it being appropriate later in our decision.

[59] Dr Steven, Ms Wraight and Mr Lister put some emphasis on the proposal fitting into the site's urban context along the South Coast and in Wellington City. Mr Chalmers and Ms Lucas were of a different opinion. Mr Chalmers gave evidence that the built environment lies away from the site and is only present when looking inland towards Lyall Bay and towards Houghton Bay and Island Bay where there is a scattering of houses in the distance sitting along the base of the escarpment face. He said that the built environment sits within the context of natural features and is subservient to the natural character when viewed from Te Raekaihau Point. He considered the site is an integral part of experiencing the natural character of the South Coast, as did Ms Lucas.



[60] In the opinion of Ms Lucas and Mr Chalmers the substantial building and formal nature of the development, including the walls and car parking, would diminish the natural character of the site. It would become a built place with a coastal frontage, and lose its remote and wild

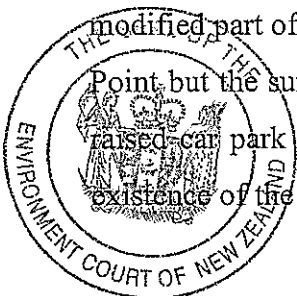
character. Also this headland is only one of two remaining areas in their natural state along that part of the South Coast adjoining the urban area with minimal or no presence of buildings, the second area being Moa Point to Breaker Bay. The proposal would also have a wider effect than the site, in that it would result in a dominant building on these headlands and associated rock platforms that make such a major contribution to the natural character of the coastal environment along the South Coast.

[61] Dr Anderlini included natural character in his Table 1 site criteria evaluation and decision matrix for the potential alternative sites investigated. The material appended to the application states that restorative landscaping and planting of the selected site to create a coastal native plant reserve is an essential aspect. Therefore there should be the potential space and natural character to allow visitors to freely see and learn about the variety of plant life which once existed along the South Coast. Conversely the selected site should not have significant natural character which could be adversely diminished by the Centre. In Table 1, in respect of natural character, the site received a moderate score of 3, along with Arthur's Nose and Windy Point, in between low scores for Palmer Head and Moa Point of 1, and high scores for Owhiro Bay Quarry and Shorland Park, of 5.

Conclusion on Natural Character

[62] Given the lack of any professionally accepted methodology and rating scale, there is a surprising degree of congruence on the assessment of natural character. We accept that the natural character of Te Raekaihau Point is at least moderate-high, particularly given matters raised in connection with the assessment by Ms Wraight. The extent of historical modification through road building and other human activities that may have occurred on The Point does not detract significantly from its natural character. We note that there is the potential to improve the natural character through management of vehicle access to the Point and revegetation or encouraging regeneration, as has occurred elsewhere.

[63] We prefer the evidence of Mr Chalmers, Ms Lucas and some of the lay witnesses about the effects of the proposal on the natural character. While the proposal would occupy a more modified part of the Point, its presence would mean the natural character values of not just the Point but the surrounding area including Princess Bay would be diminished. A building and raised-car park would be a prominent feature in a largely natural area, notwithstanding the existence of the Princess Bay changing shed. The proposal would also have an impact on the



wider coastal environment and natural character of the South Coast. It would result in the loss of natural character of one of only three natural headlands along the South Coast between Owhiro Bay and Point Dorset, adjacent to urbanised Wellington. As importantly, Te Raekaihau Point would be the only platform along the full length of the South Coast extending out into the sea having a major and prominent building diminishing its natural character.

[64] Policy 1.1.1 of the NZ Coastal Policy Statement states a national priority of preserving the natural character of the coastal environment and to encourage appropriate development in areas where the natural character has been compromised. The Regional Policy Statement reflects that priority, including in the matters to consider when making decisions about development in the coastal environment. The Open Space B provisions of the District Plan also have a strong thrust for protecting the natural character of the coastal environment. We consider that the natural character of Te Raekaihau Point has not been compromised to a major extent, and because of its proximity to the urban area of Wellington, it is, in its natural state, an important feature of the Wellington coast. We conclude that the adverse effects of the proposal on natural character at Te Raekaihau Point will be significant. We will return to the question of the appropriateness under the heading of Section 6(a).

Landscape and Visual Effects

[65] The landscape witnesses (ie Mr Lister, Dr Steven and Ms Lucas) agreed that the site, incorporating the rocky coastal marine area, the raised rock platform/raised beaches, escarpment face, ridge, and taking in parts of Houghton and Princess Bay, comprise the Te Raekaihau landscape feature. Ms Lucas was of the opinion that Te Raekaihau Point is an Outstanding Natural Feature under the modified *Pigeon Bay* factors (and is thus to be protected under s6(b)). Dr Steven and Mr Lister did not think it is an outstanding natural feature, but did form part of a landscape of visual amenity or special amenity between Owhiro Bay and Palmer Head which should be considered specifically in response to s7(c). Both acknowledged that it is part of Wellington's South Coast, which is noted as of *...wider importance...* in the Regional Policy Statement.

[66] We now consider the evidence on the modified *Pigeon Bay* factors (*Wakatipu Environmental Society Inc v Queenstown Lakes DC* [2000] NZRMA 59) as these apply to Te Raekaihau Point as a Natural Feature. We note that Mr Lister looked at the wider South Coast

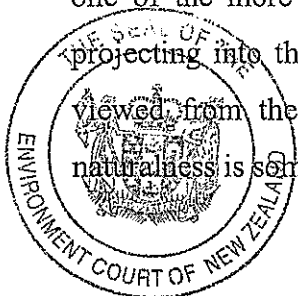


context (between Owhiro Bay and Palmer Head) and also Te Raekaihau in undertaking his analysis. A difference between the witnesses was the extent and effect of modification to landform and vegetation from the road and car park and uncontrolled vehicle access on Te Raekaihau, with Dr Steven and Mr Lister both considering these as a detraction in terms of many of the factors.

[67] *Natural Science Factors – the geological, topographical, ecological and dynamic components of the landscape* Mr Lister considered the South Coast to have moderately high natural science factors, noting relatively intact bold landform patterns, regenerating vegetation, and the ecological value of the shoreline and coastal waters, particularly as a marine reserve is proposed between the site and Island Bay. Dr Steven, largely because of the natural processes of the marine environment, rated the natural science factors as high. Ms Lucas rated them as considerable because of the landforms of different ages, particularly new land that emerged from the 1855 earthquake, and the ecology.

[68] *Its aesthetic values including memorability and naturalness* All three witnesses rated the aesthetic values as high. Dr Steven largely due to the constantly changing action and moods of waves, tides, weather and atmospheric effects and the sounds, smells and rhythms of the ocean. He also acknowledged expansive views to distant headlands and the Kaikoura Ranges of the South Island, the moderate-high degree of natural character, the vividness of the headland and adjacent rocky shoreline, and the silhouette of the headland from adjacent landscapes. He said Te Raekaihau contains few landscape elements – just the headland, rock, rock platform and the ocean – and these are well defined and adjoin the next in an easily comprehended sequential manner from headland to ocean.

[69] Mr Lister noted a rhythm of bay-headland and a sequence of concealed and revealed landscapes experienced by travelling around the coast road between Owhiro Bay and Palmer Head and a directness of contact between road and ocean because what development there is, is located almost exclusively on the landward side of the road. He considered Te Raekaihau is one of the more prominent headlands with a sharp escarpment backdrop and a platform projecting into the sea. He said the headland has a distinctive silhouette, especially when viewed from the east, including from planes landing at Wellington airport although its naturalness is somewhat compromised when viewed up close.



[70] Ms Lucas considered it to be a widely visible, highly memorable, natural landmark on the South Coast and at the southern entrance to Wellington.

[71] *Its expressiveness (legibility) how obviously the landscape demonstrates the formative processes leading to it* Dr Steven, Mr Lister and Ms Lucas all rated this as high. Dr Steven and Mr Lister because it vividly expresses faulting, tectonic uplift, particularly through the platform uplifted in the 1855 earthquake, and exposure to coastal erosion and deposition. Ms Lucas also referred to the geomorphic profile or silhouette to Te Raekaihau, with the ridge crest, the escarpment below and the platform complex extending out into the sea clearly evident.

[72] *Transient values: occasional presence of wildlife; or its values at certain times of the day or of the year* Ms Lucas considered this to be exceptional, Dr Steven very high, and Mr Lister high. Dr Steven referred to seabirds, the southerly storms, passage of ships such as the inter-island ferries, the changing quality of light and other atmospheric effects, like sea spray, mists and changing cloud patterns. He also mentioned views to the Kaikoura Ranges, particularly striking in winter when the mountains are snow clad. Mr Lister and Ms Lucas both identified the heightened experience of weather and sea conditions because the site protrudes into the ocean. Ms Lucas also recognised the value of the dark night sky.

[73] *Whether the values are shared and recognised* Dr Steven considered Wellington residents and visitors value the wildness of the marine environment and seascape and the expansiveness of sea views on the South Coast generally. In Mr Lister's opinion the South Coast is widely recognised by the community as an amenity landscape. Mr Lister said it is Wellington's *other face*, an accessible wild exposed coastline contrasting with the sheltered harbour, and a point of arrival and departure for shipping and planes. Ms Lucas considered the shared and recognised values of the place are very high. She referred to the extensive and diverse on site use and views of it from air, water or land.

[74] *Its value to tangata whenua* While Dr Steven and Mr Lister deferred to the tangata whenua on this, Ms Lucas referred to the area as having special significance to tangata whenua, contrary to the evidence we received from Mr Morrie Love, who represented Dr Ngatata Love. Mr Lister referred to an identified terrace site on the ridge behind the Te Raekaihau headland, as did Ms Lucas under the next heading.

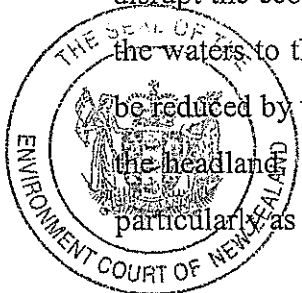


[75] *Its historical associations* Ms Lucas referred to a recorded archaeological site on the headland, a series of terraces just above the Point. Both Dr Steven and Ms Lucas mentioned the uplift from the 1855 earthquake and the wave cut platforms. We also had evidence on some past activities at the site but none of major significance.

[76] *Effects* Under the heading of aesthetic qualities of landscape, Dr Steven considered the addition of the Marine Centre would add a further significant element to the existing landscape elements of headland, rock, rock platform and the ocean and further visual interest to the scene. In his opinion the high and even very high values associated with Te Raekaihau come from the natural processes of the marine environment – winds, tides, waves, atmospheric effects - and their impact on the rocky shoreline would not be affected in any significant manner by the Marine Centre. Dr Steven also considered that the development would be assimilated into the wider landscape of Houghton Bay and Lyall Bay, and in any event would not *jar* in its context.

[77] Mr Lister considered the Centre would have a significant visual presence simply because of its location, with the Centre on an open landmark site on the seaward part of the road and a memorable headland location on the coast road. In his opinion the Centre would appear as a stand-alone structure in a landmark location in counterpoint to the landscape setting, with a relationship to its surroundings somewhat similar to a lighthouse.

[78] Ms Lucas described what she saw as the adverse effects in terms of the modified Pigeon Bay factors for assessing the quality of landscape. She saw the work as disrupting the legibility of the uplift from successive earthquakes and the intactness of the sequence from the sea cut scarp down to the current beach ridge. She considered the legibility of the coastal suite would be disrupted, including the Point's geological features, by what she described as a barricade with the building and its associated works. She also felt the proposal created a new set of microhabitats, including gravel roof gardens, which was not rehabilitation and would disrupt the ecosystems of the Point. She considered the aesthetic value of Te Raekaihau from the waters to the crest of the ridge, that derive primarily from its natural contribution, would be reduced by the building of a substantial complex across the platform and around the base of the headland. Another concern she had was that a key transient value, the view for people, particularly as they come around Queens Drive and the interface with the coast in its raw state,



would be completely altered. She considered there would be a loss of shared and recognised values from the direct access to enjoy a rocky shore and as an entrance to Wellington.

Conclusion on Landscape

[79] We conclude that Te Raekaihau Point is not an outstanding natural feature in the sense of the modified *Pigeon Bay* factors. However, we accept that the landscape and the natural feature of the Point has special amenity value. We find that there are several factors that in particular contribute to that value.

- There are the natural science values, particularly the platform extending out into the sea and the headland even with the modifications for a road, car park and on the area with uncontrolled vehicle access.
- There are the transient values of the changing sea and weather conditions and in the views around and beyond the South Coast and particularly across to the Kaikoura Ranges when snow covered.
- The direct access to the rocky shore and the interface with the ocean from the platform extending out with the sea on three sides, whether on foot or viewed from a vehicle.
- The views of the striking feature of the series of uplifted platforms, including around the island and right through all the headlands to the harbour entrance.

Those elements of the feature do not rely on the disputed geological evidence to give them credibility. The natural feature of Te Raekaihau Point also contributes significantly to the views and experience of the walk, cycle or drive around the South Coast.

[80] The New Zealand Coastal Policy Statement has a policy to protect features which in themselves are important elements of the natural character of the coastal environment, including landscapes, seascapes and landforms: (Policy 1.1.3). The Regional Policy Statement also recognises that some *...local landscapes are of such a quality or are so widely appreciated that they achieve a wider importance...* and gives examples that include Wellington's Town Belt, the headlands and capes of the South Coast, and Kapiti Island as *...regionally important landscapes*. The District Plan also has an objective of the Open Space zone to maintain and enhance natural features (including landscapes) that contribute to Wellington's natural environment.

[81] We find that the proposal would have significant adverse effects on the landscape and the natural feature with special amenity values. We accept the evidence of Ms Lucas and Mr



Chalmers and Mr Lister on the significant effects of the proposal on the landscape of Te Raekaihau Point. We do not consider the proposal would interfere significantly with the geology and geomorphology of the headland and uplifted platforms in a physical sense, although it would in a visual sense. We also do not find that the urban context takes away from those matters, but instead adds to the significance of them. We do not agree with Dr Steven that the proposal would not diminish the wildness of the site.

[82] We note that the site criteria evaluation for the alternatives in the decision matrix (Table 1) provided to us by Dr Anderlini did not include landscape.

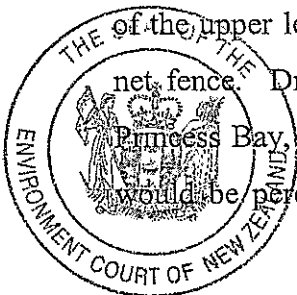
Impact on Views

[83] We start with considering the nature of views from and through Te Raekaihau Point and then move out to consider views of the site from the immediate area around Princess Bay and elsewhere along the South Coast as well as from the air and sea.

Views from the site and its immediate vicinity

[84] All the witnesses accepted that there would be an effect on views from the site from the road and between the road and the building, but differed on the nature and significance of that effect. Dr Steven said that viewed from a car for a few seconds (the predominant mode of experience of the site), or a bicycle for a few seconds longer, the building would block seaward views as Te Raekaihau is approached from either direction. After that the building, together with the Te Raekaihau headland, would frame distant views and in Ms Wraight's terms serve as a *gateway*. Ms Wraight gave evidence that for those standing between the building and the bluff there would still be a view of the sea and for the majority of the length of the building the South Island, however the building would be within a person's wide angled view. Both Ms Wraight and Dr Steven considered that views to the sea would be unchanged from down on the Point itself for people to the south of the building, with views to the setting sun, the Kaikoura Ranges, Baring and Sinclair Head unaltered.

[85] Ms Wraight gave evidence that the closer view from Princess Bay would include views of the upper levels of the building, the car park, proposed stone walls, planted areas and the net fence. Dr Steven gave evidence that in the foreground zone (under 400m), including Princess Bay, part of Houghton Bay and to the southern end of Waitaha Cove, the building would be perceived with greatest clarity, with design details such as colours and textures



apparent. In his opinion, the predominant orientation of pedestrian views from the foreshore and inter-tidal areas within the foreground zone would be seaward, rather than landward, toward the building. Also he considered the building would be seen in the context of the headland, the dominant landscape element, and this would reduce its visual impact.

[86] Mr Chalmers considered the view from the site to be *primarily natural* and a *special view* and even one of national importance. At the broad scale he said the views extend from the Rimutaka Ranges in the North Island to the Kaikoura Mountain Ranges in the South Island and across the ocean separating the North and South Islands. In the view he found little or no influence of man's presence on the landscape, with the distant lighthouses and some evidence of farming hardly registering. At the next level he considered the view includes the coastline from Sinclair Head to the west and Baring Head to the east along the coastal edge as it follows the headlands, escarpments and flat rocky outcrops that are characteristic of the South Coast. In that view he said the natural character of the coast predominates with most of the built environment receding into the distance and generally dominated by natural features such as the hills and escarpment faces.

[87] Mr Chalmers considered the view has a special significance due to its proximity to Wellington City and as an area people can go to see the South Island. Mr Chalmers considered the element of surprise important, with the sudden appearance of the panoramic view of the South Island on the approach from Lyall Bay by road or footpath. He said it is one point along the coastal road where there is a strong compulsion to stop and take in the views both in the distance and the immediate vicinity. Mr Chalmers said that while the taller section of the building is not directly in front of the view on the approach by road from Lyall Bay, the lower section building, gabion wall and expansive carpark including vehicles, would occupy the foreground. He considered that collectively all structures would have a very strong presence partially blocking the view, especially the foreground, detracting from the current expansive uninterrupted view and the sense of freedom when approaching the site.

[88] In Mr Chalmer's opinion the placement of the buildings would significantly affect the experience for those in cars and especially walkers who would have a more immediate sense of the building which would pass slowly from west to east as they walk around the corner. He also said that the presence of built structures on the site would always be part of the viewer's experience. In his opinion, that approach to the site provides the initial experience which then



sets the tone for the overall experience. The proposed built structures would dominate the site and considerably detract from the natural experience currently enjoyed.

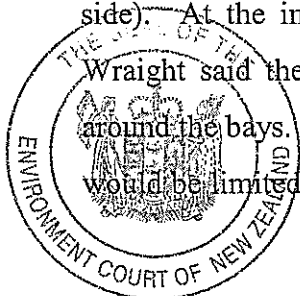
[89] Dr Steven accepted the view from Te Raekaihau is a significant view but both he and Ms Wraight considered it a view obtainable from many locations along the South Coast, with Ms Wraight referring specifically to Moa Point, Sirens and Owhiro Bay. Mr Chalmers gave evidence that this was not the case because of the local site features and the position of the view point within the South Coast headlands. Dr Steven was of the opinion that the *authentic experience is at or near the water's edge* and the Centre would be of little or no consequence to that. He said the Centre's presence would not diminish the wildness of the site and the natural environment because these depend on the vastness of the sea and exposure to the elements.

[90] Ms Lucas was of a similar opinion to Mr Chalmers. She considered the walling, building, car parking and landscape works would completely alter the experience, with the site becoming a built place with a coastal frontage. Ms Lucas gave evidence that the experience from the coast road of accessing the open wild coast, with the South Island beyond, would be significantly affected by the development. Even where views out remain, the experience would overwhelmingly be of being between the development. The continuous visual access over the platform would be seriously disrupted. Ms Lucas also considered that the remote and wild experience would be significantly lessened.

[91] Mr Lister gave evidence that although the building would be half buried in the site, have a low profile and be low key, it would still be prominent. He considered the visual effect would depend on a person's attitude to the Centre.

Wider Views of the Marine Education Centre

[92] The witnesses agreed that there would also be effects on the view of the sea from elsewhere along the edge of the South Coast. Ms Wraight considered that to a lesser extent the proposal would be visible from the coastal edge at Houghton Bay and Island Bay (eastern side). At the intermediate scale (Moa Point in the east to Owhiro Bay in the west) Ms Wraight said the proposal would be screened in part by local topography when travelling around the bays. It would alter some views of more distant landscape elements, but the effects would be limited to the silhouette of the circulation core of the building. From a distance she



considered these forms would be similar in visual terms to the original toe of the headland. At the broad scale visual catchment (South Coast from Baring Head in the east to Sinclair Head in the west), Ms Wraight assessed the proposed structure to be barely visible because the heads and the pattern of headlands are dominant.

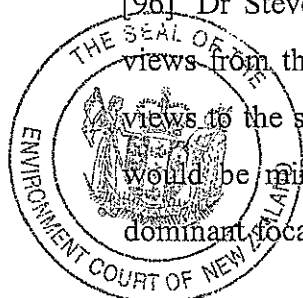
[93] Dr Steven considered that views in the middleground (400m – 4-6km) and background zones (over 4-6 km) would be of little consequence, being across water and wave zones and affected by atmospheric conditions. Details of texture and colour would be progressively lost with distance, and further out the Centre would be seen in terms of edges and the outline of forms.

[94] Mr Chalmers did not agree that the atmospheric conditions (sea and air) would make the building barely discernable. He considered while there would be degrees of visibility, the building would in most cases be apparent and the opposite would apply in conditions of low angular sunlight and clear air at which point the building would be highly visible. He said this is experienced with the lighthouses on the Pencarrow coast where, when viewed from the south they often stand out like sentinels. He also referred to Te Raekaihau Point as the matching sentinel to Moa Point guarding the entrance to Lyall Bay, with both points currently natural in character.

Views from the Sea and Air

[95] Te Raekaihau is visible from the air on certain flight paths. Views of Te Raekaihau from the sea are afforded from an almost infinite number of locations, with ferries passing 4.5-5km to the south of Te Raekaihau. Ms Wraight gave evidence that the headland forms part of the first impressions of many visitors, national and international, to Wellington whether travelling by air or sea. Mr Chalmers considered Te Raekaihau Point is a prominent landscape feature viewed from major tourist routes including planes using Wellington Airport and the shipping lane along which ocean liners and passenger ferries pass.

[96] Dr Steven gave evidence that the traditional methods of analysing views do not suit views from the air. Dr Steven was of the opinion that the visual impact of the proposal on views to the site in the background from other locations, including from the air and the sea, would be minimal. Dr Steven considered the headland of Te Raekaihau would be the dominant focal element in views directed towards the site. He was of the opinion that from



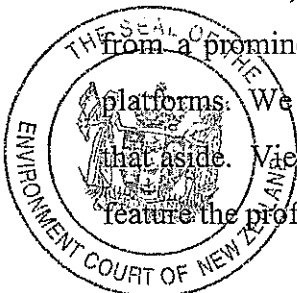
onboard a ferry, the sea and the experience of the immediate marine environment would figure more prominently than any single built structure on land. Also there would be a general impression that Te Raekaihau is part of urban Wellington, given its proximity to the suburban development of Owhiro Bay, Island Bay and Lyall Bay and the airport and the contrast with the wild natural coastline west of Sinclair Head. He also considered that the influence of the atmospheric conditions (sea and air) on the view onto the head would make the building *barely discernible*, not agreed with by Mr Chalmers as we covered earlier.

Conclusion on Views

[97] We find that there are special views from and across the site, although we stop short of considering these to be of national importance. One view is across to the South Island, with the snow in the winter a major feature. Other views are of the natural character of the area from the Rimutaka Ranges to the east along the South Coast to the west, including the striking series of platforms around the coastline. We accept the evidence of Mr Chalmers that these views are special.

[98] We conclude that the presence of the centre, the building and structures such as the gabion wall along with the elevated and increased size of the carpark, would have a major effect on a viewer's experience whether from the coastal side of the building or on the road. It would detract from the special view obtained from and across the Point. That would be the case in a car, on a bicycle or on foot.

[99] There would also be significant adverse effects on what is a predominantly natural view from the area commonly known as Princess Bay, notwithstanding the presence of the existing changing shed building. In terms of views of Te Raekaihau Point from other locations, we consider that there would also be adverse effects for the reasons given by Mr Chalmers and Ms Lucas. While some views have the headland behind them, we do not consider that this would remove the visual effect. On the approach to Wellington City by sea the distance from the site and the wider view along the coastline means the view would have more of an urban feel. However, closer to the entrance to Wellington Harbour, there would be the visual effects from a prominent building on one of the remaining natural headlands and associated rock platforms. We accept that it is difficult to assess the effect of views from the air and so we set that aside. Views of Te Raekaihau Point in profile from points either east or west would also feature the profile of the buildings.



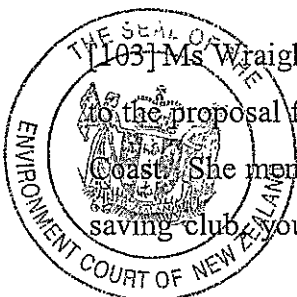
[100] We note that the site criteria evaluation matrix of potential alternative sites investigated produced by Dr Anderlini did not include views, either directly or indirectly. Our conclusion is there would be significant adverse effects on the southern, eastern and western views across the site and the structures would dominate views of the site.

Other Amenity Effects: - Open Space

[101] Mr Chalmers gave evidence on the open space features of the site as its coastal setting, expansive views to the South Island and Rimutaka Ranges, sense of promontory and close proximity to the sea, rocky and exposed nature, sense of natural character and range of geological features. He also saw the coastal setting as a prominent landscape feature viewed from major tourist routes, including the air and shipping lane for passenger ferries. In his opinion Te Raekaihau Point is viewed from many points around the coast, and one of two remaining areas that could be said to be in their natural state along the South Coast with minimal or no presence of buildings. The second area is Moa Point to Breaker Bay. He considered that Te Raekaihau Point is one of three natural areas on what is Wellington's main tourist route around the Bays, with the other two being the north and south of Miramar Peninsula. Another feature is that it is one of the more accessible points for recreationalists and tourists.

[102] In the view of Mr Chalmers, protecting the coastal side of the road from building is a key element to protecting its open space values. He also considered it is important to retain the differences between the different coastal experiences in Wellington City, with the inner harbour more built especially on the landward side while the South Coast is generally more natural and rugged in nature. Mrs Allan and Mr Ulusele referred to the District Plan as not outlawing development on the coastal side of the road. Mr Chalmers considered that open space in the District Plan provides only for modest structures necessary for the use of the open space and which cannot be located elsewhere. We do note however that buildings are a discretionary activity under the Plan.

[103] Ms Wraight accepted that Te Raekaihau is an area with open space values. She referred to the proposal fitting in with built structures on the seaward side of the road along the South Coast. She mentioned various walls, coastal protection work, three single buildings (surf life saving club, youth centre and toilet block) and row of houses, the bait house and surf life



saving club buildings at Island Bay and the small substation and quarry shed at Owhiro Bay. Mr Chalmers said that the larger built structures were close to built-up areas, none were of a similar scale to the proposal and none had been built recently. Mr Chalmers also said that open space had to be planned for at an early stage and protected if it was to be retained. Open space, he said, once lost or compromised was lost forever. In other words a compromise to open space is effectively irreversible.

[104] Mr Richard Laurenson, as a lay witness, gave evidence that the South Coast was noted for its extensive wild and rugged nature. He was concerned about the effects of placing the Centre on the seaward side of the road as that area between Island Bay to Lyall Bay is not encroached on by buildings or structures with the exception of the changing shed at Princess Bay. He said that the proposal would develop effectively the last piece of untouched coastline on the southern coast between Island Bay and Lyall Bay and that it would *puncture* the South Coast.

Conclusion on Open Space

[105] The area is zoned Open Space B in the District Plan in recognition of its open space values and we return to the Plan provisions shortly. We accept the evidence of Mr Chalmers that the open space values of Te Raekaihau Point are significant locally, along the edge of the South Coast between Owhiro Bay and Palmer Head, on the around the bays route, city-wide and regionally. We conclude that the proposal would compromise the open space, notwithstanding its appeal as a visitor attraction and the ability of visitors to walk around it to access the coast, and would have a significant adverse effect on those open space values both now and in the future. We do not accept the evidence of Ms Wraight that the proposal would fit in with the other buildings she lists along the South Coast. With the exception of the small-scale Princess Bay changing sheds, designed to be as low impact as possible, those buildings are in a more built and less of a natural environment setting and do not have the prominence the proposal would have, as we concluded earlier.

[106] We note that Dr Anderlini's Table 1 decision matrix did not include effects on open space either directly or indirectly as a site evaluation criterion.



Recreation and Public Access - Active and Passive Recreation

[107] Ms Wraight described Te Raekaihau's value for active recreation as relatively poor. She said that the site is used by a small number of people accessing the water's edge for fishing, diving and getting into boats. However, she considered it principally appreciated as a place to view the vista, often while remaining within a vehicle or as a place to pass through along the road or road-edge rather than a destination in its own right.

[108] Mr Chalmers gave evidence on existing and potential recreational use of the site in its natural state. He said that the low flat promontory is the largest and most accessible along the South Coast, with approximately 180 metres dry foot access out to sea. In his opinion other features making it attractive for recreation included the deeper water along each side of the promontory, the contrast with the adjacent sand covered Princess Bay, and the relatively easy deeper water access for people wishing to dive and explore the rocks. He also referred to the access to views and the ability for the elderly and the disabled to park close to the shore.

[109] Mr Chalmers said that Princess Bay to the west of the Point is a popular swimming beach because of its natural character and shelter from the northerly winds. He also mentioned that the area between the Point and Princess Bay is used extensively for activities like picnicking, snorkelling and diving, as well as parking to take in the view. Mr Chalmers gave evidence of a survey carried out in 1987 by the then Wellington Harbour Board, that estimated 140 people visited the Princess Bay beach at peak time. The survey findings included the most popular reasons for frequenting Princess Bay to experience its naturalness, isolation and intimacy, with visitors coming from the regional catchment area to experience its natural qualities. He said that there has been a major shift since 1987 from organised sport to freedom leisure and, along with a 14.5% population increase in the Wellington Region, it is likely beach visitor numbers will have increased significantly. Mr Simon Baumfield produced a time-lapse photograph sequence taken over the summer period, showing the use during this time. Mr Chalmers also gave evidence of the importance of coastal areas as the most popular outdoor recreational setting for New Zealanders, referring to a 1981 survey and a 2004 study. He said the time-lapse photographs also attest to the popularity of Princess Bay and the nearby



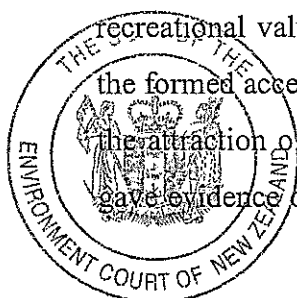
[110] Mr Chalmers saw the recreational benefits of the site as its proximity to the city and as its ability to provide *doorstep* recreation. Also the natural qualities of the area attracting

people to walk or bike the coastline. He referred to the recently approved Kupe/Kevin Smith Marine Reserve. Mr Chalmers considered the new marine reserve likely to attract a large number of visitors nationally and internationally and in itself would become a major recreational attraction. Dr Ballantine gave evidence on the large number of visitors that the Goat Island Marine Reserve attracted, but accepted conditions in Wellington are different. Both saw the coastal edge immediately adjacent to the marine reserve as an important part of the natural character of the marine reserve. Mr Chalmers also considered it reasonable to assume there is a significant level of regional recreational interest in the South Coast and there should be cognisance of the regional policies affecting recreational access.

[111] Mr Chalmers considered the loss of the sense of natural character in the immediate area and its replacement with a built setting, the effect on the views and people in the café overlooking the area would all detract from the recreational experience and opportunity. At a broader level, Mr Chalmers was of the opinion that the proposed Centre would generate an increase in traffic in the area, changing the current leisurely and relaxed feel of the site that is part of the South Coast character. The proposed facility during weekends and holiday periods is likely to attract a significant increase in traffic levels adding greater conflict between recreational users walking, cycling or driving around the coast as part of local recreational activity.

[112] Mr Chalmers considered that the demand for car parking generated from the Centre is likely to place pressure on the carpark and significantly impact on the use of Princess Bay. Mr Chalmers extrapolated the 1987 survey to approximately 40 visitor vehicles, based on a multiplier of 3.5 visitors per car the standard multiplier used when assessing park visitors based on a vehicle counter, at any one time taking up approximately 50% of the existing carpark. Mr Chalmers suggested that half the numbers again would be a conservative estimate (given the time-lapse photographs by Mr Baumfield) and this would result at times in some 70-80% of the existing car park being taken up for Princess Bay use alone.

[113] Ms Wright, Mrs Allan, Dr Steven and Mr Ulusele were all of the opinion that the recreational values of the area would remain and even be enhanced to some degree through the formed access steps and ramps and the confining of vehicles to a raised parking area. Also the attraction of the new Centre to visitors would bring more people to the site. Mrs Allan gave evidence of what she saw as the situation in terms of legal access under Policy 4 of the



Regional Policy Statement. Her assessment was predicated on the basis that with the present fee simple title, there is no automatic legal access to and along the coastal marine area. She said that the proposal safeguards existing informal access (except by vehicle) to the coastal marine area, the change would enable safer and better access for people by foot, and would encourage people to venture onto the point. She also considered it would effectively retain an esplanade reserve width or more land for public access where the building is closest to the coast on either side of the point, and the structures in the coastal marine area would not affect access to it.

[114] Dr Anderlini's Table 1 comparing alternatives has present use patterns included in the evaluation criteria. The explanation is that the Centre's presence should not stop visitors to the selected site from being able to continue present, non-destructive uses such as walking, jogging, bicycling, diving, swimming, or enjoying complete access to the site's foreshore and near shore waters. A site which has been subject to long-term disturbance (especially destructive practices such as land-filling, vehicles running over plants, dumping rubbish and abandoned cars, and poaching of marine life) would be more suitable for the project than a less disturbed site. Te Raekaihau, Arthur's Nose and Windy Point have a score of 3, Palmer Head and Shorland Park 1, Moa Point and Owhiro Bay Quarry 5.

Cycling

[115] Mr Jonathan Kennett, a recreational and cycling consultant, gave evidence for GADOT on the cycling use of the area and its importance in a clockwise 40km coastal loop route for recreational cyclists, particularly those training for major events. He said the ride is attractive because of safety, the scenic values on the seaward side of the road, and its low traffic volumes. He also referred to its use for large scale cycling events, such as *Bike the Bays* with 1799 cyclists taking part. He also said the area is attractive for people wishing to cycle a shorter distance around the coast and who may even take their cycles out to the South Coast by car. However, no surveys on cycle volumes have been done. Mr Clark, the traffic engineering consultant called by the applicant, estimated a weekly cyclist use of 200. Mr Kennett considered this to be on the low side for spring, summer and autumn on the basis of anecdotal evidence. In his view the proposal would reduce the amenity of the coastal ride, but that there might be no drop of in use because of the lack of alternatives offering such safety, flatness and scenic beauty. The traffic associated with the marine centre was more of a concern. We deal with safety issues under the heading of *Traffic*.



Night Sky Viewing

[116] Ms Vicki Irons, vice-president of the Wellington Astronomical Society, gave evidence on the use of the site for night sky viewing and its importance to star gazers and astronomers, including for education purposes. She said that Te Raekaihau Point is the only place in Wellington where the southern dark sky can be reached quickly and good observations made and alternative locations further away are under threat from residential development. Also the Point is safe from passing motorists and has a suitable surface for placing a telescope. Ms Irons said that astronomical phenomena are often unpredictable, with limited advance notice of events such as aurora, and viewing is weather dependent. Her concern was the loss of the dark sky near the urban edge because of the lighting of the Centre and car parking at night. The consent had an advice note that requires the consent holder to liaise with the Wellington Astronomical Society on the reduction of light emissions and to comply with any reasonable request to reduce light emissions on occasions when the society wishes to use Te Raekaihau Point for viewing purposes. Ms Irons considered the recommendation is not feasible given the operating hours and the proposed modus operandi of not just the Centre (including sleepovers for children), but the café and the potential conflict with the safety of the restaurant's patrons entering and leaving the premises. Also the need to provide advance notice would be a problem.

Conclusion on Recreation and Public Access

[117] We conclude that the proposal would mean a different recreation experience, a largely indoor experience with a café, aquarium and shop and more formal and raised parking area and steps and ramps to access the coast. While there would still be the ability to walk around the building and the enclosure, the area would lose key natural elements and open space that make it attractive for outdoor recreation. We conclude that while the Centre would bring more people to the Point for more of an indoor recreation or leisure experience, that would come at a loss to the existing outdoor recreation values of the Point and also Princess Bay. We do not include continued vehicle access across the whole Point as contributing to its recreation value, although we acknowledge the passive recreation value of viewing the coast from a car close to



the shoreline.
[118] We find there would likely be conflict between the parking demand for visitors to Princess Bay, the Centre, and to the soon-to-be-established Kupe-Kevin Smith Marine

Reserve not far offshore from Princess Bay. The traffic specialists did not take into account the parking implications of the marine reserve. Also we received no evidence on other environmental effects of the use of the area in the vicinity of the site for staff and volunteer parking as well as overflow parking, as is likely to occur. Indeed overflow parking along the coast was put forward as a possibility to be considered if the parking review condition were triggered. We consider it is likely that overflow parking would have adverse effects on the natural character of the coastline and the open space and recreation values. It could also limit the ability to park of those wishing to access the coast.

[119] Objective 4 in the Regional Policy Statement refers to maintaining or enhancing the attributes of natural resources that provide for regional recreational opportunity, and their appreciation and enjoyment. Also Policy 8 recognises the potential for recreation of open space and the coast to ensure the quality of the environment for succeeding generations. The District Plan also recognises these matters in the Open Space B zone. We conclude that the site has significant outdoor recreation and open space attributes, including in the context of the South Coast and regionally. We find that the proposal would formalise the access to the coast at this point. It would bring visitors from the region to visit the Centre as a destination and assist in their understanding of local marine ecology. However, that would be at the expense of the appreciation and experience of the natural coastal environment and open space of Te Raekaihau Point and the adjoining Princess Bay, and from other locations on the South Coast.

[120] Policy 4 in the Regional Policy Statement, reflects section 6(d) and refers to maintaining and enhancing public access to and along the Coastal Marine Area. We find that the proposal would maintain public access on foot, with the establishment of a formal access to the coast. The significant diminishing of natural character with the building, mesh fence, walls, stairs, ramps and formal car park behind the public access is likely to lessen the experience of accessing the wild coastline. So too would people at the Centre overlooking walkers around the building from the Centre, including from the café. Currently people can walk out and back on the one level across the platform to and along the coastal marine area. The confined access may result in people feeling less secure in weather and sea conditions common on the



[121] We accept that the Centre would mean that even if arrangements could be made to reduce light spill on request, this would still reduce the current opportunity to view the night sky at any time.

[122] We note that Dr Anderlini's Table 1 decision matrix included effects on recreation and public access under the one heading, present use patterns, in his site evaluation criteria.

Hazards and risks

[123] Anyone who lives, works or recreates on or near New Zealand's coastline has to accept a degree of risk from tsunami, and perhaps other ocean-based hazards as well. We do not live in a risk-free world and the RMA does not require the elimination of all risk. What it requires is that a consent authority (and this Court on appeal) must, under s104, *...have regard to ...actual and potential effects on the environment*. On this aspect, the issue in this appeal is whether present knowledge enables us to set precautions in place which mitigate the risk (because if the Centre is built it cannot be avoided) of a high potential impact actually occurring to such a level of danger that it is, having regard also to the other actual and potential effects, acceptable. As a Court, we have to assess the evidence placed before us to decide whether we can sensibly do that, and we think it is possible in this case.

[124] The MEC building is to be located on the exposed southern coast of Wellington and would be subject to hazards from the sea. To recap, it is a three-storied structure with a service block (lift, generation etc equipment) above and a vertical wind turbine above that again. Finished floor level of the lower level is to be 2.2m above MSL (Wellington 1953 datum). Roof level over the third floor or upper level is 13.1m above MSL and the service block rises a further 5.1m with the wind turbine of 6m on top of the service block. The total building height is therefore 22m, with the highest point at 24.2m above MSL. A fenced area to the south of the building is to contain rock pools, external exhibits and coastal vegetation. This area extends some 20m from the building and is accessed from within the building. Hazards to the building and this area and the people there arise from storm surges, wave run-up, sea level rise and tsunami waves.

[125] Expert evidence on the risk presented by storm surge resulting from wind setup, wave setup and barometric pressure effects and from wave run-up all influenced by rising sea level

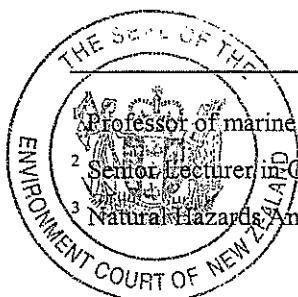


was given by Professor Carter¹ for the MEC, by Dr Kennedy² for STP and by Dr Dawe³ for the WRC. Professor Carter and Dr Dawe, after caucusing, presented us with an agreed statement of the risks and also advised they had no substantive points of disagreement. They concluded that while beach run-up can be gauged by the height of the present gravel berm, there is an increased risk of extreme high water level events overtopping the beach and causing inundation. They advised the natural gravel barrier should be retained along with its natural formation processes and that absorption of water behind the barrier should be ensured. They endorse storm shutters and other engineering features to mitigate the effects if a 1:100 year event overtops the berm and reaches the building, and recommend closing the facility for these storm events. Dr Dawe is satisfied that, provided the coastal berm and the processes forming it are not interfered with and the porous area between the building and the sea is retained, the development is not threatened by storm surges with a return period of up to 100 years, including likely sea level rise over that period.

[126] Dr Kennedy did not take part in the caucus of experts because he was overseas at the time. He observes in his evidence that sea levels have risen since 1953, the date of the MSL datum, and so will be closer to the lower floor level than 2.2m. He confirms the height of the gravel berm at about 3m above MSL. His evidence supports the conclusions of the other two experts that inundation is a threat.

[127] We conclude that inundation of the rock garden and lower level of the building is likely under storm events with a probability of about 0.01 and less. Given that the facility can be closed when an extreme event occurs that level of risk to people is acceptable. A condition protecting the gravel berm would be appropriate.

[128] The other significant hazard from the sea arises from the arrival at the coast of a tsunami. A tsunami is a long period wave at sea caused by a displacement of the sea floor. It may be triggered by an earthquake or an undersea landslide. Coastal landslides can also produce local tsunami waves. They travel quickly in deep water and shoal as they approach land. The 1855 Wairarapa earthquake, magnitude ~8.2, produced a tsunami wave some 4 –



¹ Professor of marine geology, Victoria University.

² Senior Lecturer in Coastal Landforms and Processes, Victoria University.

³ Natural Hazards Analyst, Wellington Regional Council.

5m high in Lyall Bay and ~3.7m high at the harbour entrance and would have inundated Te Raekaihau Point⁴. Clearly the MEC will be subject to this risk, so it is important to evaluate the size of the event, its probability, the consequences, and the avoidance measures possible.

[129] We received evidence on these matters from Dr Berryman⁵, by way of affidavit, and Dr Webb⁶ for the MEC, Dr Dawe for the Regional Council and from Dr Little⁷ for STP. Dr Webb, drawing on Dr Berryman's report (a document not presented to the Court), assessed the tsunami wave height from a 1:500 yr event at 5.3m with a plus and minus standard deviation range of 3.3m to 8.6m. The 1000 year event is assessed as having a wave height of 7.4m. with a plus and minus standard deviation range of 4.6m to 11.6m. The experts agreed on these assessments.

[130] Dr Berryman endorsed the use of tsunami wave heights based upon the estimated mean wave height plus one standard deviation (ie; the 84 percentile wave) when evaluating the risk posed and the remedial measures that might be taken. For a once in 100-year event the 84 percentile tsunami wave height is estimated at 3.3m. For a once in 500-year event the wave height is estimated at 8.6m and for a once in 1000-year event it is 11.6m.

[131] When a tsunami wave reaches the shore it shoals and breaks, and then runs up the beach. The run-up, as a rough guide, is as much as the wave height.⁸ So a tsunami wave of say 10m will reach levels onshore as high as 20m. Given the wave height estimates that have been agreed between the experts, they have also agreed that successful evacuation to at least 20m above sea level will be needed to reduce the risk to acceptable levels.

[132] The consequence of a tsunami wave on Wellington, in terms of people killed, was also assessed in the Berryman report. Some 160 and 650 deaths were attributed to the 500 year and 1000 year events respectively, but there was a large range of uncertainty on these figures. The experts also agreed on these assessments. Some debate occurred about the likely numbers of people likely to be killed at the MEC. That depended on assumptions about the

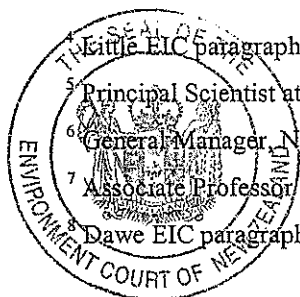
⁴ Little EIC paragraphs 56 and 70.

⁵ Principal Scientist at GNS Science and author of a 2005 report on Tsunami Hazard in New Zealand.

⁶ General Manager, Natural Hazards at GNS Science.

⁷ Associate Professor of Geology at Victoria University of Wellington.

⁸ Dawe EIC paragraph 61.



number of people at the MEC exposed to the risk, the level they were on, the duration of their presence, the degree of warning and the effectiveness of evacuation to high ground.

[133] Dr Webb assessed the risk to staff at the MEC of being killed without any warning as 1 chance in 3,333 per year (ie 0.0003). According to a report quoted by Dr Webb⁹ and attached to Dr Little's evidence this level of risk is:

Getting up to the sort of levels regarded as intolerable for non-beneficiaries in regulatory regimes focused on man-made hazards. Government should not be comfortable if risks at this level are being imposed on people without their consent, or with people being induced to accept risks at this level.

In our view the level of risk from a tsunami to people working or visiting the MEC is not such that consent should be declined on that account. But it needs to be reduced either by protection of the site and the structure or by adequate warning and evacuation.

[134] Of course the risk is reduced if a warning is given and the more effective the warning the lower the risk. For a tenfold reduction in risk (ie 90% effective warning) the level of risk is described in the *Taig* report as;

Some New Zealanders probably already face natural hazard risks at home/work of this scale. Well worthwhile avoiding new consents to add to the numbers.

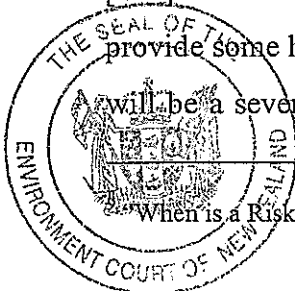
[135] For a hundred fold reduction in risk (ie 99% effective warning) the level of risk is described in the *Taig* report as:

Many New Zealanders probably already face natural hazard risks at home and work of this scale. Might want to avoid new consents to add to the numbers where possible. Government needs to note that if it helps one group of people at these sort of risk levels 'on safety grounds' then it might face large numbers of equally valid claims for help in the future.

The experts agreed that there needs to be an effective tsunami warning system and evacuation plan for the MEC. If that is not possible, they said, then the risk should be avoided. We accept that view.

[136] For distant events that cause tsunami waves a warning system is available and would provide some hours notice. For nearby events that cause tsunami waves the most likely cause will be a severe earthquake and that will be an adequate warning for those at the MEC. A

When is a Risk of National Significance in NZ?" by Tony Taig, TTAC Ltd.



nearby undersea landslide could produce a tsunami wave without warning but Dr Webb considers that such a major landslide would be triggered by a significant shaking earthquake, sufficient to induce elevated pore water pressures in the sediment. Such an earthquake would of itself be adequate warning. Also an undersea landslide induced tsunami wave tends to be more local.

[137] We think that there would be adequate warning of an impending significant tsunami wave with wave heights of 3.3m and greater (ie; the 100 year event and greater) thus allowing people to leave the MEC.

[138] However since the coastal berm height is about 3m, after allowing for wave run-up a tsunami wave greater than 1.5m would be sufficient to overtop the protective berm. That will cause danger to those in the fenced off rock pool area and, depending on how much higher the wave is, it may threaten those in the lower levels of the building.

[139] Dr Berryman showed in his Figure 1 that a tsunami wave height of 1.9m had a return period of 50 years and, after allowing for wave run-up, that would inundate the rock pool area and possibly reach the building. That figure also showed that for the Wellington region a wave height of 1.9m would not result in any deaths but that at a wave height of 2.2m one death could be expected. We accept the figures are indicative but they show that the risk of fatalities in the Wellington region can be expected for wave heights above about 2.2m.

[140] We did not receive evidence of the risk level for these intermediate events, of its acceptability and whether adequate warning would be likely. If the event is triggered by an earthquake and its probability is less than 0.02 then it seems likely that the earthquake would be severe enough to warn people. We are not so sure of adequate warning though if the tsunami wave is caused by an under-sea landslide, a likelihood that is less than 0.02. In this latter case we would expect there would be some tell-tale local signs of the impending inundation such as receding water levels that properly trained staff at the MEC could act upon.

[141] For the major events with probabilities of less than 0.01 the remaining issue is the effectiveness of the evacuation plan.



[142] Dr Oldfield¹⁰ for the MEC described three possible assembly areas high enough to avoid a tsunami wave that could be used when evacuation of the MEC was required. They were up the hill on the landward side of the road. The first site is opposite the Princess Bay changing sheds. It has a steep and slippery track from the road to an assembly area and to be useful would need significant development. The second site is further west and uses a private property access drive. It is physically suitable but we were not told of the land ownership of either of these sites and their availability for development and use by the MEC. The third site is at The Pines, a private property for which no access has been arranged. Using vehicles, high ground can be reached quickly up Houghton Bay Road.

[143] We accept that all these options would be suitable to provide emergency evacuation assembly points but there is no development of them proposed in the application and no arrangements for the use of these sites for this purpose were described to us. Such arrangements would be needed before an emergency evacuation plan could be prepared. No adequate consideration of this vital matter was presented to us and that leaves us with a proposal that introduces a level of risk that is *...regarded as intolerable to non-beneficiaries...* (refer to para [133]).

[144] Our evaluation of the inundation risk associated with the proposal is that it is significant for events with return periods of 50 years and greater, and that measures are required to reduce the risk to an acceptable level (refer to para [139]). It seems that evacuation to safe sites may be possible and available but that was not established in the evidence. We do not know whether the safe sites identified are available, can be developed and will allow timely and practical evacuation of the MEC. That is a prerequisite for an evacuation plan and possibly even for the granting of a consent.

[145] The Regional Policy Statement includes Policy 2 on Natural Hazards. It requires consideration of the probability and magnitude of the hazard, its consequences and the mitigation measures possible. These matters have been considered in the preceding paragraphs. The Policy also requires the consideration of alternative sites.



¹⁰ A specialist risk management engineer employed by MWH NZ Ltd.

[146] Dr Anderlini presented his assessment of eight alternative sites in his Table 1. One of the criteria he used was *public safety* and for the proposed site he assessed that at the highest level of 5. There was no analysis or explanation of how he settled on that assessment and from the preceding analysis of the tsunami wave hazard we have concluded that there is a significant risk to public safety that requires the provision of effective evacuation. The next most suitable site in Dr Anderlini's assessment was at Arthur's Nose, but on the public safety criterion it scored the lowest ranking of 1. Again it is not clear why that was so but perhaps it was because some of the parking area and the building would be separated by a road, as is the case at the original Island Bay site and at the Kelly Tarlton site in Auckland. A building site in the old quarry site on the west of the road at Arthur's Nose would not appear to us to be as hazardous from tsunami wave inundation as the proposed site.

Conclusions on hazard risk

[147] We find that the inundation risk from a tsunami associated with the proposal is significant for events with return periods of 50 years and greater, and that measures are required to reduce the risk to an acceptable level. It seems that evacuation to safe sites may be possible and available but that was not established in the evidence. We do not know whether the safe sites identified are available, can be developed and will allow timely and practical evacuation of the MEC, even at night. That is a prerequisite for an evacuation plan and possibly even for the granting of a consent.

Carparking and traffic

[148] Visitor numbers to the MEC were estimated by Mr Miller¹¹ for the applicant. He estimated that initially visitor numbers in the *more likely* scenario would total 244,000 pa and over a four year period to grow to 257,000. An initial range spread from 190,000 to 303,000 pa. Mr Miller and others used these figures to estimate the economic viability of the proposal and the traffic and parking requirements. Opponents of the MEC disputed the figures from the economic point of view but accepted them as a basis for evaluating the traffic and parking needs.



Managing Director of McDermott Miller Ltd, a strategic planning consultancy, and who is a member of the NZ Planning Institute.

[149] A partly sealed informal carpark servicing the popular Princess Bay is accessed from the road. Mr Clark's surveys showed the average current parking demand is about 35 vehicles at one time with a peak of 55 vehicles. He said there were about 140 parking spaces in the area at present.

[150] Development of the MEC will reduce the availability of the present Princess Bay parking area to some 50 spaces and it will provide 92 marked parking spaces on the roof of the lower level. Mr Miller estimates 167 parking spaces will at times be necessary. Mr Clark and Mr Spence¹² for the City Council consider the periodic parking shortfall is acceptable and can be managed by using the wider area near the site and, if necessary, limiting the duration of parking. Mr Galloway¹³ for STP considers the peak parking demand is likely to be 200 spaces if the visitor numbers predicted occur and based on a slightly lower car occupancy rate of 2.7 people per car. He does agree though that monitoring and management of the parking demand as per the proposed condition is appropriate.

[151] We heard early on in proceedings that the intention was not to allocate or reserve parking for the Centre, but for the parking to be available to any users of the area including Princess Bay visitors. As the hearing progressed, there was reference to parking places being set aside for staff parking, including along the slip road into the site and close to the building. Also of the possibility of staff occupying parking areas nearby. We were told that at peak times, if convenient parking were unavailable, people would not visit the Centre but would return another day. There was also evidence of other parking possibilities, if the traffic review condition was triggered, possibly including time limits on parking and further parking provision along the coast. That review condition allows the Council within five years of the Centre commencing operation, to review the conditions of consent under s128 of the Act to address any adverse impacts related to the impact of traffic movements and parking patterns generated by the Centre.

Conclusion on parking

[152] While we could impose a condition specifying that there is to be no reserved parking for the Centre, in line with what we understand to be the original intention, we conclude the issue



City Traffic Engineer.

Senior Traffic Engineer at Traffic Design Group Ltd.

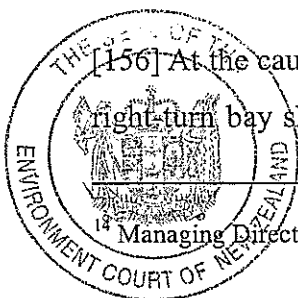
is wider than that. We consider that adequate parking can be provided most of the time but not at peak times. At peak times people would not be able to conveniently park to visit the MEC and are therefore likely to defer a visit to another day. That would also be the case for people visiting Princess Bay, other open space in the area, or the marine reserve exacerbated by any parking occupied by MEC visitors.

[153] The capacity and current usage of the existing roadway around the point was addressed by Mr Clark¹⁴ for the MEC. He records the highest current traffic flow at 320 vehicles per hour in the westbound lane and 276 vph eastbound giving a total flow of 596 vph. He also observes that Queens Drive and The Esplanade is a popular walking and cycling route. At present there is a sealed path separated from the roadway on the seaward side around the point that provides for safe walking and cycling. His estimate of the road capacity is 1200 vph.

[154] The main access to the site is to be located a little to the west of the point and another access is planned for southbound coaches to the east of the point. Detailed drawings of the accesses were not provided but we were told there would be a right turning lane marked in the center of the road for eastbound traffic to wait before turning into the site at the main entrance. Landscape drawings and the model showed a wall erected on the seaside kerb with a footpath located seaward of that. For road safety reasons, particularly for cyclists, the position of the wall would need to be reconsidered. We note that it would also have an adverse effect on the view from the road to the south across Cook Strait to the Kaikoura Mountains.

[155] Mr Galloway recorded that the road is a principal street having a through traffic function and it has a high number of cyclists. The cyclist use, he considers, requires specific consideration in the design of the road, turning bay and access layout. A proposed turning bay width of 2.5m he says is too narrow. It should be 3.5m wide or as a minimum at least 3.0m. Compounding the situation the width of the through lanes at 3.0m should in his view be 4.0m to 4.5m to accommodate the cycle traffic. If those lane widths are not provided then he says a shoulder of 1.2m to 1.5m should be added to both sides of the road.

[156] At the caucus of experts he reiterated his view that the lane widths on either side of the right-turn bay should be a minimum of 4.2m. For this site, with the centrally located right



¹⁴ Managing Director of Traffic Concepts Ltd who holds a NZ Cert in Engineering.

turn bay, Mr Galloway in cross examination rejected the notion that where additional lane width for cyclists was not possible then the lane width should be restricted so that cyclists can command the lane. If the proposed narrow lane widths were to be adopted then he considered it was essential to provide shoulders of 1.2m to 1.5m on each side of the road.

Conclusions on traffic

[157] We conclude that there should be no edge wall on the sea side of the road that would imperil cyclists and impair the view to the south. We also do not consider the proposed road and access layout is adequate to provide safely for the through traffic, the MEC destined traffic and the cycle traffic. If the proposal were to proceed, the road layout would require redesign. We covered the effects of traffic and parking on amenity values earlier in our decision.

Cumulative effects

[158] The RMA definition of *effects* includes ...*any cumulative effect which arises over time or in combination with other effects*. That is, what must be considered is the impact of any effects of the proposal on *the environment*. That environment is to be taken as it exists, with whatever strengths or frailties it may already have, and whatever effects are already at play within it which make it more, or less, able to absorb the effects of the proposal without a breach of the environmental *bottom line* – the principle of sustainable management. Further, the concept of cumulative effects can arise out of the proposal itself. It may be assessed as having a collection of effects, perhaps none of themselves being significant but which, taken in the aggregate, are significant.

[159] In these appeals, it is difficult to identify any existing significant adverse effects upon which the proposal's effects would accumulate and indeed none of the witnesses suggested so. The proposal's argued adverse effects of interference with natural character, landscape, visual and other amenity values, recreation, cycling, interference with the night sky, open space, traffic, parking, and vulnerability to coastal hazards are each individually discussed. Effects on natural character, if the project proceeds, will of themselves be significant and incapable of being avoided, remedied or mitigated. Whether they are acceptable depends on one's view of what is appropriate development. The whole is not greater than the sum of the parts.



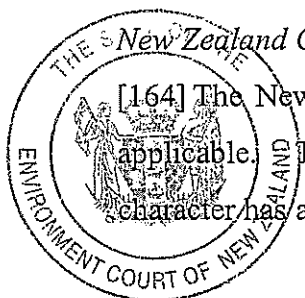
Section 104(1)(b) - the planning instruments

[160] In considering the resource consent applications we are to have regard to any relevant provisions of applicable planning instruments. Those instruments are the New Zealand Coastal Policy Statement, the Regional Policy Statement, the Regional Coastal Plan and the District Plan. We recognise that the Regional Policy Statement, Regional Coastal Plan and the District Plan are a regional and local expression of the New Zealand Coastal Policy Statement and indeed took relevant policy matters in these documents into consideration in terms of effects.

[161] We had limited planning evidence on the Regional Coastal Plan from the planning witnesses with the applicant submitting there was no appeal against the regional resource consents. However, Ms Natasha Hoogeveen, a Resource Advisor in the Environmental Regulation Department at the Wellington Regional Council, gave detailed evidence on the New Zealand Coastal Policy Statement, Regional Policy Statement and the Regional Coastal Plan insofar as it concerned the regional resource consents. She said that only a small portion of the coastal marine area would be occupied by the structures and while although there would be a temporary loss of public access during the construction phase long term public access to the coastal marine area would be maintained. We therefore do not need to traverse the Regional Coastal Plan in detail.

[162] We heard from two planners, Mrs Allan and Mr Ulusele, with both being of the view the proposal is consistent with the New Zealand Coastal Policy Statement, Regional Policy Statement and the District Plan. Mr Chalmers, an open space planner, gave evidence that the proposal did not accord with these planning instruments in respect of its effects on natural character, recreation, open space and public access. Their conclusions were of course based on their analysis of the effects, including relying on the evidence of particular witnesses.

[163] Firstly we identify the relevant provisions of the planning instruments and then come to conclusions after considering the evidence.



The New Zealand Coastal Policy Statement

[164] The New Zealand Coastal Policy Statement contains several general policies that are applicable. The policies include encouraging development in areas where the natural character has already been compromised, taking into account potential effects of development

on values relating to the natural character of the coastal environment both within and outside the immediate location, and avoiding cumulative adverse effects on the coastal environment. (Policy 1.1.1).

[165] Another policy is to protect features which in themselves or in combination are essential or important elements of the natural character of the coastal environment, including landscapes, seascapes, landforms, characteristics of special spiritual, historical or cultural significance identified in accordance with tikanga Māori, and significant places of historic or cultural significance: (Policy 1.1.3). Those features include significant representative examples of each landform which provide variety in each region, visually or scientifically significant geological features, and the collective characteristics which give the coastal environment its natural character including wild and scenic areas. There is a policy for restoring and rehabilitating the natural character of the coastal environment where appropriate: (Policy 1.1.5).

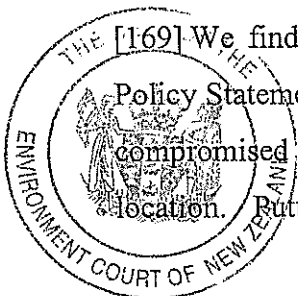
[166] On amenity values, there is a policy that use of the coast by people should not have significant adverse effect on the coastal environment amenity values, nor on public safety or enjoyment of the coast: (Policy 3.1.1). On providing for appropriate development, there is a policy that adverse effects of development in the coastal environment should as far as possible be avoided and where that is not practicable mitigated, and provision made for remedying the effects, to the extent practicable. (Policy 3.2.2).

[167] There is also a policy that new use and development be located and designed so that there is no need for hazard protection works (Policy 3.4.5).

[168] On public access, there are circumstances where restriction depriving the public of access to and along the coastal marine area may be necessary, including security consistent with the purpose of a resource consent. (Policy 3.5.1).

Consideration

[169] We find the proposal is inconsistent with Policy 1.1.1 of the New Zealand Coastal Policy Statement because of its effects on the natural character of the coast that has not been compromised and the values, particularly open space both within and outside the immediate location. Putting a building and a raised carpark on the platform jutting out into the sea,



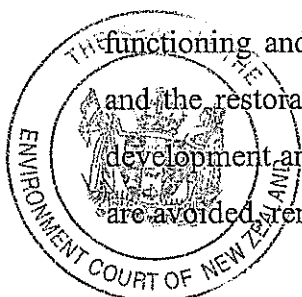
visible against the bluff and coastal seacliff, as well as from locations on land and from the sea would mean adverse effects on important elements of that natural character, infringing Policy 1.1.3. The development would significantly detract from the collective characteristics that give not just the Te Raekaihau Point and Princess Bay, but also the South Coast, its wild and scenic character. The development would partly restore and rehabilitate the natural character of the coastal environment under Policy 1.1.5, but with the loss of a large area to a building and a permanent carpark, stairs, ramps and walls (not including the roof gardens and landscaping).

[170] Policy 3.1.1 would be infringed with the use of the coast by people attending the Centre, including the café, having significant adverse effect on the coastal environment amenity values and on the current opportunity for enjoyment of the coast by the public. However, there would be a different form of opportunity and an aquarium, enjoyed by those members of the public visiting the Centre during their leisure time. In terms of Policy 3.2.2, the proposal would not avoid all adverse effects, although there are measures to mitigate some adverse effects to the extent practicable. The proposal does involve some hazard protection works in terms of Policy 3.4.5, preserving the beach barrier and swale to prevent water entry to the lower part of the building. Those works are not major. In terms of Policy 3.5.1 the reduction in the current physical public access to the coastal marine area would be necessary, including for security reasons, for the Centre.

[171] In short, we find the development and use of the site as a Centre would be inconsistent with Policies 1.1.1 and 1.1.3 of the New Zealand Coastal Policy Statement because of its effects on the natural character, and elements, of the coastal environment and associated values. We return to this issue under our consideration of section 6(a).

Regional Policy Statement

[172] Chapter 7 – *The Coastal Environment*, contains several objectives and policies of particular note. Objective 1 includes preserving the natural character of the coastal environment through the protection of regionally significant areas and values, the integrity, functioning and resilience of physical and ecological processes in the coastal environment, and the restoration and rehabilitation of degraded areas. There is also the management of development and the allocation of resources in the coastal environment so that adverse effects are avoided, remedied or mitigated.



[173] Another objective is for existing provisions for public access to and along the coastal marine area to remain and appropriate opportunities taken to enhance public areas. (Objective 2). There is a policy listing matters to give effect to when making decisions on development in the coastal environment (Policy 1). That policy has as one of the matters:

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

While a number of coastal areas are in the tables Te Raekaihau is not, although the above list is not exhaustive as the policy recognises with its use of the word *including*. A further policy lists other matters to consider when making decisions about development in the coastal environment, as follows (Policy 2):

- (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;
- (6) The adequacy of provision of infrastructure services (particularly for the disposal of waste).

[174] There is a policy (Policy 3) to restore and rehabilitate the natural character of the coastal environment where appropriate. On public access there is a policy (Policy 4) to ensure, in making decisions about new development, 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. A policy (Policy 5) is to maintain or improve the quality of coastal water, but we understand there were no issues about this.

[175] There is also a policy (Policy 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. The policy identifies earthquakes and tsunamis.

[176] Chapter 10 on Landscape and Heritage is also relevant. The introduction identifies the headland and capes of the South Coast as regionally important landscapes rather than local landscapes in a category described as of such a quality or so widely appreciated that they achieve a wider importance.

[177] There is an objective (Objective 2) to avoid, remedy or mitigate the adverse effects of human activities on the Region's natural and physical resources so that the quality of any regionally outstanding landscapes which those resources contribute to is maintained.

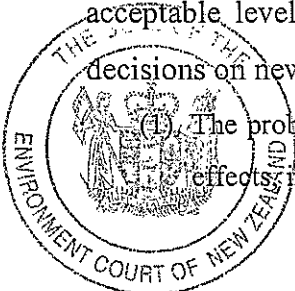
[178] Another objective (Objective 4) is to maintain or enhance the attributes of natural and physical resources which provide for regional recreational opportunity, and for the appreciation and enjoyment of those resources by the regional community.

[179] There is a policy (Policy 1) to manage the use, development, and protection of natural and physical resources in ways which recognise and respect their contribution as elements of regionally outstanding landscapes. Another policy (Policy 4) is to promote the maintenance and enhancement of the amenity and intrinsic values of regionally outstanding landscapes, and of nationally and regionally outstanding landforms, geological features, soil sites, and other features.

[180] There is a policy (Policy 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 any other regionally or nationally outstanding natural features.

[181] Chapter 11 relates to natural hazards, and there is an objective (Objective 1) to reduce any adverse effects of natural hazards on the environment of the Wellington Region to an acceptable level. A policy (Policy 2) contains a list of matters to consider when making decisions on new use and development in areas known to be susceptible to natural hazards:

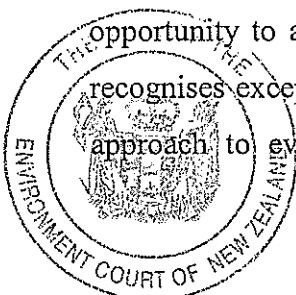
(1) The probability of occurrence and magnitude of the natural hazards, and the location of the effects, including any possible changes which might arise from climate change;



- (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, cost 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;
- (7) Any statutory obligations to protect people and communities from natural hazards.

Consideration

[182] Under Objective 1 of the Coastal Environment heading the proposal would not preserve the natural character insofar as it would not protect a regionally significant area and values, notwithstanding its contribution to marine education. The existing public access along the coastal marine area would remain, with some entry points to it channelled into ramps and steps in terms of Objective 2. There would be a change to what is now public area, given the Centre building and fenced in area would only be accessible at certain hours and on payment of an entry fee. In terms of those matters to consider when making decisions about development in the coastal environment under Policy 2, as we said earlier natural character has not been compromised to a major degree in the area. We accept that the design and operation of the proposal would be an efficient use of finite resources. Also that there are reasons why a site in the coastal environment would be viable. There would be actual and potential adverse effects on scenic, scientific, recreation, open space or amenity values. Outside of the footprint of the proposal, including the carparking, there would be restoration and rehabilitation of the natural character of the coastal environment in terms of Policy 3. Under Policy 4 there would be continued public access to and along the coastal marine area, and steps and ramps taking people down to it on either side of the building. While the current opportunity to access the coastal marine area from the one level would be lost, the policy recognises exceptional circumstances as would occur with the Centre. On the precautionary approach to evaluating risks in Policy 6, we found that some tsunami risks had been



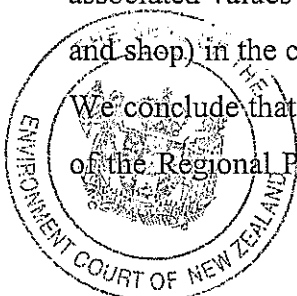
considered but without any firm measures to deal with an emergency situation and others had not been addressed.

[183] As we concluded under the effects heading the proposal would not meet objectives and policies in Chapter 10 on Landscape, particularly given the headland and capes of the South Coast are identified as regionally important landscapes of such a quality or so widely appreciated that they achieve a wider importance. The quality of those landscapes would not be maintained under Objective 2 or the natural resources attributes providing for regional recreational opportunity, and for the appreciation and enjoyment of those resources by the regional community under Objective 4. Neither would the proposal protect the quality of the environment so as to hand on to future generations the regionally significant recreation open space and coastal potential in terms of Policy 8. However, the proposal would provide an opportunity for people from throughout the region to visit the Centre and to learn about marine ecology and ways to contribute to its conservation. It would bring greater numbers of people to the South Coast specifically for that purpose and to enjoy their leisure in and around the Centre and the associated café.

[184] There are some questions raised, but not satisfactorily addressed in the proposal, under Policy 2 – Chapter 11 - Natural Hazards given the susceptibility of the area to tsunami risk and the potential for significant loss of life and injury and other costs to the community. There is also a bigger question in terms of the availability of alternative sites for the use, and we cover this elsewhere. Dr Anderlini gave evidence that the activity needed to be located not just in the coastal environment but also close to the coastal marine area. His evaluation criterion of public safety covering the safety of school children on the rocky shore and visitors from unsafe sea, wind or other natural conditions, surprisingly has the site scoring 5 (the highest score), along with Moa Point and Shorland Park. Arthur's Nose scores 1 and Owhiro Bay Quarry and the Bait Shed 3.

[185] There is an inherent conflict between the retention of the natural character and associated values and a Centre and the visitor attraction of an aquarium (not including a café and shop) in the coastal environment, bringing the suitability of the site very much into focus.

We conclude that the proposal accords with some, and not with other, objectives and policies of the Regional Policy Statement. We also note that the Regional Policy Statement requires



consideration of the viability of alternative sites, and this raises questions about the site selection process, a matter we return to later.

District Plan

[186] The site has an *Open Space B* zoning, with the Introduction containing the following:

Open space is characterised by the fact that it has few buildings. It can be enjoyed and experienced from a distance as a visual distinction between built and unbuilt areas of the city. This enjoyment of open space from a distance also needs to be taken into account when activities in open space areas are being considered.

16.1 Open Space B (Natural environment)

Open Space B land is valued for its natural character and informal open spaces. It involves areas that are used for types of recreation that, in the broadest sense, do not involve buildings or structures. The intention is to keep such areas in an unbuilt or natural state. This type of open space encompasses both formal and informal open space elements. It includes walkways, scenic areas and open grassed areas where buildings are inappropriate. Its characteristics are minimal structures, largely undeveloped areas and open expanses of land. Most Open Space B areas are vegetated and often have ecological values or may buffer Conservation Sites.

Relevant objectives and policies and explanatory material are:

Objective

16.5.1 To maintain, protect and enhance the open spaces of Wellington City.

Policies

To achieve this objective, Council will:

16.5.1.1. Identify a range of open spaces and maintain their character, purpose and function, while enhancing their accessibility and usability.

The explanation that follows refers to assessing proposed recreational structures and buildings to determine if they can be located on areas other than open space to avoid the reduction of open space quality.

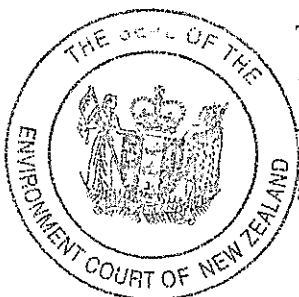
Objective

16.5.2 To maintain and enhance natural features (including landscapes and ecosystems) that contribute to Wellington's natural environment.

Policies

To achieve this outcome, Council will:

16.5.2 1 Identify and protect from development and visual obstruction landforms and landscape elements that are significant in the context of the Wellington landscape, and in particular significant escarpments and coastal cliffs.



The explanation that follows states that the Wellington faultscarp, coastal cliffs, skylines, areas of open space and areas of existing native vegetation are important components of Wellington's visual character. Where these are not protected by public ownership the aim is to restrict, and avoid, remedy or mitigate the visual impact of, any development. The environmental result will be the protection of the significant features of the Wellington landscape.

16.5.3 Encourage retention of existing native vegetation and where appropriate re-introduce native cover.

The policies under both objectives include as methods operational activities (reserves management, management plans) and rules.

[187] There are also the following relevant Assessment Criteria:

17.3.2.1 Whether the structure is designed and located so as to be visually unobtrusive.

17.3.2.2 Whether the structure is needed for the public enjoyment of the site's recreational potential.

17.3.2.3 Whether the site's open space character is maintained.

17.3.2.4...

17.3.2.5 Any relevant provisions of:

- Reserves Act 1977 and any amendments
- Any management plan prepared for the site e.g. ... the Wellington Town Belt Management Plan

17.3.2.6 Whether established public access or the possibility of such access is maintained.

17.3.2.7 Where the activity is within a Māori precinct, the outcome of consultation with tangata whenua and other Māori.

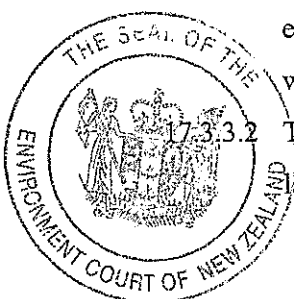
17.3.2.8 The extent to which any adverse effects of any new accessway or carparking, or change in use of any existing accessway or carparking, can be avoided, remedied or mitigated.

As an explanation the Plan adds this: *In general, structures on Open Space B are viewed unfavourably unless there is a need for public facilities that cannot reasonably be satisfied by using other land.*

[188] There are also criteria for earthworks in Rule 17.3.3, as follows:

17.3.3.1 The extent to which any earth cut or fill will remove existing vegetation, alter existing landforms, affect water quality, or affect existing natural features, such as waterbodies.

17.3.3.2 The extent to which any cut or fill can be restored or treated to resemble natural landforms. Council seeks to avoid the creation of unnatural scar faces.



17.3.3.3 The extent to which any earthworks may impact on prominent or visually sensitive situations, including the coastal marine area, ridgelines, cliffs, escarpments and waterbodies.

17.3.3.4 The necessity for carrying out the works.

17.3.3.5 Whether the earthworks proposed increase or decrease flood hazards.

17.3.3.6 Where the activity is within a Māori precinct, the outcome of consultation with tangata whenua and other Māori.

[189] There are criteria for lighting under the restricted discretionary activity rule 17.2.1.4.2:

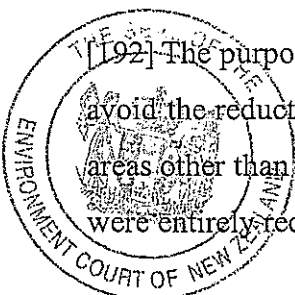
The consideration of applications to provide less intensive lighting on site areas open to public use will take into account the nature of the activities on the site, the extent of public use and whether other measures will be taken to maintain public safety.

Consideration of District Plan

[190] The District Plan provides a strong thrust for protecting the natural character of the coastal environment, as agreed by Mrs Allan and Mr Chalmers. We conclude that the proposal would not meet the objective of maintaining, protecting and enhancing the open spaces of Wellington City (Objective 16.5.1), as did Mr Ulusele and Mr Chalmers. The open space of Te Raekaihau Point has many valuable open space and recreational attributes that depend on its natural character and that would be lost with the development.

[191] We agree with Mrs Allan's assessment that Te Raekaihau is currently an open space area where people enjoy views of the sea and coast and where access is obtained to the land-sea interface and the coastal marine area. However, we do not agree that this would not change because of the proposed development; but many more people would be encouraged to take up the existing open space opportunities. Neither do we agree that while there would be slightly less open space, its quality, accessibility and usability would be substantially enhanced for reasons we traversed earlier. We agree with Mr Ulusele that the proposed Centre would alter the open space and natural character of the site by placing a large built structure in area of largely undeveloped, open expanse, and would result in the diminished sense of openness currently experienced within Te Raekaihau.

[192] The purpose or intention of the Open Space B zoning conveyed in the explanation is to avoid the reduction of open space quality by locating recreational structures and buildings on areas other than open space. The buildings are, in part, for recreational purposes. Even if they were entirely recreational, the Centre would not maintain the character of the open space with



its access to an unbuilt on platform extending from the road out into the sea. Neither would it enhance the site's accessibility and usability. Instead, the Centre would mean a large part of the natural area would be occupied by a building and a fenced off outdoor area. Access to that area would only be available during certain hours and on payment of an admission fee or by buying food and drink from the cafe.

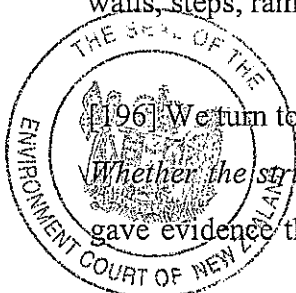
[193] Those adverse effects would not just relate to Te Raekaihau Point but extend beyond to Princess Bay and other points along the South Coast. There would be a strong awareness of the existence of the Centre from the popular sandy beach and surrounding areas of what is commonly known as Princess Bay. At present there is a strong natural character to the surroundings looking along the coastline and seaward but that would be lost with the presence of a large building, as we covered earlier.

[194] For similar reasons we conclude the proposal would not meet the objective of maintaining and enhancing natural features that contribute to Wellington's environment (Objective 16.5.2). The area of open space comprising Te Raekaihau Point is an important component of Wellington's visual character. One policy (Policy 16.5.2.1) seeks to protect from development and visual obstruction landforms and landscape elements significant in the context of the Wellington landscape. We note that Te Raekaihau headland is afforded protection as a ridgeline through Plan Change 33 and through its recognition as a special precinct. We do not accept Mrs Allan's view that the headland itself and the cliff that comprises part of it is not developed or visually obstructed by the proposal and the building visually integrates the low-lying point and the headland. As we heard from Mr Chalmers, it is his view that Te Raekaihau Point is a special place in Wellington and the presence of the Centre would be the antithesis of protecting it.

[195] We conclude that the proposal would re-introduce native cover (Policy 16.5.3) but that could occur irrespective of the development. Also the re-introduction proposed would be of a more formalised and less natural arrangement, associated with the raised access, car parking, walls, steps, ramps and the drape.

[196] We turn to look now at the Assessment Criteria.

Whether the structure is designed and located so as to be visually unobtrusive. Mrs Allan gave evidence that the while the structure would be visible it would not be obtrusive as the



location, form and context all work together to create harmony on the exposed coast. We do not find the structure visually unobtrusive for the reasons we gave earlier in this decision. In fact we consider the structure is designed to be prominent. Design features cannot overcome the effect of its size and location.

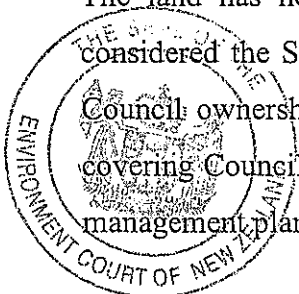
[197] *Whether the structure is needed for the public enjoyment of the site's recreational potential.* Mrs Allan was of the opinion that the development, including the structure but more particularly its contents and the enhancement to the open space beyond the structure, would enable many more people to enjoy the site and its recreational potential. We accept the evidence of Mr Chalmers that Te Raekaihau Point is already more accessible than a range of other open space examples on the South Coast for recreation and that the structure of the Centre is not needed for the enjoyment of the Point's recreational potential. Public access would be lost through the building and fence occupying areas currently accessible to the public without paying any entry fee or buying food and drink in the case of the cafe. Even where there is the possibility of public access inside the Centre, the experience would be a different one. The café would effectively be a private space and would overlook the remaining unbuilt on area detracting from public enjoyment of the coastline.

[198] *Whether the site's open space character is maintained.* Mrs Allan considered this criterion involved the quality and not just the quantity of open space. In her view a relatively degraded area used for parking would be replaced by a building and more formalised carpark, but the major part of the point will remain open space with higher quality values and enhanced character. We conclude that the site's open space character would not be maintained, as we heard in evidence from Mr Chalmers and Mr Ulusele.

[199] *Any relevant provisions of:*

- *Reserves Act 1977 and any amendments*
- *Any management plan prepared for the site e.g. ... the Wellington Town Belt Management Plan*

The land has not been set aside under the Reserves Act. Mrs Allan and Mr Ulusele considered the South Coast Management Plan is relevant as it includes the site and it is in Council ownership. We agree. The South Coast Management Plan is a non-statutory plan covering Council-owned and administered land and including the site. It is relevant because management plans are referred to in the assessment criteria.



South Coast Management Plan

[200] The Plan has, under the heading *New Structures on Coastal Land (6.7)* as a Policy:

Seek to limit new structures on the coast, specifically on the seaward side of the road, to only those that are necessary.

It explains that certain structures are necessary for the enjoyment of the coast (such as boat ramps and jetties), to manage coastal activities (such as signs, litter bins and fences) and for the effective functioning of the City's infrastructure. The Plan then specifically refers to *necessary* firstly as a stringent test for any proposal to place structures associated with the City's infrastructure within the coastal environment and states it *...implies that all other options have been explored or alternatives are not available*. Then it states that *necessary also implies that any assessment must start from the point of view of the coastal values, rather than the objectives driving the desire for the proposed structure*. Any assessment of proposed new structures is to take into account the following:

1. Only structures that are necessary for the enjoyment of the coast, are needed to manage coastal activities, or are necessary for the effective functioning of the City's infrastructure will be supported.
2. Structures should not be located on the seaward side of the coast road if at all possible.
3. Structures that are supported, must minimise their adverse impacts on the coastal environment and recreation and, if possible, should enhance the area's values.

Where a new structure is supported, its design (including size, bulk and location) should be directed at enhancing coastal character. The structure should be seen as an extension of the coastal character of the immediate area, rather than an intrusion into it. ...

Only in exceptional circumstances will a structure that is **not** necessary be supported. This may occur where a structure is of such importance to the City that this policy may be overridden. However the structure must have a direct relationship to the coastal environment. Any such project would need to be carefully assessed and undergo city-wide consultation so the Council can be satisfied its effects on the coast are outweighed by its benefits.

The Plan then goes on to refer to a management framework area-based approach and under the heading *Te Raekaihau Point Princess Bay*:

Te Raekaihau Point is the proposed site for a Marine Conservation Centre. Its current character is predominantly natural, but is in a degraded state. Princess Bay has a strong recreation focus and is a well used sandy bay. Its surroundings are natural in character, however recreation facilities are appropriate if sensitively designed and sited.



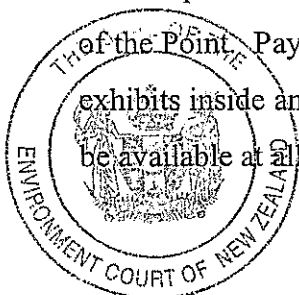
Implementation actions include a proposal to establish a Marine Conservation Centre on Te Raekaihau Point supported by the Council, with enhancement of the general area and site a part. Mr Ulusele said in answer to questions that the listing of the Marine Conservation or Education Centre in the Plan is in terms of the *exceptional circumstances* quoted above.

[201] We did not understand the Council to be suggesting that there would be any major change to the existing access to and use of Te Raekaihau Point if the proposal did not go ahead. Indeed we note the South Coast Management Plan has a section on Classifying Land as Reserve (6.13) that states *it is generally intended that all land to the seaward side of the road will be classified as recreation reserve*. The Management Plan recognises there is still the Reserves Act 1977 process to go through.

[202] We are very aware that the South Coast Management Plan is a non-statutory document and that it has not been through a submission and appeal process under the RMA. In any case, the listing in the South Coast Management Plan does not of itself outweigh or *trump* the objectives, policies and other assessment criteria in the District Plan (or the other planning documents under the RMA). We now turn to the Assessment Criteria listed in the District Plan.

[203] *Whether established public access or the possibility of such access is maintained*. Mrs Allan considered established public access to the open area is largely maintained. She said that while the building area and small fenced area adjacent would not be publicly accessible, there is no intention to “privatise” the open space, accesses around the building, or the car parking area. She also referred to a public toilet and shower, to be accessible by the general public. While the public would generally need to pay to access the display area itself, she said this is a typical situation where special facilities are provided and a charge is imposed such as occurs with the Karori Sanctuary.

[204] Physical public access along the shore would still be available with access down steps and ramps. However, established public access would not be maintained to a significant part of the Point. Payment would be required to visit the Centre facility whether as a visitor to the exhibits inside and the area within the fence or to the café. Public access to the site would not be available at all hours, unlike the situation at present.



[205] *Where the activity is within a Māori precinct, the outcome of consultation with tangata whenua and other Māori.* The location is in a Māori precinct. Mrs Allan gave evidence that consultation with tangata whenua has been undertaken and other Māori consulted as part of extensive wider consultation processes. Mr Morrie Love gave evidence on this aspect, as we mention in paras [10], [74] and [226].

[206] *The extent to which any adverse effects of any new accessway or carparking, or change in use of any existing accessway or carparking, can be avoided, remedied or mitigated.* As we concluded earlier, the accessway and carparking would have adverse effects, many of which could not be avoided or efforts to deal with them could result in other adverse effects on natural character, landscape and visual amenity, open space, recreation and amenity.

[207] In summary, to this point in the District Plan we find that the proposal would not accord with many of the objectives and policies, and generally falls well short of matters identified as important considerations in the assessment criteria, of the Open Space B zone. However, there is still an additional matter, based on consideration of alternatives in the view of Mrs Allan, that is part of the explanation of the Rule. That reads: *Structures in Open Space B are viewed unfavourably unless there is a need for public facilities that cannot reasonably be satisfied by using other land.* It appears to reflect the explanation under Policy 16.5.1.1: *To avoid the reduction of open space quality in general Council will continue to assess proposed recreational structures and buildings in order to determine if they can be located on areas other than open space.*

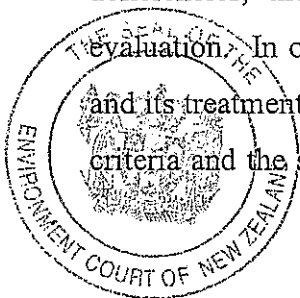
[208] We had evidence that a pre-requisite was a site on Council-owned land. The site selection criteria included ownership and land status, with the potential site scoring 5 (the highest) and 4 for the land status. Arthur's Nose scored similarly and Owhiro Bay scored 5 for both. Mrs Allan gave evidence that most of the options considered by the Trust or the Council are in Open Space B land although some are in more restrictive Conservation Sites. She also gave evidence of her independent review of and approval of the site selection evaluation.

[209] We note from the decision of the Commissioners that they were not entirely convinced that other South Coast options could not be designed to meet the educational experience. One of the site attributes for education was the proximity of suitable rocky shores for school



groups to study. We had anecdotal evidence that school groups currently use Te Raekaihau Point and also the area opposite *The Bach* well to the west of the site. We were told that the wind conditions meant it would be possible to alternate between the rocky shore to the west and the east of the site depending on the wind conditions. There was some acknowledgement that weather and sea conditions as well as child safety could be a limiting factor. The site evaluation criteria did not contain any items specifically directed to this attribute, although it was implicit in a number of other broad categories. Crossing a road was seen as a major safety issue and another reason for requiring a site on the seaside of the road, although there may be other ways around this. The Trust also considered a location on the sea side of the road especially necessary because of the focus of the Centre on the marine and coastal environment. We accept that a location in the coastal environment in its broad sense is desirable, but were not persuaded that there could not be a sufficient learning link from a location on the other side of the road.

[210] The Commissioners also considered the applicant's scoring of certain attributes in their assessment of alternatives was less than robust. We too had difficulty with the analysis and site evaluation criteria, provided by Dr Anderlini in his Table 1. He used this matrix to consider alternative sites and to demonstrate that other land was not a feasible alternative. Each of the criteria received equal weighting. This was curious given there were some factors the applicant relied on as necessary or even pre-conditions for the success of the Centre. The basis of the scores given to the evaluation criteria for the alternatives, particularly when these contained several elements and also both positive and negative elements, was not well explained or justified. The criteria used in the matrix were not comprehensive, and some of the omissions we have noted in this decision. Rankings for the limited criteria were not substantiated, with some appearing odd: eg a high public safety ranking for the site when it is exposed to significant tsunami risk. We accept the evidence of Dr Richard Hicks on the inadequacy of water quality data on which the ranking of what was described as a key site determinant was based. Te Raekaihau scored 5, Shorland Park and Moa Point 3 and Owhiro Bay and Arthur's Nose 2. While technology is available to deal with water quality deficiencies, they have significant costs. These risks were not factored into the site evaluation. In our minds, there is also the question of the café with seating for 155 people, and its treatment as an integral part of the Centre, in terms of the site selection and evaluation criteria and the scores. There was also no sensitivity analysis. The site selection evaluation



criteria considered some, but far from all, of those matters we have to consider and weigh under the RMA in connection with the selected site.

[211] In view of our conclusion on the District Plan, we do not look at the assessment criteria for earthworks and lighting as these are secondary rather than primary elements of the proposal.

Section 104(1)(c) – other (possibly) relevant matters

Alternative sites or methods

[212] Most of those who oppose the Centre expressed a fairly consistent theme that they did not oppose the concept as such, but that they did not want it to be sited at Te Raekaihau Point. Some suggested alternative sites, and some criticised the Trust's site selection process. We note from the decision of the Commissioners that they were not entirely convinced that other South Coast options could not be designed to meet the educational experience and that they considered the applicant's scoring of certain attributes in their assessment of alternatives was less than robust. They accepted that alternative sites may be feasible but the assessment of the application must be based on the consideration of the proposed activity at the Te Raekaihau Point site.

[213] It is the case that cl 1(b) of Schedule 4 indicates that an AEE should contain ...*a description of any possible alternative locations...* if it is likely that an activity will result in significant adverse effects on the environment. In the case of discharge permits, s105 requires the consent authority to have regard to ...*any possible alternative methods of discharge, including discharge into any other receiving environment.* Alternative possible sites were considered by the Trust, and discounted for various reasons. That included various possibilities for the discharge of water into the marine environment. As did the Commissioners, we found that the evaluation criteria and the scoring of alternative sites largely put before us by Dr Anderlini in evidence was not robust in several areas, as we commented on earlier. However, that process of considering alternatives cannot be converted into asking the Court to answer the question ...*Does this proposal on this site better meet the test of sustainable management than would the same proposal on some other site which the Court has not been able to examine?* That question simply cannot be answered.



[214] Other sites and methods having been considered and put aside by the trust, it is this proposal that is before the Court, and it is to be assessed on its own merits. That is what this hearing was about. We agree with the views expressed by the Court in cases such as *Dumbar v Gore District Council* (W189/96) and *Te Kupenga O Ngati Hako Inc v Hauraki DC* (A10/01). Whether or not the threshold of *significant adverse effect* in terms of cl 1(b) is met, we need to focus on the assessment of this proposal, and its effects, against the purpose of the Act, the sustainable management of natural and physical resources, without being distracted by possible, but untestable, alternatives.

[215] In summary, we take the same view as the Court expressed in *Gulf District Plan Association v Auckland CC* (A101/2003):

We hold that our task is to consider the potential effects on the environment from granting consent, and not need (or lack of need) for the facility. As submitted by Ms Campbell, it is instructive to consider the decision of the Court of Appeal in *Fleetwing Farms v Marlborough District Council* [1997] NZRMA 385, where in the context of determining the order of priority for consideration of two competing applications in relation to the same portion of coastal marine area, the Court held that every case should be considered on its merits, and that it is not the role of the Court to identify the “best” proposal to achieve a given end.

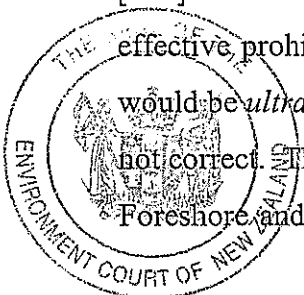
Essentially the same point was made slightly differently in *Freilich v Tasman DC* [2005] NZRMA 410 at para 114:

We do not accept that an applicant for a discretionary activity has to demonstrate that there is no alternative method or site, or that adequate consideration has been given to alternative sites or methods. The application is tested by reference to the provisions of the Act and of the plan.

[216] For completeness on this issue, we note that Policy 4.1.6 of the New Zealand Coastal Policy Statement does not apply. There are references to the consideration of alternatives in the Regional Policy Statement and District Plan and we considered these matters under those headings.

The Foreshore and Seabed Act 2004

[217] Ms Webster mounted an argument that the Foreshore and Seabed Act 2004 created an effective prohibition on granting these consents or, as she actually put it, that granting them would be *ultra vires* that Act. No other party supported that position, and we are sure that it is not correct. That Act and the RMA intersect after a Customary Rights Order has been made, a Foreshore and Seabed Reserve created, or a s26 (Foreshore and Seabed Act) Gazette Notice



has been issued: - (see the Resource Management (Foreshore and Seabed) Amendment Act 2004). But resource consents granted before any such outcome remain unaffected. It is to be remembered that resource consents do not grant proprietary rights. They are permissive only, and have a legal existence independent of the ownership of the land on which the activities are to be carried out. It is clear too, that the ability of the Regional Council to grant consents to undertake various activities in the coastal marine area remains unaffected unless a s26 Gazette Notice exists.

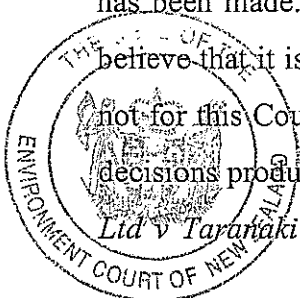
[218] The essential purpose of the Foreshore and Seabed Act, as s3 and s13 make clear, is to vest the ownership of the public foreshore and seabed in the Crown, but otherwise administrative functions over such areas are to continue in accordance with existing legislation: - see s28.

[219] The New Zealand Coastal Policy Statement and Part 2 RMA (in particular s6(d)) contain ample directions for decision-makers in respect of public rights of access to the foreshore and seabed, and the issue hardly requires further emphasis by reference to the Foreshore and Seabed Act.

Financial viability

[220] Arguably, this issue might come within the *economic wellbeing* rubric of s5. Certainly there were suggestions from witnesses such as Mr Miller that the successful establishment of the proposal would give rise to employment opportunities, and bring an increased visitor spend into Wellington generally. That may well be so – but we have no better access to a crystal ball than anyone else. Whether the proposal can be financially viable depends both on factors that might be ascertainable in advance – eg construction costs, and those that cannot be quantified to more than a broad band of expectation— eg admissions revenue.

[221] In any event, it is not a function of this Court to sit in judgment on issues of commercial risk or prudence, or to decide whether a commercially correct choice of available alternatives has been made. If the Trust and those who are prepared to commit funding to the project believe that it is a financially sound undertaking, that is a decision for them to make and it is not for this Court to second guess them. It is only if, and when, the implementation of such decisions produces effects on the environment that this Court has a role: see eg *Todd Energy Ltd v Taranaki RC* (W101/2005) and *Judges Bay Residents Assn v Auckland RC* (A72/98)



particularly at paras [48], [69] and [70], and the cases there cited. Similarly, in his decision in *New Zealand Rail v Marlborough DC* [1994] NZRMA 70, 88, Greig J confirmed the then Planning Tribunal's view that issues of financial viability of a proposal are not relevant in considering the interaction between s5(2) and s7(b), and that they are decisions for the boardroom and not, by implication, for the Courtroom.

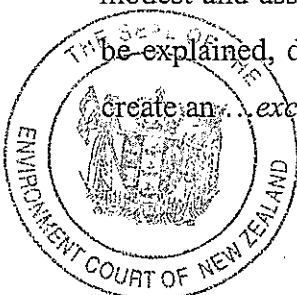
[222] A resource consent is permissive, not mandatory, and simply provides an opportunity for a project to be established. We can do no better than assume that responsible people will not take advantage of that opportunity unless it can be robustly assessed as being within the bounds of acceptable financial risk.

Other documents

[223] There were some other documents drawn to our attention and which we considered under s104(1)(c).

[224] *Capital Spaces* Mr Chalmers considered a key policy document is Capital Spaces – Open Space Strategy for Wellington Te Whanganui-A-Tara (November 1998). Although he noted the document is short on detail in his opinion Te Raekaihau Point is highly significant within the context of the South Coast in terms of the values in the Strategic Plan. Mrs Allan was of the view that this very high level policy document, which predates both the District Plan becoming operative and the more detailed South Coast Management Plan and is not referred to in the District Plan, is not particularly relevant. We found this document of limited usefulness in the light of the other documents in front of us.

[225] *South Coast Management Plan*. We covered this earlier under the heading of the District Plan. As a non-statutory management plan, with no appeal rights to the Environment Court, we do not give the South Coast Management Plan great weight. It does however provide the Council's view that structures in the coastal Open Space B on the seaside of the road ought to be limited to those necessary and where that is not possible they should be modest and associated with the use of the open space. The majority of the Court, as soon to be explained, do not agree that there is a sufficient ...*direct relationship with this site...* to create an ...*exceptional circumstance*. See para [200].



Part 2 – sections 8, 7(a) and 6(e) – tangata whenua issues

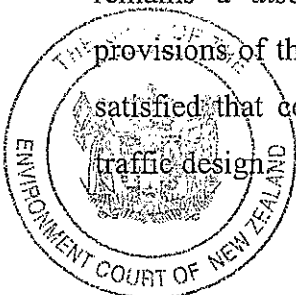
[226] Mr Morrie Love, who has wide experience in assessing issues of concern to tangata whenua arising out of development proposals, had a major role in drafting the Cultural Impact Report on this proposal for the Trust, and gave evidence for the Trust. He also represented Dr Ngatata Love, Chairman of Te Tatau o te Po Marae, and the Wellington Tenths Trust, which is an Iwi Authority. Both of those organisations support the grant of consents for the Centre.

[227] In summary, it is Mr Love's view that it is likely that Te Raekaihau was a ...*place of last resort*... for the gathering of kaimoana for Māori because of its exposure to the elements, and the availability of preferable alternatives along the South Coast. He points out too that the site contained no land suitable for cultivation. Nor are there traces of Pa having been established there, although they were common on other headlands along the South Coast. In short, Mr Love rather discounts the evidence of Mr Kelly and Ms Lucas about the significance of this site for Māori, regarding them as having blurred this site into descriptions of the South Coast in general.

[228] In light of the stance taken by the two significant Iwi organisations and Mr Love's evidence, and in the absence of any more specific issues being raised, we see no reason to think that the proposal will conflict with cultural values of significance to Māori, or with their role as Kaitiaki.

A divided view

[229] To this point, the members of the Court are in agreement, within the normal bounds of consensus decision making. However Judge Thompson has the misfortune to disagree with Commissioners Edmonds and Howie on the assessment of some Part 2 issues and, in particular, on whether the proposal should be regarded as inappropriate use and development of the coastal environment in terms of Part 2 and the NZCPS. What follows in paras [230] to [273] is Commissioner Howie's and Commissioner Edmonds' majority view. Paras [274] to [292] contain Judge Thompson's views on those issues indicating that, given that the proposal remains a *discretionary* activity notwithstanding its arguably awkward fit with some provisions of the planning instruments, he would have declined the appeals subject to being satisfied that conditions could have met the identified issues about hazard mitigation and traffic design.



*The majority view**Part 2 – s6 – matters of national importance*

[230] Section 6 RMA contains a number of issues which are declared to be of national importance, and which are to be recognised and provided for. Section 6(e) has already been mentioned, and we deal with the others relevant to this proposal in turn.

Section 6(a) – *the preservation of the natural character of the coastal environment ... and [its protection] from inappropriate use and development.*

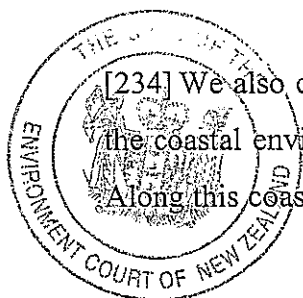
Appropriate Development

[231] The applicant's case put forward several arguments as to why the development would be appropriate in terms of Section 6(a). In particular, physical effects, suitability of the purpose of the use, policy and planning instruments and sustainable management benefits. There were several threads to these arguments. We deal with these one by one. Then we deal with Mr Lister's reasons for his opinion that the proposal would be appropriate on this site.

[232] *The road, car parking area and the site's urban context compromise the natural character of the coastal environment.* The corollary of this argument is that the extent of the compromised natural character justifies the location of the Centre, particularly in terms of Policy 1.1.1 of the New Zealand Coastal Policy Statement. Also that development of this nature is to be expected in close proximity to the urban development associated with the airport, industrial and commercial uses, and the housing found along the South Coast.

[233] We consider that this argument is an overstatement and that the site itself has significant natural character values which have not been significantly diminished. It also fails to recognise the importance of retaining those areas of natural character that are left in close proximity to the urban population of Greater Wellington. This is one of only two natural headland areas along a coast that is growing in significance for visitors because of its natural values. Along the South Coast too, the geological feature of the terraces and the fingers extending out into the sea (aside from the argument about their geological significance) are an important part of that natural character.

[234] We also consider that the urban context makes the retention of the natural character of the coastal environment, particularly the area between the road and the sea, more important. Along this coast, there are few buildings to the south of the road, but instead an uninterrupted



vista across the rocky foreshore and sea to the South Island. The existence of this view from other locations around the South Coast, does not take away from the importance of the view from Te Raekaihau Point. As Mr Chalmers described the view is a natural one and *special* when seen from the road and from below the road on the Point itself. Having the large building to one side and the car park on the other would mean that the view, from the road or from the raised carpark area, would be dominated by built rather than natural elements and the connection to the coast and the South Island diminished. Ms Wraight's suggestion that the building would provide a window to look through describes a very different view and not one that is appropriate.

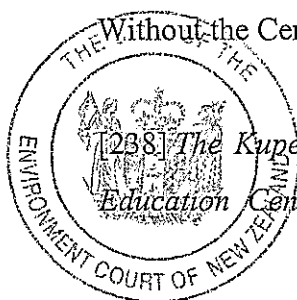
[235] *The purpose of the Marine Education Centre is, as the name describes it, marine education and this is best served by location on this site.* There were several strands to this argument. We heard that there needs to be a close connection to the sea and that a road can be a physical and psychological barrier to learning about the sea. We also heard that the rock pools to the west and east of the site would provide a suitable learning opportunity for particularly school groups visiting the Centre.

[236] We were not entirely convinced about these matters. We referred to the sea and weather conditions and their implications for visiting the rocky shore earlier. Also the aquarium part of the Centre is an inward looking operation, and even the outdoor part of the complex, has little connection to the natural values of Te Raekaihau Point. To access the area of the rocky shore outside the complex, people will need to go out of the building and then through the carpark and around its outside. That provides a tortuous route.

[237] We were told the primary purpose of the Centre is, as its name indicates, education. However, that is not its sole function. The continued viability of the Centre depends on getting people through the door on repeat visits to the aquarium. There is also a large café proposed and the intention is that the building provide for events and dining unrelated to the marine education purpose of the Centre. While we were told that the café is a minor contributor to the viability of the business (approximately 5%), it occupies a considerable area of the site.

Without the Centre, there would be no justification for locating a café here.

[238] *The Kupe-Kevin Smith Marine Reserve is to be established close by and the Marine Education Centre would be able to act as an interpretive centre.* The Department of



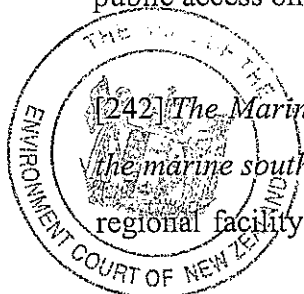
Conservation submissions indicated that the Department would work with the Centre so it could act as an interpretative centre. The Marine Reserve is to one side of Te Raekaihau Point and we had evidence that there can be considerable difference between the quality of marine life to be observed either side of the line so to speak. Dr MacDiarmid saw this as offering the benefit of comparison and therefore an educational benefit. Dr Ballantine said that this was very much a scientist's view and that he would take visitors to the best the marine reserve could offer for education purposes.

[239] We do not consider the Centre is appropriate in this location just because it can act as an interpretive centre for a nearby Marine Reserve.

[240] *The design of the building in particular but also the access, car park and the area inside the fence or drape as the architect preferred to call it, mean the Marine Education Centre would be unobtrusive* (an assessment criteria in the District Plan). We do not find the proposal unobtrusive and indeed many of the witnesses accepted that there would be adverse visual effects. We have already covered some of these. It is positioned and designed to be seen and will dominate the point and the views from and through the point. Ms Wraight describes the view through or over the point across the rocks and the sea to the snow capped Kaikoura mountains with the structure in place as being framed by the building. We agree and consider that quite inappropriate.

[241] *The area is currently in a degraded state and would be restored as a part of the project.* We consider the degradation is overstated and as we have already concluded the Centre would result in its own degradation of the natural character of the Point, with the built nature of the proposal dominating over the natural values. The area's environment could be restored to a higher quality natural state without the establishment of a Centre, as many of the witnesses accepted. This could involve redesigning the access and parking area, confining the area vehicles can access, as well as planting, as has occurred elsewhere along the South Coast. These improvements could occur without loss of open space, the connection to the sea and public access on foot to the whole area.

[242] *The Marine Education Centre would provide for better appreciation and enjoyment of the marine south coast.* This argument is that the proposed development would provide a new regional facility and maintain and enhance the urban South Coast by providing a variety of



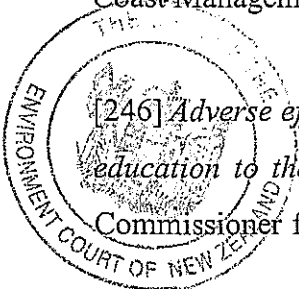
experience. The car parking, and ramps and steps giving access to the unbuilt on area adjoining the Coastal Marine Area, would provide for safer and better access by people on foot.

[243] We agree with Mr Chalmers that the Centre would restrict the current appreciation and enjoyment of the marine South Coast as well as its growing importance in the future because of its natural values and close proximity to the urban area. He also had a concern about the effects on public access, particularly that it would clearly restrict access by placing a long building, car park and retaining walls in the way of access to the foreshore and rocky outcrop. While steps and ramps to the beach are proposed the current level of access and freedom to explore the area in its natural state would be considerably diminished. There is also a level of access along the frontage but again this is likely to be constrained by the wall especially during rough seas and the fenced off rock pool area restricts access to some of the natural foreshore area.

[244] We find that the Centre would provide a changed coastal environment not just at Te Raekaihau Point but in the area around it. Maintaining the natural character values of a finite coastal resource for people to enjoy is important. The proposal would remove the opportunity for people to view, walk out on to and use the South Coast in a more natural state from a readily accessible place. It would place structures of a more urban nature in the way of that experience. We therefore do not consider the case is made out for the Centre for better appreciation and enjoyment of the marine South Coast.

[245] *The proposal does not conflict with policy and planning instruments and these are relevant to understanding community preferences.* We have already found that the proposal on this site is not in accord with policies in the New Zealand Coastal Policy Statement and Regional Policy Statement related to the protection of the natural character of the coastal environment and associated values. It also conflicts with the Open Space B zoning in the District Plan. As we said earlier in this decision we do not give much weight to the South Coast Management Plan as a non-statutory plan.

[246] *Adverse effects on the local environment would be outweighed by the benefits of marine education to the wider community.* Dr Morgan Williams in his capacity as Parliamentary Commissioner for the Environment produced a number of reports and a conference paper on



the issues facing the marine environment and the need to educate people about conservation. He gave evidence that we should take a systems approach and that the benefits of people understanding the importance of the marine environment and what they need to do to make a difference should be the overriding consideration. We do not agree in the circumstances of this case, particularly considering the proposed development and use of the site encompasses more than the marine education purpose.

[247] There was another counter argument about the inconsistency of people coming to learn about marine ecology and the need to take care of it now and in the future in a complex with major adverse effects on the coastal environment. We think there is something in that, given our findings on the effects.

[248] We now turn to our reasons for disagreeing with Mr Lister's opinion that the proposal is appropriate. Te Raekaihau Point is not far from urbanised Wellington but it is separated from the built environment. The site in our view is not urbanised or directly affected by urban development. It retains an open, natural and rugged character and in our view any urban context is quite remote from the site.

[249] We agree with Mr Lister when he observes that the relatively natural character of Te Raekaihau Point will be changed if a building is located on it. The proposed structure will, he says, appear as a stand-alone structure in a landmark location in counterpoint to the landscape setting, akin to a lighthouse. We agree. He says most structures in this location would be inappropriate in terms of s6(a) and s7(c) RMA. Again we agree and, as already recorded, the proposal for this site is inconsistent with provisions in the planning documents and particularly the District Plan.

[250] However, Mr Lister thinks there are saving graces of the proposal on the site that might outweigh these serious adverse effects and make the proposal appropriate. He says the MEC purpose relates directly to the site. In our view it relates more to the coastal environment and not particularly to this site. It also is largely introverted towards indoor aquaria and displays covering a much wider scope than just the site. Any particular relationship to this site is small and hardly mitigates the adverse effects we have identified.



[251] Mr Lister says it has a public purpose to educate the public about the marine environment. That is true and it might possibly justify its location in Open Space B near or on the coast. However we do not find that the intrusion of this structure at this location with its various adverse effects is at all mitigated by the public nature of its purpose.

[252] Mr Lister also says the MEC is designed to engage and celebrate the site. However we consider it is located and designed to dominate the site and the views through and across the site. It would certainly, at times, be in the teeth of the wild southerly weather but we do not see that as a particular advantage for the purpose of the Centre, although maybe it will be at times. We certainly do not see that this association with the site, if it is advantageous, being capable of mitigating the adverse effects.

[253] Mr Lister emphasised that the building is predominantly low profile stretching around the point and nestling into the site. However in our evaluation we have concluded that the extensive carparking on the roof and the tall building elements at the eastern end of the site do not blend with the site. They dominate it. Moreover they present a significant barrier to access to and views of and over the coast.

[254] While we agree with aspects of Mr Lister's assessment, we differ in our appreciation of the significant adverse effects on natural character, views, amenity and coastal access of the proposal on this site. We do not rate such positive effects as there are as sufficient to warrant acceptance of those adverse effects.

[255] In summary, we do not accept that the development and use proposed is appropriate on this site.

[256] Section 6(b) – *the protection of outstanding natural features and landscapes from inappropriate use and development.* We did not find Te Raekaihau Point to be an outstanding natural feature or landscape in terms of s6(b), but in case we were wrong in this we consider our analysis of whether the proposal would be appropriate development would be equally applicable.

[257] Section 6(c) – *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.* The site does not contain significant indigenous



vegetation, or is a *significant* habitat of indigenous fauna, to a degree that justifies the protection of the site. The development of the Centre and its ongoing management, with the conditions proposed for the consents, would deal adequately with the ecological effects.

[258] Section 6(d) – *the maintenance and enhancement of public access to and along the coastal marine area*. The proposal would not prevent people from accessing the coastal marine area. Some of the area currently available to the public at all hours would not be able to be accessed outside opening hours without the payment of an entry fee or the purchasing of refreshments, in the case of the cafe. As the planning evidence was at pains to point out the Council could look to manage this land in a different way. However, we do accept that the presence of the Centre would result in a diminished experience for those accessing the coastal experience now available on the site as well as along the South Coast. (*Biomarine Ltd v Auckland RC* (2007) 13 ELRNZ 1).

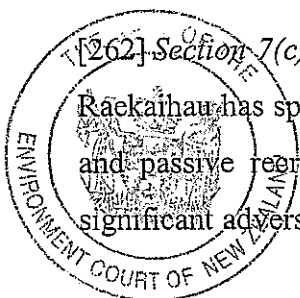
Part 2 – s7 – matters to be given particular regard

[259] Section 7 contains issues to which decision makers under the Act are to have particular regard. Section 7(a) has been mentioned already, and we now deal with those other issues which are relevant.

[260] Section 7(aa) – *the ethic of stewardship*. The Centre would contribute to educating people about the marine environment and the actions needed to safeguard it. It would do that at the expense of putting a building and associated parking on a largely natural area between the road and the sea.

[261] Section 7(b) – *the efficient use and development of natural and physical resources*. Mrs Allan gave evidence that the smallest feasible footprint, multiple use of space, multi-purpose building use including for events, and accessibility within the urban area (also potentially from public transport) all contributed to efficient use and development. We accept that these are measures designed to achieve efficient use and development.

[262] Section 7(c) – *the maintenance and enhancement of amenity values*. We concluded Te Rākaihau has special amenity values in terms of its landscape, open space, views, and active and passive recreation opportunities in the coastal environment and that there would be significant adverse effects on those values. Those amenity values would not be maintained or



enhanced by the presence of the Centre. Instead, there would be more of an urban amenity not only on the site but in terms of the effects of the Centre around and beyond the site.

[263] *Section 7(d) – intrinsic values of ecosystems.* There would be no major effect on the intrinsic values of ecosystems from the development of the site, although there could be some wider benefits for marine ecology from marine education.

[264] *Section 7(f) – maintenance and enhancement of the quality of the environment.* That part of the Centre that relates solely to its educational purpose and advocacy would help maintain and enhance the quality of the wider and particularly the marine environment. However, that would come at the price of a significantly reduced quality of the environment for Te Raekaihau, the South Coast, Wellington and wider region.

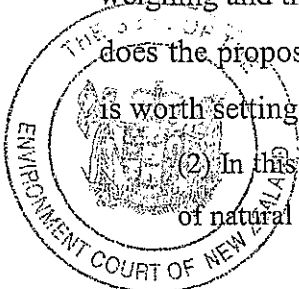
[265] *Section 7(g) – any finite characteristics of natural and physical resources* The coast is a finite resource, as are its natural character, landscape, open space, recreation and amenity characteristics. Marine education would assist people’s understanding of marine ecology and the need to take care of it. However, the Centre would occupy a scarce resource along the South Coast close to the urban area of Wellington. The effects of the Centre would not only be to detract from the natural character of Te Raekaihau Point, Princess Bay and the South Coast but also valued landscape, open space, recreation, visual and amenity characteristics. There would also be the use of areas along the coast, a scarce resource, for parking for an attraction with major indoor elements including the cafe. We find that the proposal would not be consistent with this matter.

[266] *Section 7(i) – the effects of climate change.* We have nothing to add to Judge Thompson’s conclusions on this matter.

Part 2 – section 5 – the purpose of the Act

[267] All factors, however raised under s104 or Part 2 of the Act, go to informing the weighing and the decision required under s5, which embodies the purpose of the Act. That is, does the proposal promote the sustainable management of natural and physical resources? It is worth setting out s5(2) in full:

(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 -

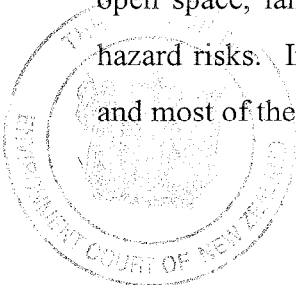
- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects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

[268] There would undoubtedly be economic benefits from the Centre. So too would there be benefits from marine education in protecting our natural resources and safeguarding the life-supporting capacity of water and ecosystems. However the Centre, despite its name, is not just about marine education but involves other activities including the café.

[269] People and communities also derive social and cultural wellbeing from, and there are also benefits to people's health, from being able to access the natural environment at any time, whether just to take in the views available from and of Te Raekaihau or to be involved in more active pursuits. Those opportunities would be significantly diminished not just at Te Raekaihau, but also at the adjoining Princess Bay, and other locations along the South Coast. There are risks to the health and safety of people visiting the Centre from a tsunami, and those risks were not fully addressed or dealt with, in terms of confirmation of the availability of evacuation sites and the like. We consider that the ability of future generations to enjoy this site in its present state will be compromised.

[270] The proposal will not avoid adverse effects on the coastal environment. The mitigation cannot deal with major adverse effects of not just the large building and associated structures but also the use of the site. The significance of those effects on this site is not outweighed by the benefits of marine education at this site and its contribution to safeguarding the life-supporting capacity of ecosystems.

[271] The proposal is also not consistent with parts of the New Zealand Coastal Policy Statement, Regional Policy Statement and District Plan with its effects on natural character, open space, landscape, visual and other amenity values, outdoor recreation and the natural hazard risks. In particular the proposed land use does not meet the objectives and policies, and most of the assessment criteria, of the Open Space B zone of the District Plan.



[272] The hierarchy of matters under sections 6, 7 and 8 in Part 2 also inform our decision. The proposal is contrary to s6(a) in being an inappropriate use and development of this part of the coastal environment. In terms of s6(d) the proposal would have adverse effects on physical access to and the natural experience of the coastal marine area. Section 6 and its national priorities to recognise and provide for protecting, and maintaining public access to, the coastal environment should not be lightly put aside. Neither should the matters in s7 lower down the hierarchy. We appreciate the importance of education to improve stewardship of marine ecology, but as we have said the proposal involves more than that, particularly with the café and its operation outside of opening hours for the Centre. There is the finite nature of the coastline and the natural characteristics that provide its value to people and communities not just from Wellington, but from further afield, including those viewing the South Coast from the Cook Strait ferries. There would be the loss of special amenity values, including views, landscape, outdoor recreation and open space and access to the coastline from the presence of the building and associated parking area on the site. These effects extend well beyond the site.

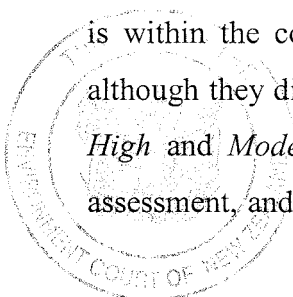
[273] We find that the proposal on this site would not promote the sustainable management of natural and physical resources.

The minority view

Part 2 – s6 – matters of national importance

[274] Section 6 RMA contains a number of issues which are declared to be of national importance, and which are to be recognised and provided for. Section 6(e) has already been mentioned, and I shall deal with the others relevant to this proposal in turn.

[275] *Section 6(a) – the preservation of the natural character of the coastal environment ... and [its protection] from inappropriate use and development.* We had the benefit of the views of no fewer than five highly qualified landscape architects. Dr Michael Steven and Ms Megan Wraight were called by the Trust. Ms Diane Lucas and Mr Barry Chalmers were called by STP, and Mr Gavin Lister was called by the City Council. It is a given that the site is within the coastal environment, and all five agreed that the site has natural character, although they differ in the rating or degree of that natural character. The range was between *High and Moderate*. Given the degree of subjectivity to be brought to bear in such an assessment, and the lack of any professionally accepted rating scale, such a range of views is



unsurprising. There is no rational basis on which I can say that I prefer one view to any of the others, nor do I need do so. All I need do is accept that the site has *Moderate to High* natural character.

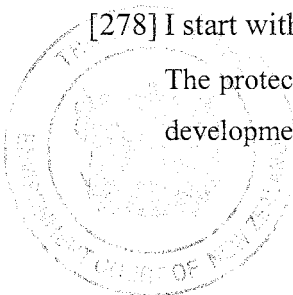
[276] Section 6(b) – *the protection of outstanding natural features and landscapes from inappropriate use and development*. It was on this point that there was the sharpest division of view between the landscape witnesses. Ms Lucas has the opinion that Te Raekaihau Point is an Outstanding Natural Feature, and is thus to be protected under s6(b). Mr Chalmers has no independent view on this point, but defers to Ms Lucas. Dr Steven, Ms Wraight and Mr Lister do not think it is an outstanding natural feature, while acknowledging that it is part of Wellington’s South Coast which is noted as a regionally important landscape in the Regional Policy Statement. I think I can short circuit what would otherwise be a long and probably not very fruitful discussion of the point by saying that, weighing the respective expert views as best I can, I am inclined to think that the majority view of the witnesses is to be preferred. Te Raekaihau Point is one of a number of headlands/points on the Wellington coast, stretching from Point Dorset to Titahi Bay. As Mr Lister points out, save for its lack of visible structures (in which it is not unique) there is nothing to particularly distinguish it from any of the others. That is not to discount the fact that the Point is part of a rugged coastline of significance to Wellington and Wellingtonians, and worthy of being treated with respect. No doubt that view accounts for the whole South Coast being regarded as a regionally important landscape. But I think that, weighing it against the accepted factors, labelling it *outstanding* is to go too far.

Inappropriate use and development

[277] Mr Chalmers succinctly defined the core issue of this litigation in his comment ...*It comes down to appropriateness*. Even if the majority of landscape witnesses are wrong and Ms Lucas is right about the Outstanding Natural Feature point, what needs to be resolved is whether what is proposed here is in any event an *appropriate* use and development on this piece of the coastline. The same issue of course also arises in considering s6(a) and the NZCPS.

[278] I start with the proposition encapsulated in General Principle 2 of the NZCPS:

The protection of the values of the coastal environment need not preclude appropriate use and development in appropriate places.



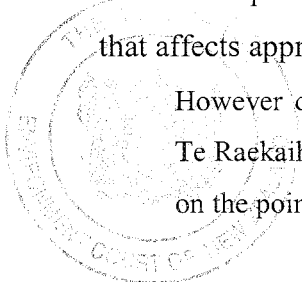
So natural character is not a value to be protected or preserved at all costs. Put another way, neither the NZCPS, nor s6, prohibits use and development in the coastal environment. What they are concerned with is *inappropriate* use and development there. There is no need to struggle for a special or technical meaning of *appropriate* or *inappropriate*. The Concise Oxford defines *appropriate* as ...*suitable; proper*. In his seminal judgment in *New Zealand Rail v Marlborough District Council* [1994] NZRMA 70, Greig J spoke of *appropriate* use or development being ...*suitable or fitting*. At p85 he said this:

“Inappropriate” ... has a wider connotation [ie than “unnecessary”] in the sense that in the overall scale there is likely to be a broader range of things, including developments which can be said to be inappropriate, compared to those which are said to be reasonably necessary. It is, however, a question of inappropriateness to be decided on a case by case basis in the circumstances of the particular case. ...the tenor of the appellant’s submissions was to restrict the application of this principle of national importance, to put the absolute preservation of the natural character of a particular environment at the forefront and, if necessary, at the expense of everything except where it was necessary or essential to depart from it. That is not the wording of the Act or its intention.

[279] So it is not the case that it must be shown that a use or development which will impact on the natural character of the coastal environment must *necessarily* take place there. Rather, the NZCPS and s6 both recognise that there may be situations where sustainable management of resources can be promoted by a *suitable or fitting* development in the coastal environment, notwithstanding that its natural character might be compromised by it. I do not lose sight of the fact that both the NZCPS and s6 are instruments that deal with matters of national importance, so issues of appropriateness need to be assessed on that scale.

[280] That the proposal is an *appropriate* use and development was a strong and recurrent theme in the evidence of witnesses across the spectrum of disciplines. The views of those who regard the development as appropriate in terms of s6(a), 6(b) and the NZCPS are perhaps best summarised in the evidence of Mr Gavin Lister, a consultant landscape architect who reviewed matters for the Wellington City Council. I find those views compelling. He pointed out that despite this being a coastal development, it is to be viewed in the urban context, and that affects appropriateness. He said this:

However despite the fact that the site is modified, and despite the sensitivity of the design, Te Raekaihau’s relatively natural appearance will inevitably be changed if a building is located on the point. The Marine Education Centre will appear as a stand-alone structure in a landmark



location in counterpoint to the landscape setting. By way of illustration it will have a relationship to its surroundings somewhat similar to that of a lighthouse. Once again, whether this is adverse or positive depends on whether it is regarded as appropriate or not.

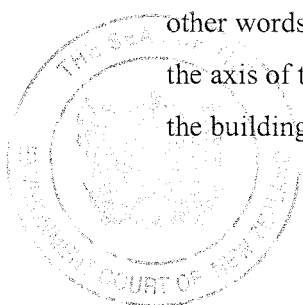
Most structures would be inappropriate in such a location in terms of RMA s6(a) and s7(c). But in my opinion the Marine Education Centre will be appropriate because of its particular characteristics including the following:

- Its purpose relates directly to the site.
- It has a public purpose.
- The centre is designed to engage with and celebrate the site.

The Marine Education Centre's purpose relates directly to the site both in functional and perceptual terms. It is intended to promote understanding and conservation of the natural maritime environment. A setting such as this will directly enhance the Centre's achieving its educational purpose by enabling visitors to make an intellectual and experiential connection between the Centre and the coastline. The site is surrounded on three sides by ocean, is buffeted by the maritime weather of the South Coast, and is adjacent to the proposed marine reserve centred on Island Bay. It is hard to imagine a site so close to a city that would more strongly engage visitors with dynamic coastal processes. Conversely the Maritime Education Centre would be unlikely to be as engaging for the public if it were to be located in a more developed or less exposed setting.

[281] In terms of design Mr Lister goes on to say this:

The Centre's design derives from its setting and engages directly with it. Design appreciation always entails a subjective aspect, but in my opinion the following comments can fairly be made: the bulk of the building will be recessed into the site below road level. Much of it will be "underground" below the road level carpark. The remainder will be open but it will be partly excavated and the ground levels manipulated in a way that the building will appear to be half buried within the site. The ground will be built up around the seaward base of the building in a manner similar to scree slopes at the base of escarpments, and my understanding is that the proposed planting will bring restored coastal plant communities around the building. This recessed level will be open to the site by way of rock pools and ramps. The surroundings of the whole rock platform area will be replanted with coastal plant communities, brackish ponds and rock pools will be created and paths will provide more controlled access to the rocky shore. In other words the bulk of the building will have a horizontal massing set into the rock platform ... the axis of this building is orientated on the axis of the headland rather than parallel to the road: the building will be aligned with the landscape rather than the road.



Those views were echoed by Dr Steven, in whose opinion the development did not *jar* in its context and who thought that, in any event, adding a built element to the Point would not significantly degrade such natural character as it has.

[282] In the course of their pre-hearing discussions, the landscape architects disagreed about the influence the *context* of the site (ie that it is a city or urban context) should have on the assessment of natural character, or how that natural character is valued. I am inclined to think that such a debate focuses on the wrong issue. That this is a coastal environment, but within a city or urban context, helps inform a judgement of what might be said to be *appropriate* development there. Its physical proximity to the city, and the population it contains, brings it within a reasonably convenient and brief travelling distance for schools and other visitors. That surely is one factor in assessing appropriateness, as is the ability of the site, as discussed under the next head, to accommodate the development and still permit easy access to the coastal marine area.

[283] For all of those reasons, I conclude that while the development will undoubtedly impact upon and change the natural character of the site, it nevertheless will not be *inappropriate*. In fact, in my view, it would be an entirely *appropriate* use of the site, adding an entirely complementary and interesting asset to the south coastline.

[284] Section 6(c) – *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna*. This topic was raised, but not, I think, in any serious way. There was some difference in initially held views between Dr Kelvin Lloyd, called by STP, and Ms Isobel Gabites, called by the Trust, about the presence of some vegetation species on the site, but that was largely resolved with Ms Gabites accepting that there were some specimens which had eluded her first inspections. They agree that the site has *Moderate* ecological significance, but disagree about its placement within the spectrum of *Moderate*. Whatever point within the spectrum is taken as correct, the evidence fell well short of persuading me that the site presently contains *significant* indigenous vegetation, or is a *significant* habitat of indigenous fauna, that will be damaged in more than the most minor way by what is proposed. Certainly the site has been degraded by its current uncontrolled and unsympathetic use, and could be improved in respect of both flora and fauna without the development taking place. But the proposal equally certainly carries the promise of significant ecological improvement over what presently exists.

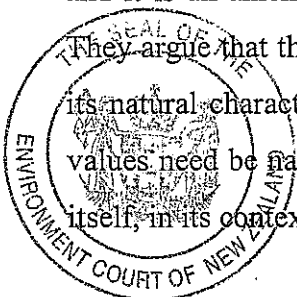
[285] Section 6(d) – *the maintenance and enhancement of public access to and along the coastal marine area*. The *coastal marine area* is quite closely defined in the RMA and, with the exception of the inlet and discharge pipelines, the proposal does not fall within it. But even adopting a more liberal view of maintaining access to the beachfront generally, there is nothing about this proposal which will inhibit, in any significant way, public access to and along the shoreline, the rockpools and the water itself. Certainly the building and structures themselves will only be available to those who are prepared to pay the admission charges, or who wish to patronise the café or shop. But those can be by-passed and access gained to the shoreline and the water. The only change will be that it will not be possible, as it is now, to take a vehicle out onto the Point itself. That may make access for some a little more difficult but from an ecology point of view, it will be no bad thing.

Part 2 – s7 – matters to be given particular regard

[286] Section 7 contains issues to which decision makers under the Act are to have particular regard. Section 7(a) has been mentioned already, and I shall mention those other issues which are relevant.

[287] *Section 7(aa) – the ethic of stewardship*. *Stewardship* is not necessarily synonymous with *do nothing to*. It embodies the concept of the wise and careful management of a resource so that it may be passed on to those who follow, or used in a way that benefits those to whom it belongs. Additionally, education about, and fostering of respect for, marine resources generally, could logically be a facet of stewardship. The establishment of the Centre will not, in my view, waste the resource of the site, or irreversibly prevent other uses of it in the future. It will provide benefits for the public, who are the owners of the resource. I see no conflict between what is proposed, and the ethic of stewardship.

[288] *Section 7(c) – the maintenance and enhancement of amenity values*. This of course is one facet of the *natural character* argument. That the site has natural character is not in issue, and it is an amenity, or an amenity value, prized by those who have opposed the proposal. They argue that the proposal will neither maintain nor enhance that value. To the extent that its natural character will not remain the same, that is unarguably true. But not all amenity values need be natural amenity. Those who support the proposal would argue that the centre itself, in its context, can be seen as an amenity.



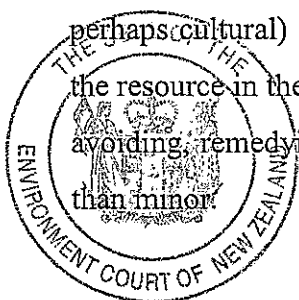
[289] *Section 7(d) – intrinsic values of ecosystems.* Perhaps, in a very loose sense, the terrestrial part of the site could be regarded as an ecosystem. As mentioned in discussing s6(c) there are species of indigenous vegetation and fauna present and it is quite possible that the site would naturally rehabilitate somewhat from its present degraded state if, for instance, vehicles were excluded from the present unformed carpark area. At the least, the intended rehabilitation of a good part of the site as part of the proposal will be an improvement, in an ecological sense, on what exists at present. The marine surroundings of the site are certainly part of an ecosystem, and it is the *raison d'etre* of the proposed Centre to foster knowledge of and respect for the values of that ecosystem. There is no suggestion that the proposed Centre will harm it in any way.

[290] *Section 7(f) – maintenance and enhancement of the quality of the environment.* This too involves, but is wider than, the natural character issue. The *quality of the environment* brings into play consideration not just of the site, or indeed of the South Coast generally, but all of the concepts incorporated in the definition of *environment* in s2 of the Act. It would be repetitious to traverse again the arguments of those who support, and those who oppose, the development. But one way or another, all of those arguments go to the issue of whether the proposal might or might not maintain or enhance the quality of the environment.

[291] *Section 7(i) – the effects of climate change.* This ground has been covered in discussing hazard risks, and no more need be said than any risk to the integrity and safety of the development from sea level rise appears to be within acceptable limits.

Part 2 – section 5 – the purpose of the Act

[292] All factors, however raised under s104 or Part 2 of the Act, go to informing the weighing and the decision required under s5, which embodies the purpose of the Act. That is, does the proposal promote the sustainable management of natural and physical resources in terms of s5? For the reasons I have traversed, I have come to the conclusion that this proposal will allow people, and the community generally, to provide for their social, economic (and perhaps cultural) wellbeing. It can do so without irreversibly precluding alternative uses of the resource in the future; without harming air, water soil or ecosystems; and while reasonably avoiding, remedying and mitigating adverse effects to the point where they will not be more than minor



Section 290A – the Councils’ decisions

[293] Although we conduct a completely fresh hearing, and are not required to decide whether the Councils’ decisions were *right* or *wrong*, we nevertheless are required by s290A of the Act to *have regard to* those decisions. We have done so and, for the reasons traversed, it will be apparent that the majority disagree with them, and the minority would agree with the decisions to grant the necessary consents and permits.

Result

[294] In accordance with the view of the majority of the Court, the appeals are upheld, and the resource consents and permits should not be granted.

Costs

[295] Given the issues and the result, our preliminary view is that awards of costs would not be appropriate but, formally, costs are reserved. Any application should be lodged within 15 working days of the issue of this decision, and any response lodged within a further 10 working days.

Dated at Wellington this 20th day of September 2007



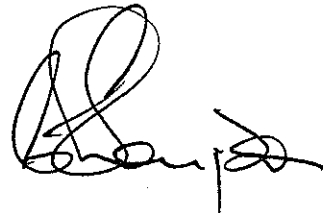
W R Howie

Environment Commissioner



K A Edmonds

Environment Commissioner



C J Thompson

Environment Judge



LIST OF ACTIVE PARTIES

CASE NUMBER: ENV-2006-346-000096
CASE TITLE: Marine Education Centre at 381 Queens Drive, Te Raekaihau Point

Party Details:

Action for Environment
DIRECTOR-GENERAL OF
CONSERVATION (Wellington
Branch)
Gibson, David
Group Against Development On Te
Raekaihau Point Incorporated
Group Against Development On Te
Raekaihau Point Incorporated
Laurenson, Richard
Love, Dr Ngatata
Prince, Lili
Save The Point Incorporated
Trevelyan, Judith
Webster, Chris
Wellington City Council
Wellington City Council
Wellington Marine Conservation
Charitable Trust
Wellington Marine Conservation
Charitable Trust
Wellington Regional Council
Wellington Regional Council

Address for Service Details:

Action for Environment, 13 Ngaio Road, Kelburn, Wellington, Carrick Lewis
DIRECTOR-GENERAL OF CONSERVATION (Wellington Branch), Box 5086, Wellington, Kris
Ericksen/Alistair Morrison

David Gibson, 101 Yule Street, Lyall Bay, Wellington
Tom Bennion, Bennion Law, PO Box 25433, Panama Street, Wellington

Group Against Development On Te Raekaihau Point Incorporated, Box 14081, Kilbirnie, Wellington, Cathy
O'Hagan
Richard Laurenson, PO Box 5606, Wellington
Dr Ngatata Love, 15 Balmoral Terrace, Newtown, Wellington, Morrie Love
Lili Prince, 36 Monaghan Ave, Karori, Wellington
Graham Taylor, John Salmond Chambers, PO Box 5294, Wellington
Richard Laurenson, PO Box 5606, Wellington
Chris Webster, PO Box 5690, Wellington
Stephen F Quinn, DLA Phillips Fox - Wellington, PO Box 2791, Wellington
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J J Hassan, Chapman Tripp Sheffield Young - Wellington, PO Box 993, Wellington

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